

**RESOLUTION NO. 2005- 147**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF MERCED, CALIFORNIA, APPROVING AND  
AUTHORIZING THE EXECUTION OF THE LOAN  
AGREEMENT BETWEEN THE CITY OF MERCED AND  
SUNNYVIEW OF MERCED, L.P.**

**WHEREAS**, The City of Merced ("City") has received Home Investment Partnership Act (HOME) funds from the United States Department of Housing and Urban Development (HUD) pursuant to Title 2 of the National Affordable Housing Act of 1990; and,

**WHEREAS**, Sunnyview of Merced, L.P., a California limited partnership ("Borrower") has requested HOME funds loan over the next three (3) years (Fiscal Years 2005 through 2007), in the total amount of \$1,761,000.00, to assist in the development of an affordable housing apartment complex in the City commonly known as "Sunnyview"; and,

**WHEREAS**, The City and Borrower have negotiated a proposed Loan Agreement, Regulatory Agreement, Promissory Note and Deed of Trust, attached hereto as Exhibits A, B, C, and D respectively, providing the Borrower with funds to assist with the development of Sunnyview as an affordable housing apartment complex in the City; and,

**WHEREAS**, The City Council, following the public hearing process, has agreed to lend the Borrower \$1,761,000.00 from HOME funds for the "Sunnyview" affordable housing apartment complex.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF  
MERCED DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** The City Council hereby approves and authorizes the execution of the Loan Agreement and the Regulatory Agreement, both in the form attached hereto with Sunnyview of Merced, L.P., and the City Manager and City Clerk are hereby authorized and directed to execute said documents on behalf of the City.

**SECTION 2.** Any amendments, changes, or modifications to the Loan Agreement and/or the Regulatory Agreement in the form attached hereto shall require authorization and approval by the City and City Council.

**PASSED AND ADOPTED** by the City Council of the City of Merced at a regular meeting held on the 5th day of December 2005, by the following called vote:

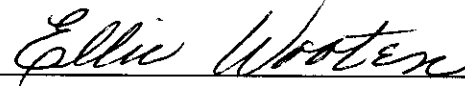
AYES: Council Members: SANDERS, CORTEZ, SPRIGGS,  
GABRIALT-ACOSTA, WOOTEN

NOES: Council Members: NONE

ABSENT: Council Members: OSORIO, 1 vacancy

ABSTAIN: Council Members: NONE

APPROVED:

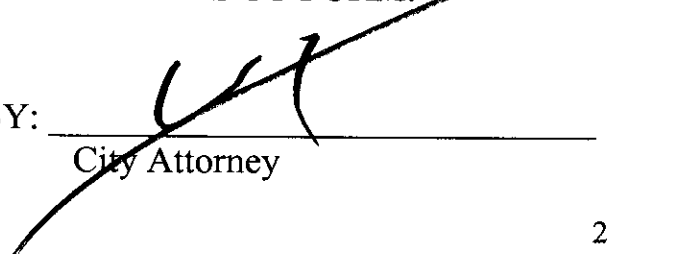
  
Mayor

ATTEST:  
JAMES G. MARSHALL, CITY CLERK

BY:   
Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

BY:   
City Attorney



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## CITY LOAN AGREEMENT

This City Loan Agreement ("**Agreement**"), dated as of December 5, 2005 is made by and between SUNNY VIEW OF MERCED, L.P., a California limited partnership ("**Borrower**"), and the City of Merced, a California Charter Municipal Corporation ("**Lender**").

### RECITALS

A. Borrower owns certain real property in the City of Merced, County of Merced, State of California described in Exhibit A hereto ("**Property**").

B. Borrower proposes to construct on the Property certain improvements consisting of the Improvements (defined below).

C. Borrower expects to obtain a construction loan for the construction of the Improvements (defined below as the "**Senior Construction Financing**"). The proceeds of the Senior Construction Financing may not cover the entire budgeted cost of constructing the Improvements. Therefore, Borrower is entering into this Agreement wherein Lender agrees to loan to Borrower certain funds from the United States Department of Housing and Urban Development HOME Program necessary to cover the difference between (a) the budgeted cost of constructing the Improvements in accordance with this Agreement and (b) the anticipated proceeds of the Senior Construction Financing, on the terms and conditions contained herein, if needed.

NOW, THEREFORE, in consideration of the covenants herein contained, Borrower and Lender agree as follows:

### ARTICLE 1 DEFINITIONS

1.1 Defined Terms. As used herein (including any Exhibits attached hereto), the following terms shall have the meanings set forth below (unless expressly stated to the contrary).

"**Account**" means an account with Lender into which Loan proceeds and Borrower's Funds will be deposited.

"**ADA**" means the Americans with Disabilities Act, 42 U.S.C. Sections 12101 *et seq.*, as hereafter amended or modified.

"**Affiliate**" means, when used with reference to a specified Person, any Person (i) that directly or indirectly controls or is controlled by or is under common control with the specified Person or of which the specified Person owns a majority of the ownership interests, (ii) that is an officer or director of, partner in or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner or trustee, or with respect to which the specified Person serves in a similar capacity or (iii) that, directly or indirectly, is the beneficial owner

of 10% or more of any class of equity securities of the specified Person or of which the specified Person is directly or indirectly the owner of 10% or more of any class of equity securities. "Affiliate" of the Partnership or a General Partner does not include a Person who is a partner in one or more partnerships or joint ventures with the Partnership or any other Affiliate of the Partnership if such a Person is not otherwise an Affiliate of the Partnership or such General Partner.

**"Agreement" or "Loan Agreement"** means this Agency Loan Agreement.

**"Authority"** means California Tax Credit Allocation Committee or other governmental agency having jurisdiction for the allocation of Tax Credits in the State.

**"Bankruptcy Code"** means the Bankruptcy Reform Act of 1978 (11 U.S.C. Sections 101 *et seq.*) as hereafter amended or modified.

**"Border Zone Property"** means any property designated as "border zone property" under the provisions of California Health & Safety Code Sections 25220 *et seq.*, and any regulations promulgated thereunder.

**"Borrower"** means Sunny View of Merced, L.P., a California limited partnership.

**"Borrower's Funds"** means all funds of Borrower deposited into the Account in accordance with this Agreement, including, without limitation, pursuant to Subsection 3.1(b) (Conditions Precedent to All Disbursements) and Subsection 5.6 hereof (Changes and Change Orders).

**"Budget"** means the budget for the Project approved by Lender and as modified from time to time pursuant to the terms of this Agreement. As of the date hereof the Budget is in the form of Exhibit B hereto.

**"Business Day"** means a day of the week (but not a Saturday, Sunday or holiday) on which national banking associations are open to the public for business in Merced, California. Unless specifically referenced in this Agreement as a Business Day, all references to "days" shall be to calendar days.

**"City"** means the City of Merced, State of California.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Collateral"** means all goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the Property or (ii) the Improvements, together with all rents, issues, deposits and profits of the Project; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Project or any business now or hereafter conducted thereon by Borrower; all permits, consents, approvals, licenses, authorizations



and other rights granted by, given by or obtained from, any governmental entity with respect to the Project; all deposits or other security now or hereafter made with or given to utility companies by Borrower with respect to the Project; all advance payments of insurance premiums made by Borrower with respect to the Project; all plans, drawings and specifications relating to the Project; all loan funds held by Lender, whether or not disbursed; all funds deposited with Lender pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Project or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

**"Completion Date"** means the Completion Date for the Improvements as defined in the Senior Loan Documents and shown in the Construction Schedule approved by Lender.

**"Condemnation Proceeds"** means all compensation, awards, damages, rights of action and proceeds awarded to Borrower by reason of any taking of or damage to the Property or the Project, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation proceeding, or in any other manner.

**"Construction Contract" or "Construction Agreement"** means that certain Construction Agreement made by and between Borrower and the General Contractor, as the same may be amended from time to time, as approved by Lender.

**"Construction Schedule"** means a construction schedule, approved by Lender, showing a trade-by-trade breakdown of the estimated periods of commencement and completion of construction in the form of Exhibit C hereto.

**"County"** means County of Merced, State of California.

**"Deed of Trust"** means that certain Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (Construction Trust Deed) of even date herewith, executed by Borrower as Trustor, First American Title Insurance Company as Trustee, for the benefit of Lender, as Beneficiary, as hereafter amended, supplemented, replaced or modified.

**"Default"** shall have the meaning ascribed to such term in Section 10.1 hereof (Defaults).

**"Effective Date"** means the date the Deed of Trust is recorded in the Office of the County Recorder of the County.

**"General Assignments"** shall include Assignments of the Plans and Specifications; the Architect's Agreement; the Construction Contract; all contracts with soils, electrical, mechanical and structural engineers, if any; all subcontracts; any property management or brokerage agreements regarding the Project; and, to the extent to which they may be assigned, all other rights, licenses, permits, franchises, authorizations, approvals and agreements relating to construction of the Project, or required for the use, occupancy or operation of the Project.

**“General Contractor” or “Contractor”** means a general contractor licensed and bonded in the State with a track record for successful completion of projects similar to the Project, and who will provide a performance and completion bond and a labor and materials bond for the full amount of the cost of construction of the Project, and subject to the approval of Lender.

**“General Partner”** means Western Community Housing, Inc, a California nonprofit corporation, which is the General Partner of Borrower.

**“Hazardous Materials”** shall have the meaning ascribed to such term in Section 7.1 hereof.

**“Hazardous Materials Claims”** shall have the meaning ascribed to such term in Section 7.1 hereof.

**“Hazardous Materials Laws”** shall have the meaning ascribed to such term in Section 7.1 hereof.

**“Improvements”** means a 113-unit very low income affordable housing apartment project together with related parking facilities and on and off-site improvements, including, without limitation, curbs, gutters, landscaping, street improvements, and underground utilities, all of which shall be constructed in accordance with the Plans and Specifications, and all appurtenances and fixtures thereto and thereon.

**“Lender”** means the City of Merced, a California Charter Municipal Corporation, and its successors and assigns.

**“Loan”** means the principal sum that Lender agrees to lend and Borrower agrees to borrow pursuant to this Agreement in the principal amount of the Loan Amount.

**“Loan Amount”** means up to the maximum amount of One Million Seven Hundred and Sixty-one Thousand Dollars (\$1,761,000.00), or such other amount as may be mutually agreed upon by Lender and Borrower in writing.

**“Loan Documents”** means this Agreement and those documents, as hereafter amended, supplemented, replaced or modified, properly executed and in recordable form, if necessary, listed in Exhibit D hereto as Loan Documents for the Loan.

**“Maturity Date”** means, if not sooner paid as provided in the Note, thirty-five (35) years from the date of initial funding of this Loan.

**“Note”** means that certain Promissory Note Secured by Deed of Trust of even date herewith, executed by Borrower as Maker, in favor of Lender as Holder, and any modification, extension or renewal thereof.

**“Partnership Agreement”** means that certain Agreement of Limited Partnership of Sunny View of Merced, L.P., by and between the General Partner and Multi-Housing Investments, LLC, a Colorado limited liability company as the Limited Partner.

**"Permanent Lender"** means the lender of the Permanent Loan made or to be made to the Partnership as approved by Lender.

**"Permanent Loan" or "Permanent Financing"** means a permanent loan having a term of at least 30 years, with an interest rate not to exceed 8.75%, a part of the proceeds of which are used to pay off any Senior Construction Financing, which loan is secured by a mortgage or other security interest encumbering all or a portion of the Project, and which loan is subject to the approval of Lender, and repayment of which is to be in fixed monthly payments of principal and interest not to exceed the applicable amortization schedule.

**"Permitted Exceptions"** means the liens or security interests encumbering all or a portion of the Project which are in favor of Lender or which have been approved in writing by Lender, including the Senior Loan Documents, which are subject to the approval of Lender, the Regulatory Agreement, which is subject to the approval of Lender and the items shown on Exhibit G attached hereto which have been approved by Lender.

**"Plans and Specifications"** means the final plans and specifications for the Project, with evidence of appropriate governmental approvals shown thereon. As of the date hereof, the Plans and Specifications are the Plans and Specifications described in Exhibit E hereto.

**"Project"** means the Improvements and the Property.

**"Project Costs"** means the total, as shown on the Budget, of all costs, expenses and fees required to acquire the Property and construct the Project in accordance with the Plans and Specifications.

**"Property"** means the real property in the City of Merced, County of Merced, State of California described in Exhibit A hereto.

**"Regulatory Agreement"** means any Regulatory Agreement to be entered into between the Borrower and the Authority with respect to Low Income Housing Tax Credits allocated to the Project, which Regulatory Agreement shall be recorded against the Project.

**"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 D as Related Documents.

**"Senior Construction Financing" or "Senior Construction Loan"** means a construction loan for construction of the Improvements, at an interest rate not to exceed 8.75%, repayable in thirty-six (36) months from the proceeds of other debt or equity, which loan is secured by a mortgage or other security interest encumbering all or a portion of the Project, and which loan is subject to the approval of Lender.

**"Senior Lender"** means an institutional Construction Lender approved by Lender.

**"Senior Loan Documents"** means the documents and instruments executed by Borrower in favor of the Senior Lender and evidencing, securing or relating directly to the Senior Construction Financing, including but not limited to the building loan agreement made by and between the Senior Lender and Borrower, and which documents and instruments are subject to the approval of Lender.

**"Senior Loan Proceeds"** means the proceeds of the Senior Construction Financing.

**"State"** means California.

**"Stored Materials"** mean materials purchased or to be purchased by Borrower or the General Contractor at the date of a request for disbursement, but not yet installed or incorporated into the Project.

**"Survey"** means the ALTA Survey described in Section 5.15 hereof.

**"Tax Credits"** means federal low income housing tax credits under Code Section 42 of the Internal Revenue Code of 1986, as amended.

**"Termination Date"** means Maturity Date.

**"Title Company"** means First American Title Insurance Company or such other title insurance company satisfactory to Lender.

**"Title Policy"** means a title insurance policy in the form of an American Land Title Association Standard Loan Policy Form 1970 (L.P. 10), with ALTA Endorsement Form 1 Coverage or its equivalent in accordance with standard custom and usage in the County and State, acceptable to the Lender, insuring that on the Effective Date Borrower owns fee simple title to the Property and that the Deed of Trust is a valid lien on the Property in the amount of the Loan Amount, subject to no lien other than the lien of the deed of trust securing the Senior Construction Financing and the Permitted Exceptions, and containing such endorsements as Lender may require. Except as approved by Lender in writing prior to the Effective Date, the Title Policy shall not contain any survey exceptions, exceptions for rights of parties in possession, easements not of record or installments of taxes or special assessments (other than taxes and special assessments not then payable), or any other exceptions to coverage not approved by Lender. The Title Policy shall contain such reinsurance agreements as Lender may require. During the term of the Loan, Lender may require other endorsements to the Title Policy, including, without limitation, CLTA Endorsements 101.2, 102.5, 116 and 122, or their equivalent in accordance with standard custom and usage in the County and State, acceptable to Lender.

1.2 **Exhibits Incorporated.** All exhibits attached hereto, are hereby incorporated into this Agreement.

## ARTICLE 2 THE LOAN

2.1 Loan. By and subject to the terms and conditions of this Agreement, provided that Borrower has obtained all other necessary financing commitment for the Project, including, but not limited to tax credits, loans, and equity capital, Lender agrees to lend to Borrower and Borrower agrees to borrow from Lender funds up to the Loan Amount. Amounts disbursed to or on behalf of Borrower pursuant to this Agreement shall be used to finance construction of the Improvements and for such other purposes and uses as may be permitted under this Agreement and the Loan Documents.

2.2 Evidence of Indebtedness and Maturity. The Loan shall be evidenced by the Note in the principal amount of the Loan Amount. The outstanding principal balance of the Loan, together with accrued interest thereon and all other amounts payable by Borrower under the terms of the Loan Documents, shall be due and payable on the Maturity Date.

2.3 Interest. The Loan Amount shall bear interest at the rate per annum specified in the Note, which interest shall be due and payable as specified therein. Borrower hereby authorizes Lender to disburse proceeds of the Loan to pay interest on the Note as and when due, without further application or request for disbursement from Borrower. Lender in its sole discretion may make such disbursements notwithstanding the fact that a Default has occurred and is continuing under the terms of this Agreement or any other Loan Document. Such disbursements shall be added to the outstanding principal balance of the Note. The authorization hereby granted shall be irrevocable, and no further direction or authorization from Borrower shall be necessary for Lender to make such disbursements. Nothing contained in this Section 2.3 shall prevent Borrower from paying interest from its own funds or shall require Lender to disburse Loan proceeds to pay interest if the conditions set forth in Section 3.1 and 3.2 are not satisfied.

2.4 Prepayment. Borrower may prepay the Note in whole or in part at any time without penalty or premium, but Borrower may not re-borrow any portion of the Note previously prepaid. The Loan is not a "revolving" loan.

2.5 Security. Borrower's obligations under the Note and under this Agreement shall be secured by, *inter alia*, the Loan Documents listed on Exhibit D, including but not limited to the Deed of Trust, other than this Agreement and the Note.

2.6 [RESERVED]

2.7 Loan Documents. Borrower shall deliver to Lender concurrently herewith, each of the Loan Documents, properly executed and in recordable form, as applicable, together with the Related Documents.

2.8 Opinion of Legal Counsel. Prior to the Effective Date, Borrower shall provide, at Borrower's expense, an opinion of legal counsel in form and content satisfactory to Lender to the effect that: (a) upon due authorization, execution and recordation or filing as may be specified in the

opinion, each of the Loan Documents shall be legal, valid and binding instruments, enforceable against the makers thereof in accordance with their respective terms; (b) Borrower is duly formed and has all requisite authority to enter into the Loan Documents; (c) the Senior Loan Documents have been validly entered into between Borrower and the Senior Lender; (d) the Regulatory Agreement has been validly entered into between Borrower and the Authority; (e) Borrower is sufficiently capitalized such that no indebtedness other than the Senior Construction Financing, Borrower's equity, and this Loan is necessary for acquisition of the Property and the construction and completion of the Improvements; and (f) such other matters, incident to the transactions contemplated hereby, as Lender may reasonably request.

2.9 Effective Date and Termination. The date of this Agreement and 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 (the "**Effective Date**"). If any condition precedent to Lender's obligation to make the first disbursement of Loan proceeds hereunder has not been satisfied (or waived by Lender in its sole discretion) before the Termination Date for any reason other than Lender's default hereunder, then upon the Termination Date, Lender shall have no further obligation to Borrower hereunder; and if the first disbursement of Loan proceeds hereunder have not been made by the Termination Date, for any reason other than Borrower's default hereunder, then upon the Termination Date Borrower shall have no further obligation to Lender hereunder, and if the Deed of Trust has previously been recorded, Lender shall promptly and fully reconvey the Deed of Trust.

2.10 Maturity Date. All sums due and owing under this Agreement and the Loan Documents shall be repaid in full on the Maturity Date. All payments due to Lender under this Agreement and the Loan Documents, whether at the Maturity Date or otherwise, shall be paid in immediately available funds.

2.11 Full Repayment and Reconveyance. Upon receipt of all sums owing and outstanding under this Agreement and the Loan Documents, Lender shall issue a full reconveyance of the Project 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 Project, if any (it being agreed that Lender has no obligation to issue any such set aside letter, letter of credit or other form of undertaking). 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 3 CONDITIONS PRECEDENT

3.1 Conditions Precedent to All Disbursements. Lender's obligation to make any disbursements or perform any other obligations under the Loan Documents shall be subject at all times to the satisfaction of each of the following conditions precedent:

(a) There shall exist no Default, as defined in this Agreement, or Default as defined in any of the other Loan Documents, or any event or condition which would constitute a Default thereunder after notice or passage of time.

(b) Any undisbursed Loan funds together with all sums, if any, to be provided by Borrower as shown in Exhibit B, and any available and undisbursed Senior Loan Proceeds shall be at all times equal to or greater than the amount which Lender from time to time determines necessary to: (i) pay, through completion, all costs of development, construction, marketing and leasing of the Project and Improvements in accordance with the Loan Documents; (ii) pay all sums which may accrue under the Loan Documents and Senior Loan Documents prior to repayment of the Loan and the Senior Construction Loan; and (iii) enable Borrower to perform and satisfy all of the covenants of Borrower contained in the Loan Documents and the Senior Construction Loan (and during the times all such conditions are satisfied, the Loan shall be deemed "in balance" for purposes of this Agreement), and Borrower shall have certified to Lender that the Loan is in balance. If Lender determines at any time that the undisbursed Loan funds are insufficient for said purposes, Borrower shall deposit the amount of such deficiency in the Account within seven (7) days of Lender's written demand.

(c) Lender shall have received all Loan Documents, other documents, instruments, insurance policies, and forms of evidence or other materials required of Borrower or requested by Lender under the terms of this Agreement or any of the Loan Documents, including but not limited to the documents listed in Exhibit D hereto which have been approved by Lender.

(d) On or before the Effective Date, Borrower and General Contractor shall have entered into the Construction Agreement pursuant to the terms and conditions of which General Contractor is to construct the Improvements. Concurrently herewith, Borrower shall deliver to Lender an assignment to Lender of Borrower's rights under the Construction Agreement and any bond posted by the General Contractor as security for Borrower's obligations under this Agreement and the Loan Documents, including the consent of the General Contractor thereto, in form and substance satisfactory to Lender.

(e) There shall be distribution of funds from the United States Department of Housing and Urban Development HOME Program to Lender in an amount sufficient to make distribution to Borrower under Section 4.2 of this Agreement.

(f) Reserved.

3.2 Additional Conditions Precedent to Initial Disbursement. In addition to the conditions precedent set forth in Section 3.1, Lender's obligation to (i) make the initial disbursement of the Loan, or (ii) perform any other obligations under the Loan Documents, shall be subject to the satisfaction of each of the following conditions precedent before the Termination Date:

(a) Lender shall have received and approved in form and substance satisfactory to Lender the following: (i) a soils report for the Project; (ii) approval of environmental review under the National Environmental Policy Act (NEPA); (iii) an environmental questionnaire and environmental site assessment with respect to the presence, if any, of Hazardous Materials on the Project; (iv) two sets of the Plans and Specifications, certified as complete by the Architect, together with evidence of all necessary or appropriate approvals of governmental agencies; (v) copies of all agreements which are material to completion of the Improvements; (vi) copies of all building permits and similar permits, licenses, approvals, development agreements and other authorizations of governmental agencies required in connection with the development of the Project; and (vii) copies of any initial study, negative declaration, mitigated negative declaration, environmental impact report, environmental impact statement, notice of determination or notice of exemption prepared, adopted, certified or filed by or with any governmental agency in connection with the Project.

(b) Lender shall have received and shall have approved all documents and instruments executed or to be executed by Borrower in connection with the Senior Construction Financing, including the Senior Loan Documents, all of which documents and instruments shall be in form and substance satisfactory to Lender.

(c) If applicable, Lender shall have entered into a subordination and intercreditor agreement with the Senior Lender in form and substance satisfactory to Lender in its sole and absolute discretion.

(d) The deed of trust securing Borrower's obligations under the Senior Construction Financing shall have been recorded in the Official Records of the County and all conditions precedent to Senior Lender's initial disbursements shall have been satisfied, with the exception of the funding of the Loan.

(e) The Deed of Trust and a UCC-1 Financing Statement described in Exhibit D hereto shall have been recorded in the Official Records of the County.

(f) Reserved.

(g) The Title Company shall have delivered to Lender the Title Policy or a proforma Title Policy together with a commitment to issue such policy, and all of the documents described therein, satisfactory to Lender, and Lender shall have received the Survey satisfactory to Lender.

(h) Lender shall have received evidence satisfactory to Lender that Borrower has received a preliminary reservation or an allocation of federal low income housing tax credits under



Code Section 42 from the Authority in the total amount of no less than Seventeen Million Nine Hundred Eighty-seven Thousand One Hundred and Ninety Dollars (\$17,987,190.00).

#### **ARTICLE 4 DISBURSEMENTS OF THE LOAN**

4.1 Account, Pledge and Assignment, and Disbursement Authorization. The following sums shall be deposited into the Account:

- (a) The proceeds of the Loan, when qualified for disbursement;
- (b) Borrower's Funds; and
- (c) If the Senior Lender so permits, the Senior Loan Proceeds, when disbursed by the Senior Lender.

Proceeds of the Loan shall be deposited into the Account or otherwise disbursed to or for the benefit or account of Borrower under the terms of this Agreement. Disbursements hereunder may be made by Lender upon the written request of any person who has 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 at the address shown in Section 11.2 hereof. As additional security for Borrower's performance under the Loan Documents, Borrower hereby irrevocably pledges and assigns to Lender, subject to the prior interest of the Senior Lender therein, all monies at any time deposited in the Account.

4.2 Loan Disbursements. Subject to the conditions set forth in Sections 3.1 (Conditions Precedent to All Disbursements), and 3.2 (Additional Conditions Precedent to Initial Disbursement) hereof, the proceeds of the Loan and Borrower's Funds shall be disbursed as follows: the first disbursement of Five Hundred and Eighty-seven Thousand Dollars (\$587,000.00) shall be made upon the closing of this Loan; the second disbursement of Five Hundred and Eighty-seven Thousand Dollars (\$587,000.00) shall occur on the first day of the 13<sup>th</sup> month after the closing of this Loan, and the third and final disbursement of Five Hundred and Eighty-seven Thousand Dollars (\$587,000.00) shall occur on the first day of the 25<sup>th</sup> month after the closing of this Loan. Disbursements made after the deposit of Borrower's Funds shall be made first from Borrower's Funds. All disbursements of Loan proceeds shall be held by Borrower in trust and applied by Borrower solely for the purposes for which the funds have been disbursed. Lender has no obligation to monitor or determine Borrower's use or application of the disbursements.

4.3 Use of Disbursements. Borrower shall use disbursements of the Loan only for the payment of or reimbursement for Project Costs as shown on the Budget and approved by Lender pursuant to subsection 4.4 hereof, and only as such Project Costs are incurred by Borrower.

4.4 Senior Loan Disbursements. All requests to Senior Lender for disbursement under the Senior Construction Loan shall be subject to Lender's review and approval of such requests

before such requests are submitted to the Senior Lender. Lender's approval shall not unreasonably be withheld, delayed or conditioned. Any such request shall be deemed approved by Lender if Lender has not given its approval or disapproval within five (5) Business Days after Lender's receipt of the request in writing. Lender shall review and approve all payment requests on a monthly basis.

## **ARTICLE 5 CONSTRUCTION**

5.1 Completion of Construction. Borrower shall diligently and continuously construct the Improvements in accordance with the Construction Schedule approved by Lender, and as provided in the Senior Loan Documents, and shall complete the Improvements on or before the Completion Date.

5.2 Extensions of Time. The time within which construction of the Improvements must be completed shall be extended for a period of time equal to such extensions and only such extensions of time permitted by the Senior Loan Documents.

5.3 General Contractor. Borrower shall require General Contractor to perform in accordance with the terms of the Construction Agreement and Borrower shall not amend, modify or alter the responsibilities of General Contractor under the Construction Agreement without the prior written consent of Lender.

5.4 Architect. Borrower shall require Architect to perform in accordance with the terms of the Architect's Agreement and Borrower shall not amend, modify or alter the responsibilities of Architect under the Architect's Agreement without the prior written consent of Lender.

5.5 No Defaults under Construction Contract and Architect's Agreement. Borrower shall comply with and shall not suffer to exist a default, or any event which, with the passage of time or the giving of notice or both, would constitute a default by Borrower, under the Construction Contract or the Architect's Agreement. Immediately upon the occurrence of a default under the Construction Contract or the Architect's Agreement (whether by Borrower or the other party or parties thereto), Borrower shall deliver written notice to Lender of such default, specifying the nature and circumstances thereof.

5.6 Changes and Change Orders.

(a) Changes in Laws and Restrictive Covenants. Borrower shall not change or in any manner cause or seek a change in any laws, requirements of governmental authorities and obligations created by private contracts and leases which now or hereafter may significantly affect the ownership, construction, equipping, fixturing, use or operation of the Project without the prior written consent of Lender.

(b) Changes in Cost of Contracts. Borrower shall not agree to any increases in the cost or amount of the Construction Contract without the prior written consent of Lender. Any changes to the scope of work for the Project exceeding for each individual change \$10,000 or in the

aggregate a total amount of \$50,000 for all changes must be approved by Lender prior to proceeding with such work, which approval shall not be unreasonably withheld.

(c) Plans and Specifications; Lender Consent. Borrower shall not make any changes in the Plans and Specifications without the prior written consent of Lender regardless of financial impact, which shall not be unreasonably withheld.

(d) Working Drawings. Borrower shall at all times maintain, for inspection by Lender, a full set of working drawings of the Improvements.

(e) Submission Requirements. Unless the Construction Lender requires a different time frame shorter than provided hereunder, Borrower shall submit all proposed changes regardless of dollar amount to Lender at least ten (10) days prior to the commencement of construction relating to such proposed changes, whether or not such change is subject to Lender's consent, with such submissions to be made on a Contractor's Change Estimate or Change Order AIA form or such other form acceptable to Lender, signed by Borrower and, if required by Lender, also by the Architect and the Contractor, with a written description of the proposed change, and with all appropriate backup documentation and information from subcontractors, and with a review of conditions from the Architect or applicable consultant approved by Lender.

(f) Consent Process. Borrower acknowledges that Lender's review of any changes to the Plans and Specifications and the required consent may result in delays in construction, and hereby consents to any reasonable delays. Lender agrees to use its reasonable efforts to promptly review any such requested changes. At its option, Lender may require Borrower to provide: (i) evidence satisfactory to Lender of the cost and time necessary to complete the proposed change; and (ii) a deposit in the amount of any increased costs into the Account.

(g) Final Plans and Specifications. Within thirty (30) days after completion of the Improvements, Borrower shall deliver to Lender a complete set of "as built" Plans and Specifications for the completed Improvements.

5.7 Contractor/Construction Information. Within fifteen (15) days after Lender's written request, Borrower shall deliver to Lender from time to time in a form acceptable to Lender: (a) a list detailing the name, address and phone number of each contractor, subcontractor and material supplier to be employed or used for construction of the Improvements together with the dollar amount, including changes, if any, of each contract and subcontract, and the portion thereof, if any, paid through the date of such list; (b) copies of each contract and subcontract identified in such list, including any changes thereto and including types of work and contract or subcontract amount; (c) a cost breakdown of the projected total cost of constructing the Improvements, and that portion, if any, of each cost item which has been incurred; (d) copies of current financial statements of the General Contractor relative to the Project; and (e) 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. Borrower agrees that Lender may disapprove any contractor, subcontractor or material supplier which, in Lender's good faith determination, is deemed financially or otherwise unqualified or is disapproved by the Senior Lender; provided, however, that the absence of any such

disapproval shall not constitute a warranty or representation of qualification by Lender. Lender may contact the General Contractor or any contractor, subcontractor or material supplier to discuss the course of construction.

5.8 Prohibited Contracts. Without the prior written consent of Lender, Borrower shall not contract for any materials, furnishings, equipment, fixtures or other parts or components of the Improvements, if any third party shall retain any ownership interest (other than lien rights created by operation of law) in such items after their delivery to the Property and Improvements. Borrower shall have five (5) days to effect the removal of any such retained interest.

5.9 Liens and Stop Notices.

(a) If a claim of lien is recorded which affects the Property or Improvements or a bonded stop notice is served upon Lender, Borrower shall, upon the earlier of (i) twenty (20) calendar days of such recording or service or (ii) five (5) calendar days after Lender's demand: (x) pay and discharge the claim of lien or bonded stop notice; (y) effect the release thereof by recording or delivering to Lender (or to the Senior Lender, if the Senior Lender shall so require) a surety bond in sufficient form and amount; or (z) provide Lender with other assurances which Lender deems, in its sole discretion, to be satisfactory for the payment of such claim of lien or bonded stop notice and for the full and continuous protection of Lender from the effect of such lien or bonded stop notice. Notwithstanding the foregoing, Borrower shall have the right to contest in good faith and with reasonable diligence the validity of any such liens or claims upon furnishing to Title Company such security or indemnity as the latter may require to induce it to issue its Title Insurance Policy or an interim endorsement thereto insuring against all such claims or liens and, provided further, that Lender will not be required to make any further disbursements of the Loan until all such mechanics' or materialmen's liens or claims of lien shown on the title insurance commitment or any interim endorsement have been so insured against by the Title Company to Lender's satisfaction. In the case of stop notices, Borrower shall have the right to contest, in good faith and with reasonable diligence, the validity of any stop notice, provided that Borrower shall immediately file with Lender a bond in form and amount sufficient to release such stop notice. Borrower agrees that Lender shall have no obligation to make any further disbursements of the Loan until all stop notices have been fully released or discharged to Lender's satisfaction.

(b) If Borrower fails to discharge, release or contest promptly any liens, claims of lien or stop notices and provide the assurances required by Subsection 5.9(a), then without limiting any of its rights and remedies, Lender may, but shall have no obligation to, procure the release and discharge of any such lien or stop notice and any judgment or decree thereon, and in furtherance thereof may, in its sole discretion, effect any settlement or compromise or furnish any security or indemnity as may be required by the Title Company. All amounts expended by Lender in connection with the provisions of this Subsection 5.9(b) shall be deemed to constitute a disbursement of the Loan. In settling, compromising or arranging for the discharge of any liens or stop notices under this Subsection 5.9(b), Lender shall not be required to establish or confirm the validity or amount of the lien or stop notice.

5.10 Construction Responsibilities. Borrower shall construct the Improvements in a good and workmanlike manner according to the Plans and Specifications and the recommendations of any soils or engineering report and in strict compliance with the terms of the Senior Loan Documents. All construction shall be free and clear of defects in and liens or claims of liens for materials supplied or labor or services performed in connection with the Project. The Project shall comply with the Plans and Specifications and shall be contained wholly within the lot lines of the Property and shall not encroach on any other real estate, easements, building lines or set-back requirements. Borrower shall comply with all applicable laws, ordinances, rules, regulations, building restrictions, recorded covenants and restrictions, and requirements of all regulatory authorities having jurisdiction over the Property or Improvements. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Property and Improvements, including, without limitation, the quality and suitability of the Plans and Specifications and their compliance with all governmental requirements, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all disbursements. Lender is not obligated to supervise, inspect or inform Borrower or any third party of any aspect of the construction of the Improvements or any other matter referred to above.

5.11 Correction of Defects. Within five (5) days after knowledge or notice thereof, Borrower shall proceed with diligence to correct all defects in the Project and any departure from the Plans and Specifications except as approved by Lender. The disbursement of any Loan proceeds shall not constitute a waiver of Lender's right to require compliance with this covenant with respect to any such defect or departure from the Plans and Specifications.

5.12 Assessments and Community Facilities Districts. Without the prior written consent of Lender, Borrower shall not cause or consent to the formation of any assessment district or community facilities district which includes all or any part of the Property and Improvements pursuant to: (a) the Mello-Roos Community Facilities Act of 1982; (b) the Municipal Improvement Act of 1913; or (c) any other comparable or similar statute or regulation. Borrower shall not cause or otherwise consent to the levying of special taxes or assessments against the Property and Improvements by any such assessment district or community facilities district.

5.13 Delay. Borrower shall promptly notify Lender in writing of any event causing delay or interruption of construction, or the timely completion of construction of the Project. The notice shall specify the particular work delayed, and the cause and period of each delay.

5.14 Inspections. Lender shall have the right to enter upon the Property from time to time at any reasonable time to inspect the Improvements and the materials and construction work to verify Borrower's compliance with this Agreement including to verify information disclosed by or required of Borrower pursuant to this Agreement. Without limiting the generality of the foregoing, Lender shall have the right to examine all contracts, records, test reports, plans and shop drawings concerning the Project, which Borrower shall keep at the construction site or at Borrower's offices. Borrower shall cause the General Contractor and subcontractors to cooperate with Lender pursuant to this Section. Borrower shall require the General Contractor to maintain and make available for

inspection by Lender or its representatives, upon demand, daily log sheets covering the period since the immediately preceding inspection, which log sheets shall show dates, weather conditions, number of workers and subcontractors on the job and the progress of construction, and testing and inspection reports. Any inspection or review of the Project by Lender is solely to determine whether Borrower is properly discharging its obligations to Lender and may not be relied upon by Borrower or by any third party as a representation or warranty of compliance with this Agreement or any other agreement. Lender owes no duty of care to Borrower or any third party to protect against, or to inform Borrower or any third party of, any negligent, faulty, inadequate or defective design or construction of the Improvements as determined by Lender.

5.15 Surveys. Concurrently herewith, Borrower shall deliver to Lender an ALTA perimeter survey of the Property satisfactory to Lender. Upon completion of the Improvements, Borrower shall deliver to Lender an ALTA as-built survey satisfactory to Lender and acceptable to the Title Company for purposes of issuing an ALTA policy of title insurance, and showing the location of the Improvements and confirming that the Improvements are located entirely within the boundaries of the Property. All such surveys shall meet the requirements of the Senior Lender, and shall: (a) be prepared and certified by a licensed engineer or surveyor acceptable to the Senior Lender, Lender and the Title Company for the benefit of the Borrower, the Lender and the Title Company as having been made in accordance with ALTA minimum detail requirements, or other comparable standards in the County and State acceptable to Lender, and with such certification, otherwise be in form and substance satisfactory to said title insurer and the Lender; and (b) confirm (1) the legal description and boundaries of the Property; (2) the location of all easements and building setback lines appurtenant to, or affecting, the Project or the Property, whether visible or of record; (3) that the location of the improvements constructed on the Property do not encroach upon any easement or setback lines or violate any building or other restriction of record; (4) the location of all encroachments onto the Project or the Property from buildings or other improvements on adjacent property; and (5) all encroachments by the improvements constructed on the Property over or onto any easements, or setback or building lines on adjacent property.

5.16 Title Policies. Upon the Effective Date, the Borrower shall deliver to Lender the Title Policy (as defined herein) satisfactory to Lender, issued by the Title Company in favor of Lender for initial funding of the Loan. Upon completion of foundations of the Improvements, Lender may require a foundation endorsement satisfactory to Lender be issued by the Title Company for the Title Policy issued to Lender. Upon completion of construction of the Improvements, Borrower shall cause the Title Policy to be reissued by the Title Company in favor of Lender as a full ALTA extended coverage loan policy satisfactory to Lender, in the full amount of the Loan, and including CLTA form 100 endorsement and such other endorsements as Lender may require. All such Title Policies issued to Lender shall satisfy all title policy requirements of the Senior Lender.

5.17 Prohibition Against Transfer of Property, the Improvements, and Assignment of Agreement. Prior to the recordation by Lender of a Certificate of Completion upon completion of the Project, the Borrower shall not transfer, convey, assign, or lease the whole or any part of the Property or the Improvements thereon without the prior written approval of the Lender. This prohibition shall not apply subsequent to the recordation of the Certificate of Completion with respect to the Improvements upon the Property. This prohibition shall not be deemed to prevent the

granting of easements or permits to facilitate the development of the Project, or (i) prohibit the transfer of Borrower's limited partnership interests in any respect; (ii) prohibit the removal and replacement of the Borrower's general partner in accordance with the Borrower's partnership agreement; (iii) prohibit a transfer of the Property or the Improvements to the Borrower's general partner pursuant to the Borrower's partnership agreement as then in effect; or (iv) prohibit a transfer of the Property or the Improvements to any Affiliate of the Borrower's then general partner or the Borrower's then limited partner, so long as any and/or all of the foregoing transferees or assignees expressly and unconditionally assumes all of the duties and obligations of the Borrower and/or any subsequent transferee or assignee under this Agreement to the extent allocable to the portion transferred. Any sale, transfer, conveyance or assignment not made in strict compliance with the foregoing conditions shall constitute a default by the Borrower under this Agreement.

In the absence of specific written agreement by the Lender, no such transfer, assignment or approval by the Lender shall be deemed to relieve the Borrower or any other party from any obligation under this Agreement until completion of the Improvements as evidenced by a Certificate of Completion.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES**

As a material inducement to Lender to enter into and perform this Agreement, Borrower represents and warrants to Lender as of the date hereof, and as of the Effective Date, and as of each request for a disbursement of Loan Proceeds and continuing thereafter that:

6.1 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 and develop the Project and Improvements as contemplated by this Agreement and the Loan Documents.

6.2 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.

6.3 Formation and Organizational Documents. Borrower has delivered to Lender all formation and organizational documents of Borrower and of the general partners of Borrower, and all such formation and organizational documents remain in full force and effect and have not been amended or modified since they were delivered to Lender. Borrower shall immediately provide Lender with copies of any amendments or modifications of the formation or organizational documents.

6.4 No Violation. Borrower's execution, delivery, and performance under the Loan Documents do not: (a) require any consent or approval not heretofore obtained under any partnership agreement, articles of incorporation, bylaws, Senior Loan Documents, or other documents; (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, including without limitation, Code Section 42 and all regulations promulgated thereunder; (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.

6.5 Compliance with Laws. Borrower has, and at all times shall have obtained, all permits, licenses, exemptions, and approvals necessary to construct, occupy, operate, market and lease the Project, and shall maintain compliance with all governmental requirements applicable to the Project and all other applicable statutes, laws, regulations and ordinances pertaining to the Property and the Project or necessary for the transaction of the Borrower's business. The Plans and Specifications have been approved by all federal, state and local authorities or instrumentalities which have jurisdiction over the Property or construction thereon and the beneficiaries of any such covenants. The Property consists of legal and separate lots under applicable law and for tax assessment purposes.

6.6 Tax Credit Compliance and Allocations. Borrower has complied at all times fully with the requirements of Code Section 42, and applicable State law and all regulations promulgated thereunder and any other federal, state or local laws or regulations related thereto, including, without limitation, with respect to (x) Borrower's organization, business and operations, (y) the operation of the Project and (z) the maintenance of all low income housing tax credits heretofore or hereafter allocated to Borrower and/or the Project pursuant to said Section 42 and applicable State law. Borrower has received a preliminary reservation of low income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, from the Authority in the total amount of Seventeen Million Nine Hundred Eighty-seven Thousand One Hundred and Ninety Dollars (\$17,987,190.00).

6.7 Litigation or Other Proceedings. 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 any of its general partners, or against the Property, that would or could materially affect the Loan, the Loan Documents, the Senior Construction Financing, the Permanent Financing, the Property or the Improvements in any manner.

6.8 Financial Condition. All financial statements and information heretofore delivered to Lender by Borrower, including, without limitation, information relating to the financial condition of Borrower, the Property, the Improvements, and the general partner of Borrower, fairly and accurately represent the financial condition of the subject thereof and have been prepared (except as expressly noted therein) on a federal income tax basis, consistently applied. Borrower acknowledges and agrees that Lender may request and obtain additional information from third parties regarding any of the above, including, without limitation, credit reports.

6.9 No Material Adverse Change. There has been no material adverse change in the financial condition of Borrower and/or any general partner of Borrower since the dates of the latest financial statements furnished to Lender and, except as otherwise disclosed to Lender in writing,



Borrower has not entered into any material transaction which is not disclosed in such financial statements.

6.10 Loan Proceeds and Adequacy. The Loan proceeds, together with the Senior Loan Proceeds, Borrower's Funds and all other sums, if any, to be provided by Borrower as shown in Exhibit B, are sufficient to construct the Improvements in accordance with the terms and conditions of this Agreement. The sum of (a) the maximum principal amount of the Senior Construction Financing and (b) the maximum principal amount of the Loan shall not exceed the total Project Costs.

6.11 Senior Construction Loan. The Senior Construction Loan Documents are in full force and effect, and no party is in default thereunder.

6.12 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 material misrepresentation or omission.

6.13 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.

6.14 Utilities; Access. All utility services, including, without limitation, gas, water, sewage, cable television, electrical and telephone, necessary for the development and occupancy of the Project and Improvements are available to the Property and are not or will not be subject to any conditions, other than normal charges to the utility supplier, which would limit the use of such utilities, or Borrower has taken all steps necessary to assure that all such services shall be available upon completion of the Improvements. All public streets and public or private easements necessary for access to the Property and for construction and operation of the Project are available to the boundaries of the Property.

6.15 Americans With Disabilities Act Compliance. The Improvements have been designed and shall be constructed and completed, and thereafter maintained, in strict accordance and full compliance with all of the requirements of the ADA. Borrower shall be responsible for all ADA compliance costs.

6.16 Compliance with Agreements. The execution, delivery and performance of this Agreement and the Loan Documents have not and shall not constitute a breach or default under any other agreement, law or court order under which Borrower or any general partner of Borrower is a party or is bound, or which shall affect the Property or the construction, use, occupancy and operation of the Project or any part thereof.

6.17 Project Costs. On a line-by-line and total basis, the Project Costs shown in Exhibit B, as the same may be modified pursuant to the terms hereof, are true, correct and complete, and represent the total of all costs, expenses and fees which Borrower expects to pay or may be or

become obligated to pay to construct, occupy, lease and operate the Project through the Maturity Date including, without limitation, the construction by the General Contractor pursuant to the Construction Contract.

6.18 Collateral. Borrower is now and shall continue to be the sole owner of the Collateral, free from any adverse lien, security interest or adverse claim of any kind whatsoever, except for the Permitted Exceptions.

6.19 Senior Loan Documents. All of the representations and warranties of Borrower contained in the Senior Loan Documents are and shall remain true and correct and complete.

6.20 Related Agreements. All representations and warranties of Borrower and the General Partner of Borrower or their Affiliates in the Borrower's Partnership Agreement or Related Documents are and shall remain true and correct and complete.

6.21 No Condemnation. No condemnation or other like proceedings are pending or threatened against the Property or any part thereof, or which would impair the full utilization of the Project in any manner whatsoever.

## ARTICLE 7 HAZARDOUS MATERIALS

7.1 Special Representations and Warranties. Without in any way limiting the other representations and warranties set forth in this Agreement, and after reasonable investigation and inquiry, Borrower hereby specially represents and warrants to the best of Borrower's knowledge as of the date of this Agreement, except as previously disclosed by Borrower to Lender in writing, as follows:

(a) Hazardous Materials. The Property and Improvements are not and have 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" or "toxic substances" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances or regulations (collectively, the "**Hazardous Materials**"). Neither Borrower nor, to the best of Borrower's knowledge, any third party has constructed, used, deposited, generated, manufactured, stored, placed, located or disposed of on, under or about the Property or transported to or from the Property any 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 ("Hazardous Materials Claims") pending or threatened against Borrower, the Property or Improvements by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.

(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.

7.2 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 except as appropriate in connection with residential use and occupancy.

(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.

7.3 Reports and Inspection By Lender. Borrower agrees to submit to Lender prior to the Effective Date and thereafter, if requested by Lender at any time and from time to time, a current up-to-date Phase I Environmental Report or other report, satisfactory to Lender, certifying that the Property and the Improvements are not and have not been a site involving, directly or indirectly, the

use, generation, manufacturing, treatment, storage, release, disposal or presence of any Hazardous Materials. 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 Material into, onto, beneath or from the Property and Improvements.

7.4 Hazardous Materials Indemnity. Notwithstanding any provision to the contrary, Borrower hereby agrees to protect, defend, indemnify and hold harmless Lender, its directors, officers, employees, agents, successors and assigns from and against any and all losses, damages, liabilities, injuries (including death or person or persons), claims, actions, judgments, court costs and legal or other expenses (including, without limitation, attorneys' fees and expenses) which Lender may incur as a direct or indirect consequence of the use, generation, manufacture, storage, release, disposal, transportation or presence of any Hazardous Materials in, on, under or about the Property or Improvements, together with interest from the date the indebtedness under this indemnity arises until paid at the rate of interest applicable to the principal balance of the Note. It is understood that the duty of Borrower to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Lender of insurance certificates and endorsements required under this Agreement does not relieve Borrower from liability under this indemnification and hold harmless clause. **BORROWER'S DUTIES AND OBLIGATIONS TO PROTECT, 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.**

7.5 Legal Effect of Section. Borrower and Lender agree that: (a) this Article 7 is intended as Lender's written request for information (and Borrower's response) concerning the environmental condition of the real property security pursuant to California Code of Civil Procedure Section 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 Section 736, and as such it is expressly understood that Borrower's duty to protect, defend, indemnify, and hold harmless Lender and its directors, officers, employees, agents, successors and assigns 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 8 COVENANTS OF BORROWER**

As a material inducement to Lender to enter into this Agreement and to make each disbursement of the Loan, Borrower hereby covenants as follows:

8.1 No Liens, Etc. Excepting the lien of the Senior Loan Documents and the Permitted Exceptions, Borrower shall not permit any lien, levy, attachment or restraint to be made or filed

against the Property or the Project or, subject to the rights of the Senior Lender under the Senior Loan Documents, permit any receiver, trustee or assignee for the benefit of creditors to be appointed to take possession of the Property or any portion of the Project.

8.2 Compliance with Senior Construction Financing. Borrower shall comply with, perform and observe all requirements, covenants and agreements of and under the Senior Construction Loan Documents, including without limitation making all payments required to be made thereunder, as and when so required to be made. Borrower shall commit no breach or default under the Senior Construction Loan Documents. Borrower shall commit no breach or default under the Senior Loan Documents, nor shall Borrower suffer to exist any event or condition which, with the passing of time or the giving of notice or both, would become a default by Borrower or an event of default under the Senior Construction Loan Documents. Immediately upon the occurrence of a default under the Senior Loan Documents (whether by Borrower or any other party), Borrower shall deliver written notice to Lender of such default, specifying the nature and circumstances thereof.

8.3 Permanent Financing. None of the proceeds of the Permanent Financing shall be used for any purpose other than payment of the Senior Construction Loan until the Loan has been paid, unless Lender consents in writing to any such use.

8.4 Compliance with Laws. Borrower shall comply and, to the extent it is able, shall require others to comply with all laws and requirements of governmental authorities having jurisdiction over the Property or construction of the Project and shall furnish Lender with reports of any official searches for violation of any requirements established by such governmental authorities. Borrower shall comply and, to the extent it is able, shall require others to comply with all restrictive covenants and all obligations created by private contracts and leases which affect ownership, construction, equipping, fixturing, use or operation of the Project. Borrower covenants and warrants that the Project, when completed, shall comply with all applicable building, zoning and land use laws, requirements, ordinances, and all federal, state, and local laws and regulations, and shall not violate any restrictions of record against the Property or the terms of any lease of all or any portion of the Property. Borrower shall deliver to Lender, promptly after receipt thereof, copies of all permits and approvals received from governmental authorities relating to the construction, use, occupancy or operation of the Project.

8.5 Tax Credit Compliance with Code Section 42. Borrower shall comply fully with the requirements of Code Section 42, and all regulations promulgated thereunder and any other federal, state or local laws or regulations related thereto, including, without limitation, with respect to (x) Borrower's organization, business and operations, (y) the operation of the Project and (z) the maintenance of all low income housing tax credits heretofore or hereafter allocated to Borrower and/or the Project pursuant to Code Section 42.

8.6 Ownership of Collateral. Borrower shall be the sole owner of all Collateral acquired after the date hereof, free from any adverse lien, security interest or adverse claim of any kind whatsoever, except for security interests and liens in favor of Lender and prior security interest in favor of the Senior Lender pursuant to the Senior Loan Documents, and except for the Permitted

Exceptions. Borrower shall not convey or encumber any portion of the Collateral without the prior written consent of Lender.

8.7 No Transfers or Encumbrances; Ownership of Project and Borrower. Borrower shall not, without the prior written consent of Lender, sell, transfer, convey or encumber, mortgage or hypothecate the Property, the Project or any part thereof or any interest therein, in any manner, whether voluntarily or involuntarily or by operation of law, nor shall Borrower enter into any agreement to do any of the foregoing. No general partnership interest in Borrower or any interest in any general partner of Borrower may be assigned, transferred, hypothecated, pledged or disposed of in any manner, whether voluntarily or involuntarily or by operation of law, without the prior written consent of Lender. As used herein, "transfer" includes the transfer, assignment, conveyance or hypothecation of legal or beneficial ownership of (i) any general partnership interest in Borrower, (ii) any partnership interest in any general partner of Borrower that is a partnership, or (iii) any of the voting stock in any general partner of Borrower that is a corporation.

8.8 Compliance with Loan Documents. Borrower shall perform, observe and comply with all conditions and provisions of this Agreement, whether or not a disbursement is requested. Borrower shall comply and, to the extent it is able, shall cause compliance by parties thereto, with all Loan Documents and with the Construction Contract and the Architect's Agreement.

8.9 Financial Statements and Reports. Borrower, at its expense, shall furnish or cause to be furnished to Lender the following:

(a) As soon as possible, and in any event not later than five days after the occurrence of any Default, a statement of an authorized representative of Borrower describing the details of such Default and any curative action Borrower proposes to take;

(b) As soon as available, and in any event not later than sixty (60) days after the close of each fiscal year of Borrower, financial statements of Borrower, including a profit and loss statement, reconciliation of capital accounts and a consolidated statement of changes in financial position of Borrower as at the close of and for such fiscal year, all in reasonable detail, certified by an authorized representative of Borrower and accompanied by the unqualified report of a certified public accountant acceptable to Lender;

(c) Commencing on the twentieth (20th) day of the first full calendar month following the commencement of leasing activity for the Project (unless sooner requested by Lender), and thereafter on the twentieth (20th) day of every calendar month until the Loan is repaid in full, a report showing the status of the leasing of apartments in the Project, in form and substance satisfactory to Lender, certified as true and complete by the General Partner;

(d) Commencing on the forty-fifth (45th) day of the fiscal quarter immediately succeeding the quarter in which the first tenant in the Project begins paying rent under an executed lease, and thereafter on the forty-fifth (45th) day of each following fiscal quarter until the Loan is repaid in full, cash flow statements showing actual sources and uses of cash during the preceding fiscal quarter certified to be true, complete and accurate by the General Partner, and an updated

projected cash flow statement for the Project through the Maturity Date, certified by the General Partner to be a true and complete projection of such cash flow accurate to the best of Borrower's knowledge and ability after due investigation and analysis thereof;

(e) As soon as available, and in any event not later than at the time of filing with the Internal Revenue Service, the federal tax returns (and supporting schedules, if any) of Borrower; and

(f) Concurrently with the delivery to the Senior Lender, a copy of all financial statements and reports delivered to the Senior Lender.

8.10 Operating Expenses. Borrower shall pay when due, all expenses, costs and disbursements of every kind and nature incurred by or on behalf of Borrower during the term of the Loan with respect to the operation, maintenance and management of the Project.

8.11 Brokers. Borrower shall pay any and all valid claims of any brokers or agents with whom it has dealt who claim a right to any fees in connection with arranging the acquisition or financing of the Property or Improvements, and shall protect, defend, indemnify, and hold Lender and its directors, officers, employees, agents, successors and assigns harmless from such claims, whether or not they are valid.

8.12 Trade Names. Borrower shall immediately notify Lender in writing of any change in the place of business of, or the change in the legal, trade or fictitious business names used by, Borrower or the constituent General Partner(s) of Borrower and shall, upon Lender's request, execute any additional financing statements and other certificates necessary to reflect the change in trade names or fictitious business names.

8.13 No Partnership Distributions. Borrower shall not, without the prior written consent of Lender, make any distribution of partnership assets to any partner of Borrower, except if such a partnership distribution is permitted under the terms of Borrower's Partnership Agreement or Related Documents, including, without limitation, repayment of any loans made by a partner of the Borrower or any accrued interest thereon, and return of capital contributions or distributions upon termination, liquidation or dissolution of Borrower. Notwithstanding any provision to the contrary, no proceeds of the Loan shall be distributed to any partner of Borrower for any reason and at any time.

8.14 Further Assurances. Borrower shall execute and deliver from time to time, promptly after any written request therefor by Lender, any and all instruments, agreements and documents and shall take such other action as may be necessary or desirable in the reasonable opinion of Lender to maintain, perfect or insure Lender's security provided for herein and in the Loan Documents, including, without limitation, the execution of UCC-1 continuation statements, the execution of such amendments to the Deed of Trust and the Loan Documents and the delivery of such endorsements to the Title Policy, all as Lender shall require, and shall pay all fees and expenses (including attorneys' fees) related thereto.

8.15 Maintenance of Existence. Borrower and its general partner(s) shall maintain and preserve their existence and all rights and franchises material to their business. Western Community Housing, Inc, a California nonprofit public benefit corporation, shall maintain and preserve its non-profit status under Code Section 501(c)(3) and shall cause the Borrower to obtain and maintain the property tax exemption for the Project under California Revenue and Taxation Code Section 214(g).

8.16 Litigation; Condemnation. Borrower shall give Lender written notice of any litigation or condemnation action or proceeding commenced or threatened against Borrower, the Property or the Improvements and shall deliver to Lender copies of all notices, and other information regarding such proceeding or action, in all cases within five (5) days after receipt or, if generated by Borrower, transmittal thereof.

8.17 Construction Materials. Borrower shall not use in the construction of the Improvements any asbestos or other known hazardous or toxic substance, material or waste under applicable federal, state or local laws or regulations, whether or not such substances or materials are Hazardous Materials.

8.18 Representations and Warranties. Until repayment of the Note and satisfaction of all other obligations secured by the Deed of Trust, the representations and warranties of Borrower set forth in this Agreement and the Loan Documents shall remain true and complete.

8.19 Assignment. Without the prior written consent of Lender, 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 the expertise, reputation, and prior experience of Borrower in developing and constructing affordable multi-family housing, Lender's knowledge of Borrower, and Lender's understanding that this Agreement is more in the nature of an agreement involving personal services than a standard loan where Lender would rely on security which already exists.

8.20 Management of Property. Borrower shall enter into a Property Management Agreement ("**Property Management Agreement**"), with a qualified, licensed and experienced low income housing management agent ("**Management Agent**"). Borrower shall use its best efforts to cause the Management Agent to lease each unit in the Project upon its completion for amounts not less than the rental amounts in the Proforma Leasing Schedule. Borrower shall comply with all requirements of Borrower, as owner, under the Property Management Agreement. The Property Management Agreement shall provide for a right of cancellation by Borrower or Lender, without cause, upon 30 days written notice to the Management Agent.

8.21 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 and Borrower's Funds, and the same shall be available for inspection and copying by Lender upon reasonable prior notice.



8.22 Compliance with Related Agreements. Borrower and the General Partner of Borrower shall perform, observe and comply with all covenants, conditions, restrictions, obligations, representations and warranties of the Borrower and the General Partner of Borrower in the Borrower's Partnership Agreement, the Regulatory Agreement and Related Documents and in any documents or instruments evidencing, securing or pertaining to any other loan or indebtedness secured by the Property or the Project whether prior or subordinate to the Loan Documents.

8.23 Subordination. Lender agrees to execute reasonable subordination agreements with any Senior Construction Lender and/or Permanent Lender, subject to approval by Lender's legal counsel.

## ARTICLE 9 INSURANCE AND CONDEMNATION

Borrower shall, while any obligation of Borrower under any Loan Document remains outstanding, maintain at Borrower's sole expense, with licensed insurers approved by Lender, the following policies of insurance in form and substance satisfactory to Lender:

9.1 Property Insurance. 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).

9.2 Liability Insurance. 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.

9.3 General. Borrower shall provide to Lender the originals of all required insurance policies, or other evidence of insurance acceptable to Lender. All insurance policies shall provide that the insurance shall not be cancelled, allowed to lapse without renewal, surrendered or materially changed without thirty (30) days prior written notice to Lender. Lender shall be named under a Lender's Loss Payable Endorsement (form #438BFU or equivalent) on all hazard insurance policies which Borrower actually maintains with respect to the Property and Improvements, and Lender, its officers, employees, and agents shall be named as an additional insured on all liability insurance policies maintained by Borrower with respect to the Property and Improvements. Borrower shall provide to Lender evidence of any other hazard or liability insurance Lender may deem necessary at any time during the Loan. All policies of insurance required hereunder shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act of negligence of Borrower or any party holding under Borrower which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Borrower. Without limiting the generality of the foregoing, Borrower shall maintain the insurance coverages described in Exhibit H attached hereto and incorporated by reference herein. If Borrower fails to maintain any insurance coverage required hereunder or pursuant hereto, Lender may (but shall not be obligated to) obtain such insurance at Borrower's expense, and Borrower shall pay all premiums thereon upon demand of Lender. Until

paid by Borrower, the amount of such premiums advanced by Lender shall be added to the principal amount of the Loan and bear interest at the default rate specified in the Note.

9.4 Insurable Value. After the Project has been completed and until repayment of the Loan, Borrower shall also provide from time to time at the written request of Lender, but not more often than once annually, satisfactory evidence of the insurable value of the Project. Borrower shall bear the cost, if any, of such insurance appraisal or valuation report.

9.5 Loss Proceeds. If the Property or the Project shall be damaged or destroyed by an insured peril or otherwise, then subject to the rights of the Senior Lender under the Senior Loan Documents, Lender may, at its option, upon written notice to Borrower, settle, adjust or compromise any and all claims. All proceeds of insurance with respect to any damage or destruction shall be payable to Lender and Borrower hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Lender and Borrower promptly shall pay over to Lender any such proceeds received by Borrower. Such proceeds of insurance shall be applied in the manner required by the Deed of Trust.

9.6 Eminent Domain. In the event that any proceeding or action be commenced for the taking of the Property or the Project, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation proceeding, or in any other manner, or should Borrower receive any notice or other information regarding such proceeding, action, taking or damage, Borrower shall give prompt written notice thereof to Lender. Lender shall be entitled at its option, without regard to the adequacy of its security, to appear in and prosecute in its own name any condemnation action or proceeding. Lender shall also be entitled to make any compromise or settlement in connection with such taking or damage with respect to Lender's Interest. Subject to the rights of the Senior Lender under the Senior Loan Documents, (a) all Condemnation Proceeds are hereby assigned to Lender and Borrower agrees to execute such further assignments of the Condemnation Proceeds as Lender may require, and (b) all such Condemnation Proceeds shall be applied or distributed in the manner required by the Deed of Trust.

## **ARTICLE 10 DEFAULTS AND REMEDIES**

10.1 Defaults. The occurrence of any one or more of the following shall constitute a Default by the Borrower under this Agreement and the Loan Documents and the occurrence of any such Default shall not require any further notice to Borrower except as specifically provided in such Subsection:

(a) Monetary. Borrower's failure to pay any sums due within the time provided in the Senior Loan Documents, or under any other lien or encumbrance which is prior or superior to the Loan Documents, or Borrower's failure to pay within ten (10) days after the date when due any sums payable under the Note or any of the Loan Documents; or Borrower's failure to comply with any other covenant contained in this Agreement which calls for the payment or deposit of money,

without curing such failure within ten (10) days after written notice from Lender, or, if less, within the period specified in the particular provision at issue; or

(b) Performance of Obligations. Borrower's failure to perform any obligation other than those in Subsection 10.1(a) above under any of the Loan Documents within the lesser of (i) thirty (30) days after written notice from Lender, or, if less, the period of time specified in the particular provision at issue, or (ii) the applicable cure period for equivalent obligations under the Senior Loan Documents, or under any other lien or encumbrance which is prior or superior to the Loan Documents; or

(c) Construction; Use. If (i) there is any material deviation in the work of construction from the Plans and Specifications or governmental requirements or the appearance or use of defective workmanship or materials in constructing the Improvements, and Borrower fails to remedy the same to Lender's satisfaction within fifteen (15) days after Lender's written demand to do so; or (ii) there is a cessation of construction of the Improvements prior to completion for a continuous period of more than thirty (30) days (except as otherwise permitted by the Senior Loan Documents); or (iii) the construction, sale or leasing of any of the Improvements in accordance with the Loan Documents is prohibited, enjoined or delayed for a continuous period of more than thirty (30) days; or (iv) utilities or other public services necessary for the full occupancy and utilization of the Property and Improvements are curtailed for a continuous period of more than thirty (30) days; or

(d) Liens, Attachment; 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 twenty (20) 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; or (iii) the sequestration or attachment of, or any levy or execution upon any of the Property or Improvements, any other collateral provided by Borrower under any of the Loan Documents, any monies in the Account, or any substantial portion of the other assets of Borrower, which sequestration, attachment, levy or execution is not released, expunged or dismissed prior to the earlier of thirty (30) days or the sale of the assets affected thereby; or

(e) Representations and Warranties. (i) Any representation or warranty of Borrower in any of the Loan Documents shall have become untrue in any material respect and such condition shall not have been cured within fifteen (15) days after written notice to Borrower from Lender requesting cure; or (ii) any material adverse change in the financial condition of Borrower or any other person or entity in any manner obligated to Lender under the Loan Documents from the financial condition represented to Lender as of the Effective Date; or

(f) Voluntary Bankruptcy; Insolvency; Dissolution. (i) The filing of a petition by Borrower for relief under the Bankruptcy Code, or under any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; (ii) 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; (iii) the filing by the General Partner of Borrower, or any shareholder, partner, or joint venturer of such General Partner, of an involuntary petition against Borrower under the Bankruptcy Code or other debtor relief law; (iv) a general assignment by Borrower for the benefit of creditors; or (v) Borrower applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or

(g) 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 sixty (60) days after the date of filing of such involuntary petition; or

(h) Partners. The occurrence of any of the events specified in Subsection 10.1(f) or 10.1(g) as to the General Partner of Borrower; or

(i) Change In Management or Control. The occurrence of any material or adverse change or circumstance in the management or organization of Borrower or the General Partner of Borrower; or

(j) 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, subject to no prior liens other than the lien of the Senior Construction Financing and the Permitted Exceptions, 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 or the consent of Lender; or

(k) Adverse Financial Condition - Other Than Borrower. Any material adverse change in the financial condition of the General Partner from the condition shown on the financial statement(s) submitted to Lender and relied upon by Lender in making the Loan; or

(l) Senior Construction Financing. The expiration, termination, failure to fund, failure to procure, occurrence of a default or breach by either Borrower or Senior Lender, or failure of Borrower to satisfy any of the terms, covenants or conditions, of the Senior Construction Loan Documents, or the Senior Construction Financing for any reason whatsoever; or

(m) Very Low Income Affordable Housing. The failure to rent the units in the Project to Very Low Income Households in compliance with the requirements under the City Regulatory Agreement; or

(n) Key Person or Entity. The retirement, death, incapacity or withdrawal of the General Partner, and Borrower's failure to provide a substitute or replacement reasonably acceptable to Lender within thirty (30) days after the occurrence of any such retirement, death, incapacity or withdrawal; or

(o) Transfer of Assets. The sale, assignment, pledge, hypothecation, mortgage or transfer of the assets of Borrower, or any General Partner of Borrower, including any violation of the provisions of Section 8.7 hereof (No Transfers or Encumbrances; Ownership of Project and Borrower) of this Agreement, provided that the rental of apartment units to tenants in the ordinary course of business and otherwise meeting the requirements of the Loan Documents and any other covenants, conditions or restrictions applicable to the Project (including the Senior Loan Documents and the Regulatory Agreement) shall not require the further consent of Lender under Section 8.7 of this Agreement; or

(p) Hazardous Materials. The discovery of any significant Hazardous Materials 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 or use of the Property and Improvements; or

(q) Reserved.

(r) Default Under Related Agreements. Any breach or default of Borrower or the General Partner of Borrower under any of the covenants, conditions, restrictions, obligations, representations or warranties of the Borrower or the General Partner of Borrower in the Borrower's Partnership Agreement, or by Borrower or the General Partner or any parties under the Related Documents or the Regulatory Agreement, or in any document or instrument evidencing, securing or pertaining to any other loan or indebtedness secured by the Property or the Project, whether prior or subordinate to the Loan Documents;

(s) Default Under Permitted Exceptions. Any breach or default of Borrower under any Permitted Exceptions, or under any other liens or encumbrances now or hereafter encumbering all or a portion of the Project, or any indebtedness or obligations secured thereby;

(t) Failure of Disbursement Conditions. Inability of Borrower to satisfy any condition for the receipt of a disbursement requested by Borrower hereunder, or to resolve the situation to the satisfaction of Lender, for a period in excess of thirty (30) days after written notice from Lender;

(u) Bankruptcy of General Contractor. The bankruptcy or insolvency of the General Contractor or the withdrawal or termination of the General Contractor from proceeding with construction of the Project and the failure of Borrower to procure a contract at the same price, or, if at a higher price, to supply the additional funds thereby required with a new general contractor satisfactory to Lender within thirty (30) days from the occurrence of such bankruptcy, insolvency or withdrawal;

(v) Abandoning the Property. Borrower abandons the Property or ceases to do business or terminates its business for any reason whatsoever or fails to maintain its existence in good standing in the State.

10.2 Acceleration Upon Default; Remedies. Upon the occurrence of any Default specified in this Article 10, Lender may, at its sole option, declare all sums owing to Lender under the Note, this Agreement and the Loan Documents immediately due and payable without presentment, demand, protest or further notice of any kind. Upon such acceleration, Lender may, in addition to all other remedies permitted under this Agreement and the Loan Documents and at law or equity, apply any sums in the Account or in its possession to the sums owing under the Loan Documents, and any and all obligations of Lender to fund further disbursements under the Loan shall terminate.

10.3 Disbursements to Third Parties. Upon the occurrence of a Default occasioned by Borrower's failure to pay money to a third party as required by this Agreement, Lender may but shall not be obligated to make such payment from the Loan proceeds, Borrower's Funds, or other funds of Lender. If such payment is made from proceeds of the Loan or from Borrower's Funds, Borrower shall immediately deposit with Lender, upon written demand, an amount equal to such payment. If such payment is made from funds of Lender, Borrower shall immediately repay such funds upon written demand of Lender. In either case, the Default with respect to which any such payment has been made by Lender shall not be deemed cured until such deposit or repayment (as the case may be) has been made by Borrower to Lender.

10.4 Lender's Completion of Construction. Upon the occurrence of a Default, Lender may (but shall not be obligated to), upon five (5) days prior written notice to Borrower, and with or without legal process, take possession of the Property and Improvements, remove Borrower and all agents, employees and contractors of Borrower from the Property and Improvements, complete the work of construction and market and sell or lease the Property and/or Improvements.

For this purpose, Borrower irrevocably appoints Lender as its attorney-in-fact, which agency is coupled with an interest. As attorney-in-fact, Lender may (but shall not be obligated to), in Borrower's name, take or omit to take any action Lender may deem appropriate, including, without limitation, to exercise Borrower's rights under the Loan Documents and all contracts concerning the Property and/or Improvements.

10.5 Lender's Cessation of Construction. If Lender determines at any time that the Improvements are not being constructed in accordance with the Plans and Specifications and all governmental requirements, Lender may immediately cause all construction to cease on any of the Improvements affected by the nonconforming condition. Borrower shall thereafter not allow any construction work, other than corrective work, to be performed on any of the Improvements affected by the nonconforming condition until such time as Lender notifies Borrower in writing that the nonconforming condition has been corrected.

10.6 Repayment of Funds Advanced. Any funds expended by Lender in the exercise of its rights or remedies under this Agreement and the Loan Documents shall be payable to Lender upon demand, together with interest at the rate applicable to the principal balance of the Note from the date the funds were expended.

10.7 Rights Cumulative, No Waiver. All Lender's rights and remedies provided in this Agreement and the Loan Documents, together with those granted by law or at equity, are cumulative

and may be exercised by Lender at any time. Lender's exercise of any right or remedy shall not constitute a cure of any Default unless all sums then due and payable to Lender under the Loan Documents are repaid and Borrower has cured all other Defaults. No waiver shall be implied from any failure of Lender to take, or any delay by Lender in taking, action concerning any Default or failure of condition under the Loan Documents, or from any previous waiver of any similar or unrelated Default or failure of condition. Any waiver or approval under any of the Loan Documents shall be in writing and shall be limited to its specific terms.

10.8 Attorney-in-Fact. Borrower hereby constitutes and appoints Lender, or an independent contractor selected by Lender, as its true and lawful attorney-in-fact with full power of substitution for the purposes of completion of the Project and performance of Borrower's obligations under this Agreement in the name of the Borrower, and hereby empowers said attorney-in-fact to do any or all of the following upon the occurrence of a Default:

(a) to use any of the funds of Borrower, including any balance of the Loan and any funds which may be held by Lender for Borrower, for the purpose of effecting completion of the Project in the manner called for by the Plans and Specifications;

(b) to make such additions, changes and corrections in the Plans and Specifications as shall be necessary or desirable to complete the Project in substantially the manner contemplated by the Plans and Specifications;

(c) to employ any contractors, subcontractors, agents, architects and inspectors required for said purposes;

(d) to employ attorneys to defend against attempts to interfere with the exercise of the powers granted hereby;

(e) to pay, settle or compromise all existing bills and claims which are or may be liens against the Property or the Project or may be necessary or desirable for the completion of the Project or clearance of objections to or encumbrances on title;

(f) to execute all applications and certificates in the name of Borrower, which may be required by any construction contract;

(g) to prosecute and defend all actions or proceedings in connection with the Project and to take such action, require such performance and do any and every other act as is deemed necessary with respect to the completion of the Project which Borrower might do on its own behalf;

(h) to let new or additional contracts with the same contractor(s) or others to the extent not prohibited by their existing contracts;

(i) to employ watchmen and erect security fences to protect the Project from injury; and

(j) to take such action and require such performance as it deems necessary under any of the bonds or insurance policies to be furnished hereunder, to make settlements and compromises with the sureties or insurers thereunder, and in connection therewith to execute instruments of release and satisfaction.

It is understood and agreed that the foregoing power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked until repayment of the Loan.

10.9 Abatement of Lender Obligations; Additional Remedies. Upon the occurrence of any Default, Lender's obligation to make further disbursement of the Loan shall abate (at Lenders's sole option), and Lender shall have the right to exercise any and all rights and remedies under this Agreement, the Loan Documents or as otherwise provided by law or in equity.

## **ARTICLE 11 MISCELLANEOUS**

11.1 Assignment. Borrower shall not assign any of its rights under this Agreement, without the prior written consent of Lender.

11.2 Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by courier (including, without limitation, Federal Express or other express mail service) or sent by registered or certified mail (postage prepaid) through the United States Postal Service to the addresses shown below or such other addresses which the parties may provide to one another in accordance herewith. Such notices, requests and demands, if delivered by hand, shall be deemed given when actually received, except that notices sent by mail shall be deemed received three (3) calendar days following the date of mailing.

To Lender:                      City of Merced  
                                      678 West 18<sup>th</sup> Street  
                                      Merced, California 95340  
                                      Attention: City Clerk

To Borrower:                Sunny View of Merced, L.P.  
                                      320 Golden Shore Drive, Suite 200  
                                      Long Beach, California 90802-4217  
                                      Attn: Brian Gentner, Esq.  
                                      Facsimile No.: (562) 901-0918

With a copy to (which shall not constitute notice to the Borrower):

Multi-Housing Investments, LLC  
320 Golden Shore Drive, Suite 200  
Long Beach, California 90802-4217



Attn: Jeffrey Weiss  
Facsimile No.: (562) 256-2003

11.3 Authority to File Notices. Borrower irrevocably appoints Lender as its attorney-in-fact, with full power of substitution, to file for record, at the Borrower's cost and expense and in Borrower's name, any notices of completion, notices of cessation of labor, or any other notices that Lender considers necessary or desirable to protect its security upon occurrence of a Default.

11.4 Payments. All payments under this Agreement, the Note or any Loan Documents shall be made to Lender in immediately available funds not later than 11:30 a.m. Pacific Time on the dates such payments are to be made. Any payment received after 11:30 a.m. shall be deemed received by Lender on the next Business Day.

11.5 No Waiver. No disbursement of proceeds of the Loan shall constitute a waiver of any conditions to Lender's obligation to make further disbursements nor, in the event Borrower is unable to satisfy any such conditions, shall any such waiver have the effect of precluding Lender from thereafter declaring such inability to constitute a Default under this Agreement.

11.6 Lender Approval of Instruments and Parties. All proceedings taken in accordance with transactions provided for herein; all waivers of lien, surveys, appraisals and documents required or contemplated by this Agreement; the power, authority, capability and expertise of persons responsible for the execution and preparation thereof; and the form of the general contracts, subcontracts, all leases, bonds and guaranties shall be satisfactory to and subject to approval by Lender. Lender's counsel shall be provided with copies of all documents which they may reasonably request in connection with this Agreement.

11.7 Third-Party Consultants. Lender may hire such third-party consultants as it reasonably deems necessary, the reasonable costs of which shall be paid by Borrower, to provide the following services: (a) review final Plans and Specifications; (b) review the Budget and the Construction Schedule; (c) conduct compliance inspections with respect to the progress of construction of the Project and approve each element of a request for disbursement relating to construction costs; and (d) perform such other services as may, from time to time, be required by Lender to protect its security interest in the Project, including, without limitation, establishing the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Agreement.

11.8 Payment of Expenses. Borrower shall pay all taxes and assessments and all expenses, charges, costs and fees provided for in this Agreement or relating to the Loan or construction of the Project, including all fees, charges, and taxes in connection with recording or filing any of the Loan Documents, title insurance premiums and charges, fees of any consultants, fees and expenses of Lender's counsel (which attorneys may be employees of Lender), fees and expenses of Lender's special counsel (which may include fees billed for law clerks, paralegals and other persons not admitted to practice law but performing services under the supervision of an attorney), printing, photocopying and duplicating expenses, air freight charges, escrow fees, costs of surveys, escrow fees, and premiums of hazard insurance policies and surety bonds and fees for any appraisal, market or feasibility study required by Lender. Lender shall provide Borrower with invoices for such

expenses, which invoices Borrower shall pay pursuant to the terms of the Loan Documents. All such expenses, charges, costs and fees shall be Borrower's obligation whether or not Borrower has requested and met the conditions for a disbursement of the Loan. This obligation on the part of Borrower shall survive the repayment of the Loan and reconveyance of the Deed of Trust. Borrower hereby authorizes Lender, in its discretion, to pay such expenses, charges, costs and fees at any time by a disbursement of the Loan.

**11.9 Disclaimer by Lender.** Lender shall not be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. Lender shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Property or the Project. Borrower is not and shall not be an agent of Lender for any purpose. Lender is not a joint venture partner with Borrower or with the constituent partners in Borrower in any manner whatsoever. Lender makes no warranty, guarantee, or representation of any kind concerning Borrower's ability to obtain and/or qualify for tax credits under applicable state and/or federal laws and regulations. Prior to a Default under this Agreement or the Loan Documents and the exercise of remedies granted herein, Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment of funds directly to a contractor, subcontractor, or provider of services be deemed to create any third party beneficiary status or recognition of same by Lender. Approvals granted by Lender for any matters covered under this Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval.

**11.10 Indemnification.** Notwithstanding any provision to the contrary, Borrower hereby agrees to protect, defend, indemnify and hold Lender, its directors, officers, employees, agents, successors and assigns harmless from and against any and all losses, damages, liabilities, injuries (including death of person or persons), claims, actions, judgments, court costs and legal or other expenses (including, without limitation, attorneys' fees and expenses) which Lender may incur as a 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 Loan Documents in any material respect; (c) any failure at any time of any of Borrower's representations or warranties to be true and correct in any material respect; or (d) any negligent or wrongful act or omission by Borrower or General Partner of Borrower, any contractor, subcontractor or material supplier, engineer, architect or other person or entity with respect to any of the Property or Improvements. Borrower shall pay to Lender within ten (10) days of Lender's written notification, 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. It is understood that the duty of Borrower to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Lender of insurance certificates and endorsements required under this Agreement does not relieve Borrower from liability under this indemnification and hold harmless clause. **BORROWER'S DUTY AND OBLIGATIONS TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER SHALL SURVIVE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE DEED OF TRUST.**

11.11 Inconsistencies with Loan Documents. In the event of any inconsistencies between the terms of this Agreement and any terms of any of the Loan Documents, the terms of this Agreement shall govern and prevail.

11.12 Titles and Headings. The titles and headings of sections of this Agreement are intended for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

11.13 Changes, Waivers, Discharge and Modifications in Writing. No provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

11.14 Choice of Law; Venue and Jurisdiction. This Agreement and the transaction contemplated hereunder shall be governed by and construed in accordance with the laws of the State of California, except to the extent that Federal laws preempt the laws of the State of California, and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

11.15 Disbursements in Excess of Loan Amount. In the event the total disbursements by Lender exceed the Loan Amount, to the extent permitted by the laws of the State, the total of all disbursements shall be secured by the Deed of Trust. All other sums expended by Lender pursuant to this Agreement or any Loan Document shall be deemed to have been paid to Borrower and shall be secured by, among other things, the Deed of Trust.

11.16 Time is of the Essence. Time is of the essence of each and every term of this Agreement.

11.17 Completion of Construction. For purposes of subdivision (h) of Section 9334 of the California Commercial Code, "completion of construction" shall not be deemed to occur prior to completion of all work, and installation or incorporation into the Improvements of all materials, for which Loan proceeds are disbursed by Lender.

11.18 Submission of Agreement. The submission of this Agreement to Borrower or its agent or attorney for review or signature does not constitute a commitment by Lender to make the Loan to Borrower, and this Agreement shall have no binding force or effect until its execution and delivery by both Borrower and Lender.

11.19 Limitation on Partners' Liability. Lender's recovery against any partner of Borrower under the Loan Documents shall be limited solely to the collateral given to Lender as security for Borrower's performance under the Loan Documents and to the general assets of Borrower itself. Such recovery shall not be a lien, or the basis of a claim of lien or levy of execution, against the general assets of any general or limited partner of Borrower. Notwithstanding the foregoing, Borrower, any general partner of Borrower and the general assets of any general partner of Borrower shall be fully liable to Lender to the same extent that Borrower would be liable absent the foregoing

limitation of this Section for: (a) fraud or willful misrepresentation on the part of Borrower or such partner; (b) waste; (c) failure of such partner to pay any income or other taxes, assessments or other charges attributable to such partner which can create liens on any portion of the Project (to the full extent of any such taxes, assessments or other charges); (d) the amount of any money or value of any property received by such partner as a distribution of earnings or income from the Project if such distribution was prohibited under the terms of this Agreement (to the full extent of such distribution); (e) any breach by Borrower of any covenant under Article 7, entitled Hazardous Materials, any representation or warranty of Borrower under such Article proving to have been untrue when made, or the presence of any significant Hazardous Materials in, on or about the Project which are discovered subsequent to the Effective Date; or (f) any obligation arising from the indemnity set forth in Section 11.10 hereof, except for payment of principal and interest in the Note. In addition, the limitations hereof shall not be deemed to limit: (i) any right Lender might otherwise have to obtain injunctive relief against Borrower, any partner of Borrower or any other person or entity; (ii) any suit, action or proceeding (including without limitation exercise of the power of sale under or the filing of an action for judicial foreclosure of the Deed of Trust), in connection with the preservation, enforcement or foreclosure of the liens, mortgages, assignments and security interests now or at any time hereafter securing the payment and performance of all obligations under this Agreement or any of the Loan Documents; or (iii) the collection of amounts which may become owing or payable under or on account of insurance, condemnation awards or damages for other public actions or surety bonds maintained or provided by Borrower; provided, however, that the assertion by Lender of any such right, suit, action or collection of amounts shall not result in a monetary claim upon the general assets of any general or limited partner of Borrower except as otherwise provided herein.

**11.20 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.

**11.21 Actions.** Borrower agrees that Lender, in exercising the rights, duties or liabilities of Lender or Borrower under the Loan Documents, may commence, appear in or defend any action or proceeding purporting to affect the Property, the Improvements, or the Loan Documents and Borrower shall immediately reimburse Lender upon demand for all such expenses so incurred or paid by Lender, including, without limitation, attorneys' fees and expenses and court costs.

**11.22 Right of Contest.** Borrower may contest in good faith any claim, demand, levy or assessment by any person other than Lender which would constitute a Default if : (a) Borrower pursues the contest diligently, in a manner which Lender determines is not prejudicial to Lender, and does not impair the rights of Lender under any of the Loan Documents; and (b) Borrower deposits with Lender any funds or other forms of assurance which Lender in good faith determines from time to time appropriate to protect Lender from the consequences of the contest being unsuccessful. Borrower's compliance with this Section shall operate to prevent such claim, demand, levy or assessment from becoming a Default.

**11.23 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.

11.24 Attorneys' Fees and Expenses; Enforcement. If any attorney is engaged by Lender to enforce or defend any provision of this Agreement, any of the Loan Documents or Related Documents, or as a consequence of any potential default or Default under the Loan Documents, with or without the filing of any legal action or proceeding, Borrower shall immediately pay to Lender, upon demand, the amount of all reasonable attorneys' fees and expenses and all costs incurred by Lender in connection therewith, 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. For the purpose of this Agreement and the Loan Documents, the term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of any attorney, and "reasonable" attorneys' fees shall mean the standard rates charged by Lender's regular outside litigation counsel from time to time.

11.25 Lender's Consent. Wherever in this Agreement there is a requirement for Lender's consent or approval, it is understood by such phrase that Lender shall exercise its consent or approval in its sole and absolute discretion.

11.26 Loan Sales and Participations; Disclosure of Information. Borrower agrees that Lender may elect, at any time, to sell, assign or grant participations in all or any portion of its rights and obligations under the Loan Documents, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities, at Lender's sole discretion ("Participant"). Borrower further agrees that Lender may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Lender with respect to: (a) the Property and Improvements and their operation; (b) any party connected with the Loan (including, without limitation, the Borrower, any partner of Borrower, any constituent partner of Borrower, any guarantor and any non-borrower trustor); and/or (c) any lending relationship other than the Loan which Lender may have with any party connected with the Loan. In the event of any such sale, assignment or participation, Lender and the parties to such transaction shall share in the rights and obligations of Lender as set forth in the Loan Documents only as and to the extent they agree among themselves. In connection with any such sale, assignment or participation, Borrower further agrees that the Loan Documents shall be sufficient evidence of the obligations of Borrower to each purchaser, assignee, or participant, and upon written request by Lender, Borrower shall enter into such amendments or modifications to the Loan Documents as may be reasonably required in order to evidence any such sale, assignment or participation. The indemnity obligations of Borrower under the Loan Documents shall also apply with respect to any purchaser, assignee or participant.

11.27 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 Loan Documents. Any reference to Lender in any of the Loan Documents shall include Lender's agents, employees or independent contractors.

11.28 Tax Service. Lender is authorized to secure, at Borrower's expense, a tax service contract with a third party vendor which shall provide tax information on the Property and Improvements satisfactory to Lender.

11.29 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

11.30 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 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 in any of the Loan Documents to the Property or Improvements shall include all or any part of the Property or Improvements. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing.

11.31 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.

11.32 Counterparts. This Agreement, any of the Loan Documents (except for the Note), any Related Documents and any subsequent modifications, amendments, waivers, consents or supplements thereof, if any, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all such counterparts together, shall constitute one and the same instrument.

11.33 Relationship of Parties. No right or benefit conferred on Lender under this Agreement shall constitute or be deemed to constitute Lender a partner or a joint venturer with Borrower. Borrower and Lender specifically acknowledge that the relationship between Borrower and Lender is solely that of Borrower and Lender and that all payments required to be made by Borrower to Lender under this Agreement and other Loan Documents are required solely by reason of that relationship.


11.34 Authority to Execute. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

IN WITNESS WHEREOF, Lender and Borrower have caused this Agreement to be duly executed and delivered as of the date first written hereinabove.

**"BORROWER":**

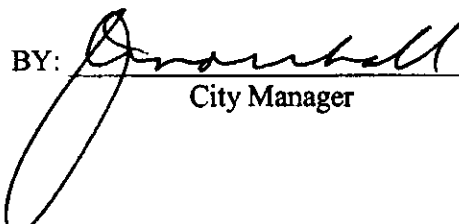
SUNNY VIEW OF MERCED, L.P.,  
A California Limited Partnership

By: Western Community Housing, Inc,  
California Nonprofit Corporation,  
its General Partner

By:   
Name: Graham Espley-Jones  
Title: President

**"LENDER":**

CITY OF MERCED  
A California charter municipal corporation

BY:   
City Manager

ATTEST:  
JAMES G. MARSHALL, CITY CLERK

By: *[Signature]*  
Deputy City Clerk

APPROVED AS TO FORM:

By: *[Signature]*  
City Attorney

250831 P# 75668

ACCOUNT DATA:

By: *[Signature]*  
Verified by Finance Officer

MR #909  
1430105  
RF

033-130552-29-00  
\$587,000 - over three years per dept.  
funds available M4 11-30-05  
S- R



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**Exhibits**

Exhibit A	Real Property Description
Exhibit B	[Budget/Financial Requirements Analysis]
Exhibit C	Construction Schedule
Exhibit D	Loan Documents and Related Documents
Exhibit E	Description of Plans and Specifications
Exhibit F	Reserved
Exhibit G	Permitted Exceptions
Exhibit H	Required Insurance

**EXHIBIT A**

**DESCRIPTION OF REAL PROPERTY**

City of Merced:

Parcel 2, of Parcel Map titled City of Merced Lot Split #03-06, recorded on October 29, 2003 in Book 94 of Parcel Maps, at Pages 33 & 34, as Document No. 2003070795 in the Merced County Recorder's Office, State of California.

Assessors Parcel No: 035-010-062

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## **EXHIBIT B**

### **[BUDGET]**

[The Budget is to be approved by Lender in writing. Lender shall not be obligated to make any advances under this Agreement until it has approved a Budget in writing. Advancing any funds by Lender without having first approved a Budget shall not constitute a waiver of Lender's right to approve a Budget prior to any other advances.]

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## **EXHIBIT C**

### **CONSTRUCTION SCHEDULE**

[The Construction Schedule is to be approved by Lender in writing. Lender shall not be obligated to make any advances under this Agreement until it has approved a Construction Schedule in writing. Advancing any funds by Lender without having first approved a Construction Schedule shall not constitute a waiver of Lender's right to approve a Construction Schedule prior to any other advances.]

## EXHIBIT D

### LOAN DOCUMENTS AND RELATED DOCUMENTS

A. Loan Documents. The documents listed below, and amendments, modifications and supplements thereof which have received the prior written consent of Lender, together with any documents executed in the future that are approved by Lender and the recitation 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 Secured by Deed of Trust of even date herewith executed by Borrower in favor of Lender;
3. The Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (Construction Trust Deed) ("**Deed of Trust**") of even date herewith executed by Borrower, as Trustor, the title company approved by Lender as Trustee, for the benefit of Lender, as Beneficiary;
4. Uniform Commercial Code - Financing Statement -Form UCC-1, of even date herewith, executed by Borrower as Debtor in favor of Lender as Secured Party in conjunction with the above;

B. Related Documents (which are not Loan Documents):

1. The Partnership Agreement of Borrower, and the Certificate of Limited Partnership of Borrower (LP-1) filed with the State, and any amendments thereto, and a current Certificate of Status (good standing) for Borrower from the Secretary of State of the State.
2. The Articles of Incorporation and Bylaws of the General Partner of Borrower, and any amendments thereto, and a current Certificate of Status (good standing) for the General Partner of Borrower from the California Secretary of State.
3. All insurance policies and certificates of insurance for the insurance required in Exhibit H hereto.

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## **EXHIBIT E**

### **DESCRIPTION OF PLANS AND SPECIFICATIONS**

The Plans and Specifications for the Project prepared by the Architect are to be approved in writing by Lender. Lender shall not be obligated to make any advances under this Agreement until it has approved the Plans and Specifications in writing. Advancing any funds by Lender without having first approved the Plans and Specifications shall not constitute a waiver of Lender's right to approve the Plans and Specifications prior to any other advances.

The Plans and Specifications for the Project shall be per the plans approved by the City of Merced for building permit purposes.

## **EXHIBIT H**

### **REQUIRED INSURANCE**

1. During construction of the Improvements, Borrower shall maintain or cause to be maintained the following insurance coverages, all in form acceptable to Lender, and in each instance containing provision for not less than 30 days prior written notice to Lender before the same is canceled, allowed to expire, or the coverage reduced:

(a) builder's risk insurance in the amount determined by Lender, which shall be an amount not less than the completed value of the Improvements on a replacement cost basis, without allowance for depreciation and without regard to the balance of the Loan outstanding, such insurance to be on an "all risks" basis, specifically including (without limitation) coverage against fire, extended coverage, vandalism and malicious mischief, and including coverage for materials in storage and while in transit, such insurance to include course of construction provisions or a course of construction endorsement, and to include a standard non-contributory mortgage clause in favor of Lender;

(b) commercial general liability insurance on an "occurrence" basis against claims for "personal injury", including death, bodily injury or property damage liability and in such an amount as Lender may from time to time find to be prudent under the circumstances, but in no event less than \$5,000,000, and naming Lender as an additional insured;

(c) workers' compensation and employer's liability insurance with respect to claims by employees of Borrower and by any contractor and the employees of any contractor supplying labor or materials with respect to the Project;

(d) unless Borrower establishes to Lender's satisfaction that the Property is not located within a flood zone, flood insurance;

(e) such additional insurance as may be required by Lender from time to time.

2. After substantial completion of the Improvements, Borrower shall maintain or cause to be maintained the following insurance coverages, all in form acceptable to Lender, and in each instance containing provision for not less than 30 days prior written notice to Lender before the same is canceled, allowed to expire, or the coverage reduced:

(a) property hazard insurance on an "all risks" replacement cost basis; to include a standard lender (mortgagee) loss payee clause or endorsement in favor of Lender;

(b) commercial general liability insurance on an "occurrence" basis against claims for "personal injury" liability, including death, bodily injury or property damage liability and in such an amount as Lender may from time to time find to be prudent under the circumstances, but in no event less than \$5,000,000, and naming Lender as an additional insured;

(c) workers' compensation and employer's liability insurance;

(d) unless Borrower establishes to Lender's satisfaction that the Property is not located within a flood zone, flood insurance; and

(e) such additional insurance as may be required by Lender from time to time.

3. The insurance requirements specified herein may be satisfied by a blanket policy maintained by or for the benefit of Borrower, provided that the following requirements are satisfied:

(a) The Project is specifically identified as an insured property in the policy or a schedule attached thereto; and

(b) The policy is endorsed to provide that in all events no less than the limits of liability specified above shall be available in the event of a loss relating to the Project, despite any other losses which may have been sustained during any applicable policy period; and

(c) Lender is furnished with a certified copy of all relevant portions of the policy (excluding reference to other properties covered or other insureds, if desired by Borrower), and the originals of (i) of the endorsement referred to in paragraph (b) above, and (ii) current certificates of insurance from time to time indicating that the premiums for such insurance are fully paid and the coverage in force at all times.

4. Notwithstanding anything to the contrary herein, the Borrower shall at all times maintain such insurance so as to comply with the requirements of the Senior Lender and Senior Loan Documents. All casualty insurance policies obtained by Borrower for the Property and the Project, covering any loss or damage from any cause, shall include Lender as a loss payee under a lender (mortgagee) loss payee clause satisfactory to Lender, and all proceeds of such insurance shall be payable to Lender, subject to the rights of the Senior Lender. All liability insurance policies obtained by Borrower for the Property and the Project shall name Lender and its directors, officers, employees, agents, successors and assigns as an additional insured.



**AMENDMENT  
TO  
CITY LOAN AGREEMENT**

This First Amendment to City Loan Agreement (the "**First Amendment**") is made and entered as of May 1, 2006 by and between the City of Merced, a California Charter Municipal Corporation (the "**City**") and Sunny View of Merced, L.P., a California limited partnership (the "**Owner**").

**RECITALS**

A. The City and the Owner entered into that certain City Loan Agreement (the "**Agreement**") which was executed by the City on December 5, 2005.

B. The City and the Owner desire to amend the Agreement, to correct and modify certain terms of the Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of other good and valuable consideration the receipt of which is acknowledged, the parties agree as follows:

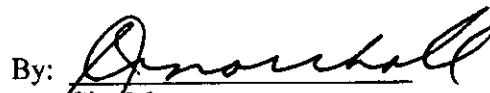
1. The definition of "Improvements" set forth in the Agreement is modified to read as follows: "Improvements means a 113-unit low income and very low income affordable housing apartment project together with related parking facilities and on and off-site improvements, including, without limitation, curbs, gutters, landscaping, street improvements, and underground utilities, all of which shall be constructed in accordance with the Plans and Specifications, and all appurtenances and fixtures thereto and thereon."
2. The following definition of Low Income Households is added to the Agreement: "Low Income Households shall mean households with Adjusted Income that do not exceed the maximum level of income for low income households under HUD regulations for Merced County, California, adjusted for household size."
3. The following definition of Very Low Income Households is added to the Agreement: "Very Low Income Households shall mean households with Adjusted Income that do not exceed the maximum level of income for very low income households under HUD regulations for Merced County, California, adjusted for household size."

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4. The Budget attached as Exhibit B to the City Loan Agreement is hereby replaced in its entirety with the revised Budget attached hereto as Exhibit B.
  5. The Construction Schedule attached as Exhibit C to the City Loan Agreement is hereby replaced in its entirety with the revised Construction Schedule attached hereto as Exhibit B.
  6. Except for the changes set forth in this Amendment, the Agreement is not modified, is ratified by the parties and remains in full force and effect.
  7. This First Amendment may be executed in counterparts, and when taken together shall constitute a single, integrated, and fully executed agreement.

**SIGNATURE PAGE IS THE NEXT PAGE**

IN WITNESS WHEREOF, the City and the Developer have for themselves and their successors and assigns executed this Amendment to City Loan Agreement by their duly authorized representatives which shall become effective the date in which the last of the parties, whether City or Developer, executes this document.

**THE CITY OF MERCED,**  
A California Charter Municipal  
Corporation  
("City")

By:   
City Manager  
Date: 6/6/06


ATTEST:  
JAMES G. MARSHALL, CITY CLERK

By:   
Deputy City Clerk

APPROVED AS TO FORM:

By:  5/30/06  
City Attorney

250631  
ACCOUNT DATA:

BY:   
Verified by Finance Officer

met 19009  
no funds required state rep TR

**SUNNY VIEW OF MERCED, L.P.**

**a California limited partnership**  
**("Developer")**

By: **Western Community Housing, Inc.**  
a California nonprofit public benefit corporation,  
Its: General Partner

By:   
Graham Espley-Jones, President

Taxpayer I.D. No.: 95-4751332

ADDRESS: 151 Kalmus Drive, Suite J-5  
Costa Mesa, Ca 92626  
TELEPHONE: (714) 549-4100  
FAX: (714) 549-4600  
E-MAIL: graham@wchousing.com

Date: 6/2/06

[ALL OFFICER/PRINCIPAL SIGNATURES TO BE NOTARIZED]

STATE OF CALIFORNIA )

) ss.

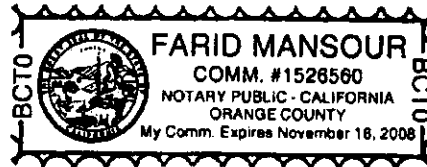
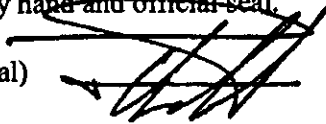
COUNTY OF Orange )

On 6-2-2006 before me, FARID MANSOUR, Notary Public, personally appeared

GRANAM ESPLEY YONES personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature (Seal)



STATE OF CALIFORNIA )

) ss.

COUNTY OF Merced )

On June 6, 2006 before me, Nobie M. Reynolds personally appeared  
JAMES G. MARSHALL

JAMES G. MARSHALL personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature (Seal)

Nobie M. Reynolds  
Nobie M. Reynolds  
Notary

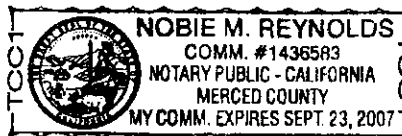


EXHIBIT  
"B"

Schedule of Values

Sunny View Apartments  
Merced, CA

1526-	DEMOLITION		Comments
2100	Contaminated Site Remediation		
2220	Demolition	\$0	N/A
15260	Asbestos Removal	\$0	N/A
TOTAL DEMOLITION		\$0	N/A

1534-	ON-SITE		Comments
1570	Dust Control		
2058	Import/Export Soils	\$0	
2230	Cleaning/Grubbing	\$32,080	Export moved from Phase I
2311	Rough Grading	\$0	
2312	Finish Grading	\$347,348	
2313	Fine Grading	\$44,195	
2340	Line Soil Stabilization	\$0	
2360	Topsoil Treatment	\$0	
2370	Erosion Control	\$0	
2610	Water Distribution	\$32,080	
2630	Sewer Distribution	\$337,650	
2650	Gas Distribution	\$178,830	
2680	Electrical Distribution (Primary)	\$87,316	
2680	Electrical Distribution (Secondary)	\$87,110	
2681	Telephone Distribution (Primary)	\$14,898	
2681	Telephone Distribution (Secondary)	\$14,898	
2682	CATV Distribution (Primary)	\$7,300	
2682	CATV Distribution (Secondary)	\$14,125	
2820	Trenching	\$0	
2830	Storm Drainage	\$0	
2740	Asphalt Pavement	\$271,100	
2750	Concrete Pavement	\$178,500	
2760	Pavement Striping/ Traffic Warnings	\$0	
2770	Concrete Curb & Gutters	\$80,350	
2780	Precast Concrete Pavers	\$0	
2820	Perimeter Fences & Gates (Tubular Steel)	\$0	
2821	Perimeter Fences & Gates (Wood)	\$25,320	
2822	Perimeter Fences & Gates (Chainlink)	\$0	
2830	Retaining Walls	\$0	
2840	Parking Bumpers	\$0	
4220	Perimeter Wall (Concrete Masonry Units)	\$0	
TOTAL ON-SITE		\$1,700,450	

1622-	OFF-SITE		Comments
2311	Rough Grading		
2312	Finish Grading	\$18,380	
2313	Fine Grading	\$7,080	
2610	Water Distribution	\$0	
2630	Sewer Distribution	\$28,860	
2650	Gas Distribution	\$8,000	
2680	Electrical Distribution (Primary)	\$0	
2681	Telephone Distribution (Primary)	\$28,500	Street light relocation
2682	CATV Distribution (Primary)	\$0	
2830	Storm Drainage	\$0	
2740	Asphalt Pavement	\$0	
2750	Concrete Pavement	\$131,880	
2760	Pavement Striping/ Traffic Warnings	\$20,200	
2770	Concrete Curb & Gutters	\$28,400	
2775	Concrete Sidewalks	\$0	
2780	Precast Concrete Pavers	\$0	
2830	Retaining Walls	\$0	
2880	Traffic Signs and Signals	\$0	
4220	Concrete Masonry Units (CMU)	\$14,125	
TOTAL OFF-SITE		\$283,100	

## Schedule of Values

Sunny View Apartments  
Merced, CA

1536-	BASE CONSTRUCTION		Comments
1740	Final Cleaning	\$28,700	
3200	Concrete Reinforcement	\$23,200	
3310	Structural Concrete	\$198,500	
3480	Precast Concrete Stair Treads	\$58,000	
3540	Lightweight Concrete Underlayment	\$78,650	
4220	Concrete Masonry Unit	\$0	
4730	Simulated Stone Veneer	\$0	
4810	Brick Veneer	\$0	
5120	Structural Steel	\$8,828	
5500	Misc. Metal Fabrications	\$14,860	
5610	Metal Stairs	\$200,100	
5820	Metal Handrails and Railings	\$16,225	
6101	Rough Carpentry (Materials)	\$1,288,826	
6102	Rough Carpentry (Labor)	\$714,250	
6200	Finish Carpentry	\$350,850	
6410	Cabinets (National Contract)	\$228,128	
6415	Counter Tops	\$108,808	
7100	Waterproofing	\$15,775	
7180	Deck Coating	\$66,130	
7210	Building Insulation	\$114,730	
7310	Asphalt Shingle Roofing	\$0	
7320	Concrete Tile Roofing	\$282,678	
7400	Sliding	\$0	
7600	Flashing & Sheet Metal	\$8,500	
7610	Standing Seam Roof	\$0	
7710	Roof Accessories, Gutters & Downspouts	\$42,875	
7800	Fire & Smoke Protection	\$15,330	
8100	Metal Doors & Frames	\$7,760	
8210	Wood Doors	\$0	
8220	Fiberglass Doors	\$0	
8380	Sliding Wood & Plastic Doors	\$0	
8310	Specialty Doors	\$0	
8380	Overhead Garage Doors	\$0	
8500	Windows & Sliding Glass Doors	\$168,065	
8700	Finish Hardware	\$37,445	
8830	Aluminum	\$12,715	
8220	Exterior Plaster	\$618,578	
8250	Gypsum Board	\$775,480	
9310	Ceramic Tile	\$17,620	
9800	Floor Covering - Res Center	\$18,605	
9850	Resilient Flooring - Units	\$58,030	
9880	Carpet - Units (Materials)	\$65,325	
9880	Carpet - Units (Labor)	\$46,860	
9911	Painting (Interior)	\$184,325	
9912	Painting (Exterior)	\$61,895	
9913	Wallcoverings - Res Center	\$0	
10150	Tub/Shower Enclosures	\$3,080	
10300	Manufactured Fireplace	\$0	
10620	Fire Extinguishers	\$0,886	
10650	Mailboxes	\$0	See books, below
10800	Tel./Bath Accessories	\$35,318	
11450	Appliances (National Contract)	\$124,775	
12480	Window Treatments - units only	\$40,925	
13480	Window Treatments - recreation bldg only	\$8,420	
13700	Intrusion Alarm	\$1,173	Perimeter only
13860	Fire Alarm (DESIGN BUILD)	\$148,320	
14200	Elevators	\$0	N/A
14380	Trash Chute	\$0	N/A
15100	Plumbing	\$870,870	
15300	Fire Protection Systems	\$134,185	
15410	Garbage disposal (National Contract)	\$0	
15700	HVAC	\$480,870	
16200	Electrical	\$1,104,145	
16500	Electrical Fixtures	\$0	In electrical
16610	Electrical Fixtures (Interior)	\$0	In electrical
16721	Telephone Prewire	\$0	In electrical
16722	Emergency Call (DESIGN BUILD)	\$0	N/A
16770	Cable TV and TV Common Antenna (DESIGN BUILD)	\$0	In electrical
TOTAL BASE CONSTRUCTION		\$5,237,516	

## Schedule of Values

Sunny View Apartments  
Merced, CA

1538-	EXTERIOR COMMON AREA		Comments
2775	Concrete Slabwalk/ Pool Deck	\$450,646	
2790	Recreational Amenities	\$21,889	
2810	Irrigation Systems	\$44,736	
2820	Perimeter Fences & Gates (Tubular Steel)	\$78,676	
2821	Perimeter Fences & Gates (Wood)	\$0	
2822	Perimeter Fences & Gates (Chainlink)	\$0	
2823	Electric Gates/Intercoms at Entry Gate	\$0	
2870	Outdoor Furniture (OFO)	\$8,128	
2890	Playground Equipment	\$28,534	
2900	Landscape Planting (Materials)	\$88,216	
2910	Landscape Planting (Labor)	\$38,218	
4220	Trash Enclosure (Concrete Masonry Units)	\$40,025	
6100	Trails	\$0	
10400	Signage Directory	\$5,268	
10430	Building Signage (Allowance)	\$15,538	
10430	Exterior Monument Signage	\$7,538	
10630	Carpenter	\$0	
10830	Mail Kiosks	\$18,246	
11430	Barbecue Equipment	\$7,536	
12-400	Recreation Building Interiors (OFO)	\$0	
13180	Pool	\$78,648	
13190	Spa	\$0	
18520	Exterior Site Lighting (Fidene)	\$18,540	
18521	Exterior Site Lighting (Labor)	\$0	
18720	Intercom	\$0	N/A
TOTAL EXTERIOR COMMON AREA		\$1,438,533	\$1,438,533



## Schedule of Values

Sunny View Apartments  
Merced, CA

1540-	GENERAL REQUIREMENTS		Comments
010	General Contractors Bond (If Required)	\$0	
020	Insurance	\$0	
800	City Licenses	\$0	
1312	Project Manager	\$0	
1314	Project Superintendent	\$73,828	
1316	Assistant Project Superintendent	\$42,268	
1318	General Labor	\$63,750	
1450	Testing Inspection and Laboratory (By Owner)	\$0	
1612	Temporary Pile Protection	\$16,700	
1614	Temporary Electric (Distributed)	\$5,040	
1614	Temporary Electric (Usage)	\$8,448	
1616	Temporary Telephone	\$7,068	
1618	Temporary Water	\$6,300	
1621	Contractor Tools & Supplies	\$3,300	
1622	First Aid Kit	\$300	
1624	Field Office	\$11,300	
1626	Job Office Supplies	\$5,100	
1628	Trash Bins	\$44,725	
1628	Temporary Toilet	\$3,678	
1680	Security	\$35,315	
1682	Storage Bin	\$20,010	
1684	Temporary Fencing	\$13,185	
1740	Site Maintenance	\$25,887	
TOTAL GENERAL REQUIREMENTS		\$411,277	

TOTALS	
TOTAL DEMOLITION	\$0
TOTAL ON-SITE	\$1,700,450
TOTAL OFF-SITE	\$281,100
TOTAL BASE CONSTRUCTION	\$9,237,515
TOTAL EXTERIOR COMMON AREA	\$930,550
SUB TOTAL	\$12,149,515

TOTAL GENERAL REQUIREMENTS	\$411,277	3.39%
CONTRACTOR'S FEE	\$0	
TOTAL OVERHEAD	\$0	
SUB TOTAL	\$411,277	3.39%

CONTINGENCIES	\$0
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GRAND TOTAL	\$12,560,792
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## **EXHIBIT C**

### **Construction Schedule**

<b>Milestone</b>	<b>Revised Schedule</b>
Permits	November-05
Mobilization	May-06
Grading	June-06
Underground Utilities	July-06
Foundations	August-06
Framing	October-06
Finish Work	February-07
Completion of Site Work	June-07
Certificate of Occupancy	July-07

**M. STEPHEN JONES**  
County Recorder

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CM City of Merced

G

THE CITY OF MERCED  
A California Charter Municipal Corporation  
678 West 18<sup>th</sup> Street  
Merced, California 95340  
Attention: City Clerk

Doc#: 2006-006144



Titles:	1	Pages:	19
Fees			0.00
Taxes			0.00
Other			0.00
PAID			\$0.00

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE  
No recording fee required; this document exempt from fee pursuant to  
Section 27383 of the California Government Code

## REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "**Regulatory Agreement**") is made and entered into as of this 5<sup>th</sup> day of December, 2005, by and between the CITY OF MERCED, a California Charter Municipal Corporation (the "City") and SUNNY VIEW OF MERCED, L.P., a California limited partnership (the "Developer").

### --RECITALS--

A. The City and the Developer have entered into that certain Affordable Housing Loan Agreement, dated as of 12/5, 2005 (the "**Agreement**"). A copy of the Agreement is on file with the City Clerk and incorporated herein by this reference.

B. Pursuant to the terms of the Agreement, the City will provide partial resources to the Developer for development of a 113-unit low-income and very low-income affordable housing project ("Project" herein) located at 1102-1194 D St in the City of Merced, said real property more specifically described in the Legal Description attached herein as Exhibit "A." In particular, City has agreed to provide the Developer with certain Low and Moderate-income Housing HOME funds in support of the Project to cover the difference between the budgeted cost of constructing the Project and the anticipated proceeds of the Senior Construction Financing and Borrower's equity, subject to certain conditions, hereinafter referred to as the "City Loan."

C. In consideration for the City Loan, the Developer has agreed to maintain one hundred and thirteen (113) of the rental dwelling units in the Project as available at "affordable rent" to low-income households and one (1) manager's unit to a low-income household as these terms are defined in the Agreement for the term of this Regulatory

Agreement and to further agree to observe all the terms and conditions set forth below.

D. The City has agreed to provide the City Loan on the condition that the Project be maintained and operated in accordance with Health and Safety Code Sections 33334.2 and 33413 and in accordance with certain additional restrictions concerning affordability, operation, and maintenance of the Project, as specified in this Regulatory Agreement.

E. In order to ensure that the Project will be used and operated in accordance with these conditions and restrictions, the City and the Developer wish to enter into this Regulatory Agreement for themselves and their successors and assigns.

THEREFORE, THE CITY MERCED, ITS SUCCESSORS AND ASSIGNS AND THE DEVELOPER, ITS SUCCESSORS AND ASSIGNS HEREBY COVENANT AND AGREE AS FOLLOWS:

## ARTICLE 1

### DEFINITIONS

1.1 Definitions. When used in this Regulatory Agreement, certain terms and phrases as denoted by an initially capitalized letter shall have the same meaning as found in the Agreement unless the specific context of the usage of a term or phrase may otherwise require, and certain additional defined terms which appear below in this Section 1.1 shall have the meaning in this Regulatory Agreement as ascribed below:

- a. "Adjusted Income" shall mean the total anticipated annual income of all persons in a household which occupies (or is proposed to occupy) a Unit as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor state housing program regulation that utilizes a reasonably similar method of calculation of adjusted annual income. In the event that no such program exists, the City shall provide the Developer with a reasonably similar method of calculation of adjusted income as provided in 25 California Code of Regulations Section 6914.
- b. "Agreement" means that certain City Loan Agreement dated as of December 5, 2005, by and between the Developer and the City. A copy of the Agreement is on file with the City Clerk and is incorporated herein by this reference.
- c. "Certificate of Occupancy Date" means the date of issuance by the City of the initial certificate of occupancy for the Project.
- d. "City" shall mean the City of Merced, California.

- e. "Closing Date" shall mean the date of recordation of this Regulatory Agreement.
- f. "HUD" shall mean the United States Department of Housing and Urban Development.
- f. "Management Agent" shall mean the experienced management agent selected by the Developer for the management of Project as provided in Section 5.2 of this Regulatory Agreement.
- g. "Developer" shall mean SUNNY VIEW OF MERCED, L.P., a California limited partnership.
- h. "Site" shall mean the real property described in Exhibit "A" attached hereto and incorporated herein.
- i. "Regulatory Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.
- j. "Rent" shall mean the total of each monthly payment by the tenants of a Unit to the Developer for the following: use and occupancy of the Unit and land and associated facilities, including parking (other than parking services acquired by tenants on an optional basis); any separately charged fees or service charges assessed by the Developer which are required of all tenants, other than security deposits; the cost of an adequate level of service for utilities paid by the tenant, including garbage collection, sewer, common area, water, electricity, gas and other heating, and refrigeration costs, but not telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Developer, and paid by the tenant.
- k. "Restricted Units" shall mean the one hundred thirteen (113) Housing Units which are affordable Rent to Very Low Income Households - restricted pursuant to this Regulatory Agreement.
- l. "Very Low-Income Households" shall mean households with Adjusted Income that do not exceed the maximum level of income for very low income households under HUD regulations for Merced County, California, adjusted for household size.
- m. "Term" shall mean the period of twenty (20) years, following the issuance by City of a Certificate of Completion for the Housing Units on the Site and ending on the twentieth (20<sup>th</sup>) anniversary following such date.
- n. "Housing Units" shall mean the one hundred thirteen (113) Very Low-Income and one (1) Low-Income Household management rental dwelling

unit to be constructed on the Site.

## ARTICLE 2

### VERY LOW-INCOME HOUSEHOLD RESTRICTED UNITS -- RENT AND OCCUPANCY AFFORDABILITY COVENANTS --

2.1 Occupancy Requirement. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest, that during the twenty (20) years following issuance by City of a Certificate of Completion for the Housing Units on the Site, not less than one hundred thirteen (113) of the Units (the "Restricted Units") shall be rented or occupied by, or if vacant, available for rental and occupancy exclusively by Very Low Income Households and one (1) manager's unit shall be rented or occupied by, or if vacant, available for rental and occupancy by a Low Income Households as defined in Health and Safety Code Section 50105 and in the Agreement. The Developer acknowledges that City has made no commitment to provide financial rental assistance to the Very Low income households, or to persons and families of low or moderate income.

#### 2.2 Allowable Rent for Restricted Units.

a. Subject to Section 2.3 below and the provisions of Section 50053(b)(2) of the California Health & Safety Code, the Rent charged the occupants of the Restricted Units shall not exceed thirty percent (30%) of one-twelfth of Income Household, adjusted for household size.

b. In calculating the allowable Rent for the Restricted Units, the household size shall be assumed to be four and one-half (4.5) person per Three-bedroom Unit and five and one-half (5.5) person per Four-bedroom Unit. Utilizing the United States Department of Housing and Urban Development's income limits for Merced County in year 2005, the initial allowable Rent for the Restricted Units will be as follows:

Type of Unit	Median Income Restriction	Allowable Rent/month
3 BD – 2 BA	30%	\$382
	40%	\$510
	50%	\$638
	60%	\$765
4 BD – 2 BA	30%	\$427
	40%	\$570
	50%	\$712
2 BD – 2 BA (manager)	60%	\$552

c. At least one hundred eighty (180) calendar days prior to increasing Rent on any Restricted Unit, the Developer shall submit to the City for review and approval a

written request for such increase. Households occupying Units shall be given at least ninety (90) days written notice prior to any increase in Rent.

Rent for a Restricted Unit may only be increased one time per year and the Rent levels following an increase, or upon a new occupancy, shall not exceed the applicable Rent levels set forth in Section 2.2.a., above.

### 2.3 Increased Income of a Household Occupancy of a Restricted Unit.

a. In the event, upon recertification of an occupant household's income for a Restricted Unit, the Developer discovers that a [Very] Low Income Household no longer qualifies as a Very Low Income Household, then such household shall not be required to vacate the Project and the Rent chargeable to that household shall be increased to an amount of Rent which is the lesser amount of (i) thirty percent (30%) of that household's actual monthly income; or (ii) the amount payable by the tenant under State. However, when the Restricted Unit is vacated by that household or another unrestricted Unit is vacated, the Unit shall be rented to a Very Low Income Household at the Rent level allowed in Section 2.2 for a Restricted Unit as of the date of commencement of such a new occupancy. Moreover, a Unit occupied by a Very Low Income Household shall be deemed, upon the termination of such Very Low Income Household's tenancy to be continuously occupied by a Very Low Income Household until that Unit is reoccupied.

b. If the Project is subject to state or federal rules governing low income housing tax credits, the provisions of those rules regarding continued occupancy by, and Rent charged to, households whose incomes exceed the eligible income limitation shall apply in place of the provisions set forth in Section 2.3.a., above.

### 2.4 Lease Provisions.

a. The Developer shall include in leases or rental agreements for all Restricted Units provisions which authorize owner to immediately terminate the tenancy of any household one or more of whose members misrepresented any fact material to the household's qualification as a Very Low Income. Each lease or rental agreement for a Restricted Unit shall also provide that the household is subject to annual certification in accordance with Section 4.1 below, and that, if the household's income increases above the applicable limits for a Very Low Income Household such household's Rent may be subject to increase to the lesser of (i) thirty percent (30%) of that household's actual adjusted monthly income; or (ii) the amount payable by the Tenant under the State.

b. The leases for Restricted Units shall provide that if the Project is subject to State or federal rules governing low income housing tax credits, the provisions of those rules regarding continued occupancy by, and increases in Rent for households whose incomes exceed the eligible income limitation shall apply in place of the provisions set forth in Section 2.4.a, above.

### 2.5 Rental Process.

a. Initial Leasing Preference. Prior to opening the residential rental property, Developer shall cooperate with City to communicate the availability of the Housing Units to individuals residing or working in the City of Merced to encourage the greatest possible opportunity for such residents of, or persons working in, Merced to lease the Housing Units.

b. Rental Agreement. The initial form rental agreement to be used by Developer for the rental of any of the Housing Units ("Rental Agreement"), and any changes to such form Rental Agreement regarding the provisions required by this Section to be included in the form Rental Agreement, as set forth below, other than matter related to the tenant's identity, the identity of the unit, the rental amount, discounts and the like, shall be reasonably approved in advance by City's Housing Program Coordinator prior to the initial use of the lease form and prior to the first use of the changed lease form. Such Rental Agreement shall include, but not be limited to (i) a provision prohibiting the storage of any personal property of any kind in the parking areas on the Site; (ii) a provision requiring all balconies, if any, to be free from visible storage items, including, but not limited to, clothes, laundry, or solid coverings; and (iii) the following provision:

- (i) Any member of the Resident's household, or a guest or other person under the Resident's control shall not engage in criminal activity, including drug-related criminal activity, on or near property premises. 'Drug-related criminal activity' means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use of a Controlled Substance 21 U.S.C. Section 802.
- (ii) Resident, any member of the Resident's household, or a guest or other person under the Resident's control shall not engage in any act intended to facilitate criminal activity, including drug-related criminal activity, on or near property premises.
- (iii) Resident or members of the household will not permit the dwelling unit to be used for, or to facilitate, criminal activity, including drug-related criminal activity, regardless of whether the individual engaging in such activity is a member of the household or a guest.
- (iv) Resident or members of the household will not engage in the manufacture, sale, or distribution of illegal drugs at any location, whether on or near property premises or otherwise.
- (v) Resident, any member of the Resident's household, or a guest or other person under the Resident's control shall not engage in acts of violence, including, but not limited to the unlawful discharge of firearms on or near property premises.



2.6 Survival of Covenant. Notwithstanding any foreclosure or transfer to a lender with a position senior to City, the conditions, covenants, and restrictions contained in this City Regulatory Agreement shall run with the land and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by City and its successors and assigns, against the Developer and its successors and assigns, to or of the Site or any portion thereof or any interest therein, any party in possession or occupancy of said Site or portion thereof.

2.7 City Beneficiary to Covenants. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that City shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of City and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect. City shall have the right, in the event of any breach of any such agreement or covenant to exercise all the rights and remedies, and to maintain any action at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

### **ARTICLE 3**

#### **OPERATION AND MAINTENANCE OF THE PROJECT**

3.1 Use as Rental Housing. The Project shall be operated only as rental housing for Very Low-Income Households, including not more than one (1) of the Housing Units, which may be used and occupied by on-site resident manager(s) employed by the Developer and/or the Management Agent.

3.2 Compliance with the Agreement. The Developer shall comply with all the terms and provisions of the Agreement.

3.3 Compliance with Law. Developer shall comply with all applicable Federal, State, and municipal laws, rules and ordinances, including but not limited to HUD regulations.

3.4 Taxes and Assessments. The Developer shall pay all real and personal property taxes, City business license taxes, assessments and charges and all franchise, income, employment, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Site; provided, however, that the Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge against it, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

3.5 Nondiscrimination. All of the Units shall be available for occupancy on a continuous basis to Very Low-Income Household members of the general public (who are also income eligible with respect to the Restricted Units). The Developer shall not give preference to any particular class or group of persons in renting the Units. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, age, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit. Neither the Developer nor any person claiming under or through the Developer, shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of any Unit. All deeds, leases or contracts made or entered into by owner as to the Units or the Site or portion thereof, shall contain covenants prohibiting discrimination as prescribed herein. The Developer shall include a statement in all advertisements, notices and signs for the availability of Units for rent to the effect that owner is an Equal Housing Opportunity Provider.

#### ARTICLE 4

##### VERY LOW-INCOME HOUSEHOLD CERTIFICATION AND REPORTING

4.1 Income Certification. The Developer shall obtain and complete prior to initial occupancy and thereafter maintain on file income certifications from each tenant household renting any of the Restricted Units. The Developer shall make a good faith effort to verify that the income provided by an applicant or occupying Very Low-Income Household in an income certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain an income tax return for the most recent tax year; (2) conduct a credit agency or similar search; (3) obtain an income verification form from the applicant's current employer; (4) obtain an income verification form from the United States Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (5) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. On the anniversary of the occupancy of such Restricted Unit the Developer shall recertify the household income of the Very low-Income Household occupying the Restricted Unit. Copies of tenant income certification shall be available to the City upon request.

4.2 Annual Restricted Unit Rental Affordability Report to City. Commencing on the 30th day of September following the Certificate of the Occupancy Date, and on or before each September 30th thereafter throughout the Term of this Regulatory Agreement, the Developer shall submit an annual compliance report to the City, in a form approved by the City. The annual compliance report shall include for each Restricted Unit covered by this Regulatory Agreement, the Rent and the income and family size of the Very Low-Income Household occupying the Restricted Unit. The report shall also state the date the tenancy commenced for each Restricted Unit and such other

information as the City may be required by law to obtain; provided, however, that the City shall take reasonable steps to maintain the confidential nature of the information contained therein relating to any Restricted Unit.

4.3 Additional Information. The Developer shall provide any additional information reasonably requested by the City, including without limitation such Project-related income and expense accounting information. The City shall have the right to examine and make copies of all books, records or other documents of Developer which pertain to any Unit; provided, however, that the City shall take reasonable steps to maintain the confidential nature of the information contained therein.

4.4 Records. The Developer shall maintain complete, accurate and current records pertaining to the Units, and shall permit any duly authorized representative of the City (during business hours and upon not less than seventy-two (72) hours notice) to inspect records, including records pertaining to income and household size of tenant households of Restricted Units; provided, however, that the City shall take reasonable steps to maintain the confidential nature of the information contained therein relating to any household.

## **ARTICLE 5**

### **PROPERTY MANAGEMENT**

5.1 Management Responsibilities. The Developer shall be responsible for management of the Project, including, without limitation, the selection of tenants, certification and recertification of household size, and income for the Restricted Units, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, graffiti abatement, and security. The City shall have no responsibility for the management or operation of the Site or the Project.

5.2 Management Agent. The Project shall at all times be managed by an experienced management agent (the "Management Agent") with demonstrated ability to operate residential rental facilities similar to the Project in a manner that will provide decent, safe, and sanitary housing. For the purposes hereof, if the Developer directly performs the functions of the Management Agent by its employees or by means of a service contract with an entity owned or controlled by the Developer, such a Management Agent shall be deemed approved by the City. If the Management Agent is an entity or person other than the Developer, its employees or an entity owned or controlled by the Developer, the Developer shall submit for the City's approval the identity of any proposed Management Agent, together with additional information relevant to the background, experience and financial condition of any proposed Management Agent as reasonably requested by the City. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Developer in writing. Unless the proposed

Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. The Developer is hereby approved by the City as the Management Agent for the Project.

5.3. Maintenance of the Site and the Project.

a. The Developer shall maintain the Site and the Project in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. In the event that, at any time during the term of this Regulatory Agreement, there is an occurrence of an adverse condition on any area of the Site in contravention of the general maintenance standard described above (hereinafter referred to as a "Maintenance Deficiency"), then the City shall notify the Developer in writing of the Maintenance Deficiency and give the Developer fifteen (15) days from receipt of such notice to cure the Maintenance Deficiency as identified in the notice. In the event the Developer fails to cure or commence to cure the Maintenance Deficiency within the time allowed, the City may conduct a public hearing following transmittal of written notice thereof to the Developer ten (10) days prior to the scheduled date of such public hearing in order to verify whether a Maintenance Deficiency exists and whether the Developer has failed to comply with the provision of this Section 5.3.a. If, upon the conclusion of a public hearing, the City makes a finding that a Maintenance Deficiency exists and that there appears to be non-compliance with the general maintenance standard, as described above, thereafter the City shall have the right to enter the Site and perform all acts necessary to cure the Maintenance Deficiency, or take other action at law or equity the City may then have to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency as authorized by this Section 5.3.a shall become a lien on the Site. If the amount of the lien is not paid within thirty (30) days after written demand for payment by the City has been presented to the Developer, the City shall have the right to enforce the lien in the manner as provided in Section 5.3.c.

b. Graffiti which is visible from any public right-of-way which is adjacent or contiguous to the Site shall be removed by the Developer from any exterior surface of a structure or improvement on the Site by either painting over the evidence of such vandalism with a paint which has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water as appropriate. In the event that graffiti is placed on the Site and such graffiti is visible from an adjacent or contiguous public right-of-way and thereafter such graffiti is not removed within forty-eight (48) hours following the time of its application; then in such event and without notice to the Developer, the City shall have the right to enter the property and remove the graffiti. Notwithstanding any provision of Section 5.3 to the contrary, any sum expended by the City for the removal of graffiti from the Site as authorized by this Section 5.3.b, shall become a lien on the Site. If the amount of the lien is not paid within thirty (30) days after written demand for payment by the City to the Developer, the City shall have the right to enforce its lien in the manner as provided in Section 5.3.c.

c. The parties hereto further mutually understand and agree that the rights

conferred upon the City under this Section 5.3 expressly include the power to establish and enforce a lien or other encumbrance against the Site, or any portion thereof, in the manner provided under Civil Code Sections 2924, 2924b and 2924c in the amount reasonably necessary to restore the Site to the maintenance standard required under Section 5.3a, or Section 5.3.b, including reasonable attorneys fees and costs of the City associated with the abatement of the Maintenance Deficiency or removal of graffiti and the collection of the costs of the City in connection with such action. The provisions of this Section 5.3 shall be a covenant running with the land for the Term of the Regulatory Agreement and shall be enforceable by the City, and its successors and assigns. Nothing in the foregoing provisions of this Section 5.3 shall be deemed to preclude the Developer from making any alternations, additions, or other changes to any structure or improvement or landscaping on the Site, provided that such changes comply with applicable law. No lien as may arise under this Section 5.3 shall interfere with or be superior to the security interest of any mortgage secured by the Site.

5.4 Insurance Coverage. The Developer shall cause to have in full force and effect during the term of this Regulatory Agreement insurance coverage as follows:

- (i) If any building or improvements erected by the Developer on the Site shall be damaged or destroyed by an insurable cause, the Developer shall, at its own cost and expense, diligently repair or restore the Site and the Project consistent with the original plans and specifications for the Project. Such work or repair shall be commenced within One Hundred Twenty (120) days after the damage or loss occurs and shall be completed within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, the Developer shall make up the deficiency;
- (ii) a policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than either (i) a combined single limit of THREE MILLION DOLLARS (\$3,000,000.00) or (ii) bodily injury limits of TWO MILLION DOLLARS (\$2,000,000.00) per person, property damage limits of TWO MILLION DOLLARS (\$2,000,000.00) per occurrence and THREE MILLION DOLLARS (\$3,000,000.00) DOLLARS in the aggregate.
- (iii) a policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Developer and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Developer in the course of carrying out the activities in this Regulatory Agreement.
- (iv) a policy of comprehensive automobile liability insurance written on a per

occurrence basis in an amount not less than either (i) bodily injury liability limits of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) per person and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) per occurrence and property damage liability limits of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per occurrence and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) in the aggregate or (ii) combined single limit liability of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00). Said policy shall include coverage for owned, non-owned, leased and hired vehicles.

All of the above policies of insurance shall be primary insurance and shall name the City and its officers, employees, and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against the City and its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to City. In the event any of said policies of insurance are canceled, the Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the City Clerk. No operation of the Project shall commence until the Developer has provided City with certificates of insurance or appropriate insurance binders evidencing the above insurance coverages, and said certificates of insurance or binders are approved by City.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated at least "A(vii)" or better in the most recent edition of Bests Insurance Rating Guide or an equivalent rating in The Key Rating Guide or in the Federal Register unless such requirements are modified or waived by the City Manager due to unique circumstances.

The Developer agrees that the provisions of this Section shall not be construed as limiting in any way the extent to which the Developer may be held responsible for the payment of damages to any persons or property resulting from the Developer's activities or the activities of any person or persons for which the Developer is otherwise responsible.

## ARTICLE 6

### MISCELLANEOUS

6.1 Term. The provisions of this Regulatory Agreement shall apply to the Site for the entire Term. This Regulatory Agreement shall bind any successor, heir or assign of the Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, with or without the approval of the City, except as expressly released by the City.

6.2 Indemnity. Developer shall indemnify, protect, defend, save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or

negligent acts, errors, or omissions of Developer or Developer's officers, partners, employees, volunteers, and agents during performance of this Regulatory Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Developer or its employees, subcontractors, or agents, or by the quality or character of Developer's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused solely by the gross negligence of the City. It is understood that the duty of Developer to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Regulatory Agreement does not relieve Developer from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Regulatory Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Regulatory Agreement, Developer acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

6.3 Non-Liability of Officials, Employees and Agents. The City and its officers, agents, and employees shall not be personally liable to the Developer for any obligation created under the terms of this Regulatory Agreement except in the case of actual fraud or willful misconduct by such person.

6.4 Covenants to Run With the Land. The Developer hereby declares its express intent that the covenants and restrictions set forth in this Regulatory Agreement are affordable housing covenants and that each and every provision of this Regulatory Agreement shall run with the land, and shall bind all successors in title to the Site and/or the Project; provided, however, that on the expiration of the Term of this Regulatory Agreement said covenants and restrictions shall expire except as provided in Section 3.5 herein relating to nondiscrimination.

6.5 Enforcement by the City. If the Developer fails to perform any obligation under this Regulatory Agreement, and fails to cure the default within thirty (30) days after the City has notified the Developer in writing of the default or, if the default cannot be cured within thirty (30) days, fails to commence to cure within thirty (30) days and thereafter diligently pursue such cure, the City shall have the right to enforce this Regulatory Agreement by any or all of the following actions, or any other remedy provided by law:

- a. Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel the performance of the obligations of the Developer under this Regulatory Agreement, and/or for damages.
- b. Enforce Liens. The City may enforce and execute upon the lien rights of the City as conferred under Section 5.3 of this Regulatory Agreement.

6.6 Attorneys' Fees and Costs. In any action brought to enforce this

Regulatory Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

6.7 Recording and Filing. The City and the Developer shall cause this Regulatory Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Merced, California.

6.8 Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California, except those provisions preempted by federal law, and any action brought relating to this Regulatory Agreement shall be held exclusively in a state court in the County of Merced.

6.9 Amendments. This Regulatory Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Merced, California.

6.10 Notice. All notices given or certificates delivered under this Regulatory Agreement shall be: (i) deemed received on the date of delivery or refusal if personally delivered by a commercial service which furnishes signed receipts of delivery; or (ii) deemed delivered within three (3) business days if mailed by certified mail, return receipt requested, postage prepaid, addressed as shown on the signature page. Any of the parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

6.11 Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Regulatory Agreement shall not in any way be affected or impaired thereby.

6.12 Notice of Default. Developer shall cause a Request for Notice to City to be recorded on the Project Site in conjunction with the recordation of First Lien deed of trust or mortgage. A statutory notice of default as set forth in the California Civil Code shall be provided to the City. Such notice shall be sent to:

CITY OF MERCED, CALIFORNIA  
678 West 18<sup>th</sup> Street  
Merced, California 95340  
Attention: City Clerk

Sunny View of Merced, L.P.  
320 Golden Shore Drive, Suite 200  
Long Beach, California 90802-4217



Attn: Brian Gentner, Esq.  
Facsimile No.: (562) 901-0918

And a copy (which copy shall not constitute notice to Borrower):  
Chernove & Associates, Inc.  
520 S. Virgil Avenue, #302  
Los Angeles, CA 90020  
Attn: Sheldon Chernove, Esq.

6.13 Relationship of Parties. The relationship between the City and the Developer during the term of this Regulatory Agreement shall not be construed as a joint venture, equity venture, or partnership. The City does not undertake nor assume any responsibility or duty to the Developer or any third party with respect to the ownership of the Site or the operation of the Project or the actions of the Developer. The Developer shall have no authority to act as an agent of the City or to bind the City to any obligation.

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

6.15 Other Agreements. The Developer represents that it has not entered into any agreements that would restrict or compromise its ability to comply with the terms of this Regulatory Agreement. The Developer shall not enter into any agreements that are inconsistent with the terms of this Regulatory Agreement without the express approval by the City in writing.

6.16 Successors and Assigns. This Regulatory Agreement shall be binding upon and inure to the benefit of the respective parties hereto and to their respective heirs, transferees, successors, assignee, partners, and legal representatives.

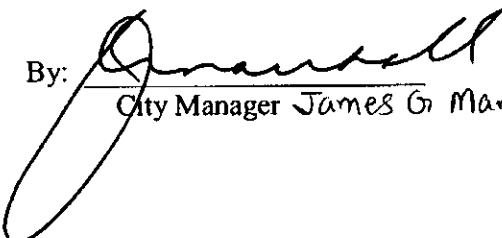
6.17 Integration. This Regulatory Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

6.18 Authority to Execute. The person or persons executing this Regulatory Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Regulatory Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

6.19 Counterparts. This Regulatory Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the City and the Developer have for themselves and their successors and assigns executed this Regulatory Agreement by their duly authorized representatives which shall become effective the date in which the last of the parties, whether City or Developer, executes this document.

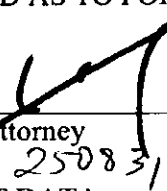
**THE CITY OF MERCED,**  
A California Charter Municipal  
Corporation  
("City")

By:   
City Manager James G. Marshall

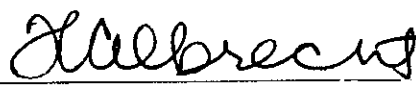
ATTEST:  
JAMES G. MARSHALL, CITY CLERK

By:   
Deputy City Clerk

APPROVED AS TO FORM:

By:   
City Attorney  
250831

ACCOUNT DATA:

BY:   
Verified by Finance Officer  
NO funds required. 9-12

Note: Approved by City Council Resolution \_\_\_\_\_

**SUNNY VIEW OF MERCED, L.P.**

A California Limited Partnership  
("Developer")

By: Western Community Housing, Inc,  
California Nonprofit Corporation,  
its General Partner

By: [Signature]  
Name: Graham Espley-Jones  
Title: President

Taxpayer I.D. No. 95-4751332

ADDRESS: 151 Kalmus Drive, Suite J-5  
Costa Mesa, CA 92626

TELEPHONE: (714) 549-4100

FACSIMILE: (714) 549-4600

E-MAIL: graham@wchousing.org

[ALL OFFICER/PRINCIPAL SIGNATURES TO BE NOTARIZED]

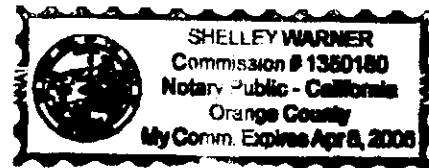
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On DEC 14<sup>th</sup> 2005 before me, SHELLEY WARNER, personally appeared  
GRAHAM ESLEY-JONES

\_\_\_\_\_ personally known to  
me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]  
(Signature of Notary Public)



(seal)

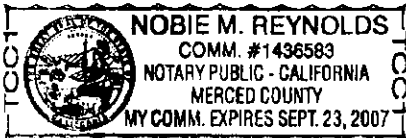
ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 )  
COUNTY OF MERCED )

On JANUARY 10, 2006, before me, Nobie M. Reynolds,  
Notary Public, personally appeared JAMES G. MARSHALL

- ☒ personally known to me -OR-  
☐ proved to me on the basis of satisfactory evidence to be the person(s)  
whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies) and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf  
of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Nobie M. Reynolds  
SIGNATURE OF NOTARY

**EXHIBIT A**

**LEGAL DESCRIPTION**

Parcel 2, of Parcel Map titled City of Merced Lot Split #03-06, recorded on October 29, 2003 in Book 94 of Parcel Maps, at Pages 33 & 34, as Document No. 2003070795 in the Merced County Recorder's Office, State of California.

Assessors Parcel No: 035-010-062

**M. STEPHEN JONES**

1:45 PM

County Recorder

R04

CM City of Merced

G

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Doc#: 2006-045789

Titles: 1 Pages: 7



Fees	0.00
Taxes	0.00
Other	0.00
PAID	\$0.00

THE CITY OF MERCED  
A California Charter Municipal Corporation  
678 West 18<sup>th</sup> Street  
Merced, California 95340  
Attention: City Clerk

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE  
No recording fee required; this document exempt from fee pursuant to  
Section 27383 of the California Government Code

## AMENDMENT TO REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS AMENDMENT TO REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "**Regulatory Agreement**") is made and entered into as of this 1<sup>st</sup> day of May, 2006 by and between the CITY OF MERCED, a California Charter Municipal Corporation (the "City") and SUNNY VIEW OF MERCED, L.P., a California limited partnership (the "Developer"). This Amendment hereby modifies, as follows, that certain Regulatory Agreement and Declaration of Restrictive Covenants (hereinafter known as "Regulatory Agreement") recorded on January 1, 2006 as Document number 2006-006144 of the Official Records of the County Recorder's Office of the County of Merced. The parties desire to amend the Regulatory Agreement and correct certain provisions and more clearly set forth certain terms. The amendment to the regulatory agreement is needed in order to include a definition for "Low Income Households." Except as modified herein, the terms of the Regulatory Agreement remain unchanged and are in full force and affect.

1. Recital A is modified to read as follows: "A. The City and the Developer have entered into that certain Affordable Housing Loan Agreement, dated as of December 15, 2005 (the "**Agreement**"). A copy of the Agreement is on file with the City Clerk and incorporated herein by this reference."
2. Recital B is modified to read as follows: "B. Pursuant to the terms of the Agreement, the City will provide partial resources to the Developer for development of a 113-unit low-income and very low-income affordable housing project ("Project" herein) located at 1102-1194 D Street in the City of Merced, said real property more specifically described in the Legal Description attached herein as Exhibit "A." In particular, City has agreed to provide the Developer with certain Low and Very Low-income Housing HOME funds in support of the Project to cover the difference between the

budgeted cost of constructing the Project and the anticipated proceeds of the Senior Construction Financing and Borrower's equity, subject to certain conditions, hereinafter referred to as the "City Loan."

3. Recital C is modified to read as follows: "C. In consideration for the City Loan, the Developer has agreed to maintain one hundred and thirteen (113) of the rental dwelling units in the Project as available at "affordable rent" to low-income and very low income households and two (2) manager's unit to a low-income household as these terms are defined in the Agreement for the term of this Regulatory Agreement and to further agree to observe all the terms and conditions set forth below."
4. Paragraph 1.1 O is added to read as follows: "O. Low Income Households shall mean households with Adjusted Income that do not exceed the maximum level of income for low income households under HUD regulations for Merced County, California, adjusted for household size."
5. Paragraph 1.1 K is modified to read as follows: "K. Restricted Units" shall mean the eighty (80) Housing Units which are affordable Rent to Very Low Income Households and thirty three (33) Housing Units which are affordable to Low Income Households - restricted pursuant to this Regulatory Agreement."
6. Paragraph 1.1 is modified to read as follows: "N. "Housing Units" shall mean the eighty (80) Very Low-Income Households, thirty one (31) Low Income Households and two (2) Low-Income Household management rental dwelling unit to be constructed on the Site."
7. Paragraph 2.1 is modified to read as follows: "2.1. Occupancy Requirement. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest, that during the forty (40) years following issuance by City of a Certificate of Completion for the Housing Units on the Site, not less than eighty (80) of the Units shall be rented or occupied by, or if vacant, available for rental and occupancy exclusively by Very Low Income Households, thirty one (31) of the Units (collectively the "Restricted Units") and two (2) manager's unit shall be rented or occupied by, or if vacant, available for rental and occupancy by a Low Income Households as defined in Health and Safety Code Section 50105 and in the Agreement. The Developer acknowledges that City has made no commitment to provide financial rental assistance to the Low Income households or Very Low income households, or to persons and families of low or moderate income."
8. Paragraph 3.1 is modified to read as follows: "3.1. Use as Rental Housing. The Project shall be operated only as rental housing for Low Income and Very Low-Income Households, including not more than) two (2)

of the Housing Units, which may be used and occupied by on-site resident manager(s) employed by the Developer and/or the Management Agent."

9. Paragraph 4.1 is modified to read as follows: "4.1. Income Certification. The Developer shall obtain and complete prior to initial occupancy and thereafter maintain on file income certifications from each tenant household renting any of the Restricted Units. The Developer shall make a good faith effort to verify that the income provided by an applicant or occupying Low Income and Very Low-Income Households in an income certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain an income tax return for the most recent tax year; (2) conduct a credit agency or similar search; (3) obtain an income verification form from the applicant's current employer; (4) obtain an income verification form from the United States Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (5) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. On the anniversary of the occupancy of such Restricted Unit the Developer shall rectify the household income of the Low Income and Very low-Income Household occupying the Restricted Unit. Copies of tenant income certification shall be available to the City upon request."
10. Paragraph 4.2 is modified to read as follows: "Annual Restricted Unit Rental Affordability Report to City. Commencing on the 30th day of September following the Certificate of the Occupancy Date, and on or before each September 30th thereafter throughout the Term of this Regulatory Agreement, the Developer shall submit an annual compliance report to the City, in a form approved by the City. The annual compliance report shall include for each Restricted Unit covered by this Regulatory Agreement, the Rent and the income and family size of the Low Income and Very Low-Income Households occupying the Restricted Unit. The report shall also state the date the tenancy commenced for each Restricted Unit and such other information as the City may be required by law to obtain; provided, however, that the City shall take reasonable steps to maintain the confidential nature of the information contained therein relating to any Restricted Unit."

All other terms and conditions shall remain as set forth in the original Regulatory Agreement referenced above.



IN WITNESS WHEREOF, the City and the Developer have for themselves and their successors and assigns executed this Amendment to Regulatory Agreement by their duly authorized representatives which shall become effective the date in which the last of the parties, whether City or Developer, executes this document.

**THE CITY OF MERCED,**  
A California Charter Municipal  
Corporation  
("City")

By: 

City Manager James G. Marshall

Date: 6/6/08

ATTEST:

JAMES G. MARSHALL, CITY CLERK

By: 

Deputy City Clerk

APPROVED AS TO FORM:

By: 

City Attorney

5/31/06

550831  
ACCOUNT DATA:

BY: 

Verified by Finance Officer

no funds required 5/31/06 plus



ME 19019

**SUNNY VIEW OF MERCED, L.P.**

**a California limited partnership  
("Developer")**

By: **Western Community Housing, Inc.**  
a California nonprofit public benefit  
corporation,  
Its General Partner

By:

  
\_\_\_\_\_  
Graham Espley-Jones,  
President

Taxpayer I.D. No. 95-4751332

ADDRESS: 151 Kalmus Drive, Suite J-5  
Costa Mesa, CA 92626

TELEPHONE: (714) 549-4100

FAX: (714) 549-4600

E-MAIL: graham @wchousing.org

Date: May 23, 2006

[ALL OFFICER/PRINCIPAL SIGNATURES TO BE NOTARIZED]

STATE OF CALIFORNIA )  
COUNTY OF Merced ) ss.

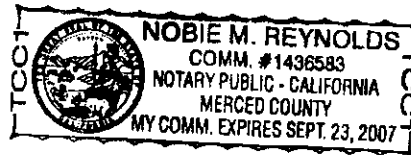
On June 6, 2006 before me, Nobie M. Reynolds, vNotary Public,  
James G. Marshall, personally appeared

James G. Marshall personally known to  
me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the parson(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature (Seal)

Nobie M. Reynolds  
Nobie M. Reynolds  
Notary



STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss.

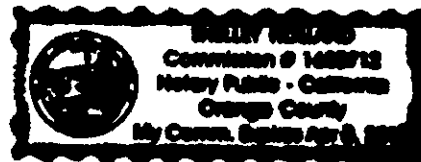
On MAY 23rd 2006 before me, SHELLEY HOLLAND, vNotary Public,  
GRAHAM ESPLEY-JONES, personally appeared

Graham Espley-Jones personally known to  
me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the parson(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature (Seal)

SHELLEY HOLLAND  
SHELLEY HOLLAND



GOVERNMENT CODE 27361.7

I CERTIFY UNDER PENALTY OF PERJURY THAT THE  
NOTARY SEAL ON THE DOCUMENT TO WHICH THIS  
STATEMENT IS ATTACHED READ AS FOLLOWS:

NAME OF NOTARY: Shelley Holland

DATE COMMISSION EXPIRES: April 8, 2010

COMMISSION NUMBER: 1650712

PLACE OF EXECUTION: County of Orange

EXECUTION DATE: May 23, 2006

SIGNATURE: Araceli Gam

FIRM NAME (IF APPLICABLE): City of Merced

---



## **ADMINISTRATIVE REPORT**

AGENDA

ITEM: \_\_\_\_\_

MTG

DATE: \_\_\_\_\_

**TO:** James G. Marshall, City Manager

**FROM:** Masoud Niroumand, Housing Program Coordinator

**DATE:** June 5, 2006

**SUBJECT:** Amendment to "Sunny View" City Loan and Regulatory Agreements

---

### **RECOMMENDATION:**

Adopt a motion:

1. Approving the amendment to Sunny view City Loan and Regulatory Agreements between the City of Merced, Sunny View of Merced, L.P.
2. Authorizing the City Manager to execute all necessary documents.

### **POSSIBLE CITY COUNCIL ACTIONS:**

1. Approve as recommended;
2. Modify the action; or
3. Deny the recommendation.

### **AUTHORITY:**

Merced City Charter, Section 200 and City of Merced HUD Annual Plan FY 2006.

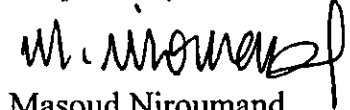
### **DISCUSSION:**

In December 2005, the City Council adopted a resolution authorizing the execution of the City Loan and Regulatory Agreements, for Sunny View, a 113-unit multi family affordable housing development in South Merced on the northeast corner of "D" Street and Childs Avenue. Staff has received a request from the developer that it is necessary to amend the City Loan and the Regulatory Agreement to make the aforementioned documents consistent with the state regulatory agreement.

**CONCLUSION:**

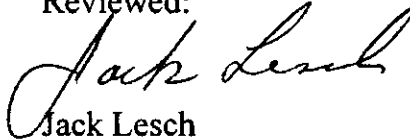
The amendment will not give any benefit to the developer and the original agreement will remain the same and in full effect. Staff is recommending the approval of this amendment.

Respectfully Submitted:



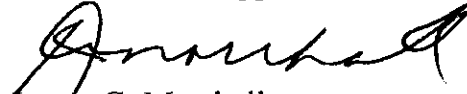
Masoud Niroumand  
Housing Program Coordinator

Reviewed:



Jack Lesch  
Director of Development Services

Reviewed and Approved:



James G. Marshall  
City Manager

Attachments:

- 1) Amendment to City Loan Agreement
- 2) Amendment to Regulatory Agreement and Declaration of Restrictive Covenants

**PROMISSORY NOTE  
SECURED BY DEED OF TRUST**

\$1,761,000.00

12/5, 2005  
Merced, California

1. FOR VALUE RECEIVED, the undersigned SUNNY VIEW OF MERCED, L.P., a California limited partnership ("**Maker**") promises to pay to the City of Merced, a California Charter Municipal Corporation, or order ("**Holder**") at 678 West 18<sup>th</sup> Street, Merced, California 95340, or at such other place as the Holder of this Promissory Note ("**Note**") may designate in writing, the sum of One Million Seven Hundred Sixty-one Thousand Dollars (\$1,761,000.00) or so much thereof as is disbursed to Maker, together with interest on unpaid principal until paid at the rate of two percent (2%) per annum on the first day of the month in which the Loan funds, with interest compounded annually.

2. This Note is secured by that certain Deed of Trust ("**Deed of Trust**") of even date herewith given by the Maker, as Trustor, to a title company approved by Lender as Trustee, for the benefit of Holder, as the Beneficiary, which Deed of Trust is to be recorded against that certain property in the City of Merced, County of Merced, State of California and more particularly described in Exhibit "A" to the Deed of Trust (the "**Property**").

3. The following terms as used in this Note shall have the meanings given herein unless expressly provided to the contrary:

"**City Loan**" means the Loan made by the City of Merced, a California Charter Municipal Corporation, to Maker evidenced by this Note.

"**City Loan Documents**" means that certain City Loan Agreement of even date herewith ("**City Loan Agreement**") by and between Maker and Holder, this Note, the Deed of Trust and all other documents and instruments evidencing, securing or relating to the indebtedness evidenced by this Note and the obligations of Maker.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended.

"**Construction Loan**" means any Loan or Loans obtained by Maker from an institutional lender making such loans in the ordinary course of its business, and secured by a first lien on the Project, the majority of the proceeds of which Loan are used to finance the construction of the Project.

"**Debt Service**" means the debt service on the Senior Mortgage Financing.

**“Developer Agreement”** means that certain Developer Agreement entered into by and between the Maker and Simpson Housing Solutions, LLC with respect to the Project.

**“Gross Income”** means all revenues or income collected by the Maker, or its successors or assigns from the Project. Gross Income shall be determined on a cash basis during any pertinent or applicable period, but shall not include security deposits (unless and until such security deposits have been forfeited by tenants), or insurance or condemnation proceeds (except as paid to Maker for loss of rents), or the proceeds from any sale or refinancing of the Project or any part thereof, or amounts expended from any reserves for the Project.

**“Lender”** means any lender under, or holder of, any Loan.

**“Lien”** means any mortgage, deed of trust or other security instrument encumbering the Project or any part thereof as security for any Loan.

**“Loan”** or **“Loans”** means any loan made by the Mortgagee to Maker which is secured by a Lien.

**“Mortgagee”** means a mortgagee of a mortgage or a beneficiary under a deed of trust encumbering title to the Project, or any part thereof.

**“Net Cash Flow”** means for any period the amount of Gross Income for such period less Operating Expenses and Debt Service for such period.

**“Net Proceeds”** means the proceeds of any Loan secured by the Project, less the repayment of any Loan made prior in time to said Loan and less any fees or charges paid out of the gross proceeds related to such Loan, including without limitation broker’s commissions and fees, Loan commitment fees or other charges assessed by the Lender for making the Loan, normal closing costs, title insurance premiums, and attorney’s fees.

**“Operating Expenses”** means for any period the sum of the following expenses incurred and paid during such period: (i) all expenses incurred by Maker in owning, operating, maintaining, repairing, and replacing the Project (excluding payment from insurance proceeds and any costs or expenses paid or reimbursed by third parties), including without limitation taxes, assessments and bonds, insurance, and maintenance expenses for the Project, accounting and legal fees, leasing commissions, advertising expenses, property management fees (not to exceed 6% of Gross Income) and expenses of on-site employees, supplies, license and permit fees, capital expenditures (to the extent such expenses exceed reserves), any and all developer fees and payments on the Developer Note (as defined in the Maker’s partnership agreement), if any, partnership management fees and asset management fees and utility charges, and (ii) such reasonable reserves as the Maker or any Mortgagee may require to be set aside for the Project (but excluding the expenditure of funds from the reserve once set aside) not exceeding Three Hundred Dollars (\$300.00) per apartment unit per year. Maker shall be deemed to be required to pay Operating Expenses for materials and services upon receipt thereof, and to the extent services are not billed on a monthly basis, the bill for such



services shall be prorated over the period during which such services were received. Real estate taxes, assessments, bonds, and insurance premiums shall be prorated on a monthly basis based on the latest information available. If the actual cost of real estate taxes, assessments, bonds, or insurance premiums are different from the information used to make such prorations, then an adjustment in the next month's Operating Expenses shall be made based upon the correct information. Operating Expenses shall not include: (i) payments made from insurance proceeds for any loss or damage to the Project, or (ii) depreciation of buildings or improvements or similar non-cash items of deduction or expense, or (iii) funds expended from reserves. Maker shall count an Operating Expense only one time in one category and under no circumstances shall an Operating Expense be counted more than once.

**"Partnership Agreement of Maker"** means the Agreement of Limited Partnership of Sunny View of Merced, L.P.

**"Permanent Loan"** means any Loan, secured by a first lien on the Project, the Net Proceeds of which are used to pay any Construction Loan or any previous Permanent Loan.

**"Project"** means the Property and the proposed development of the Property with a 113-unit low income affordable housing residential apartment project.

**"Property"** means the subject real property located in the City of Merced, County of Merced, State of California, and more particularly described in Exhibit "A" to the Deed of Trust securing this Note.

**"Senior Mortgage Financing"** means any of the following: (i) the Construction Loan; (ii) the Permanent Loan; or (iii) any Loan refinancing any Permanent Loan.

**"Tax Credits"** means low-income housing tax credits allowable to the Maker with respect to the Project under Section 42 of the Internal Revenue Code of 1986, as amended.

**"Tax Credit Sale Proceeds"** means the total net proceeds to be obtained by Maker from the sale of limited partnership interests in Maker to persons who will qualify as limited partners of Maker for purposes of receiving Tax Credits, less the cost of said sales, including without limitation syndication costs and syndication fees, attorney fees and accountant fees, filing fees with governmental agencies having jurisdiction over the syndication, brokerage or finder's fees, and consulting fees.

**"Debt Service", "Gross Income", "Net Cash Flow", and "Operating Expenses"** all shall be determined on a cash basis.

4. RESERVED.

5. Commencing on the first day of the first calendar month in which there is Net Cash Flow after payment of Debt Service, and continuing on the first day of each and every calendar month thereafter for the remaining term of this Note, there shall be due and payable to Holder an amount equal to twenty-five percent (25%) of the Net Cash Flow of the Project. The payments made pursuant to this Paragraph 5 shall first be applied to accrued interest and the remainder to principal.

6. If not sooner paid, the unpaid principal balance of this Note plus any unpaid interest thereon shall be all due and payable to Holder thirty-five years (35) from the date of execution of this Note.

7. The principal of this Note and any unpaid interest accrued thereon may be prepaid in whole or in part at any time without premium or penalty.

8. In the event of default in payment of principal hereunder or interest accrued thereon occurring for more than ten (10) days, or upon maturity of this Note (whether by acceleration or otherwise), interest shall thereafter accrue on said unpaid principal until said default is cured at the rate of twelve percent (12%) per annum, compounded annually, or the maximum amount allowed by applicable usury law if less than said rate, which interest shall be immediately due and payable as accrued to the Holder of this Note.

9. In the event of any default of Maker in payment hereof or under any terms, covenants or conditions contained herein, or in the City Loan Documents, the Deed of Trust or in any other instrument securing this Note, or under any modification, extension or renewal hereof or thereof, then the entire principal sum of this Note and all interest accrued thereon shall become immediately due and payable at the option of the Holder of this Note. Failure to exercise such option shall not constitute a waiver of the right to exercise such option in the event of any further or subsequent default.

10. Principal, interest and all other sums due hereunder shall be payable in lawful money of the United States of America. Maker agrees to pay all costs and expenses of collection of this Note, including, but not limited to, reasonable attorneys' fees whether collected by suit or otherwise. Neither the failure to accelerate the indebtedness hereof by reason of any default or under any provision hereof nor the acceptance of any past-due payment shall constitute a waiver of the right of the Holder of this Note thereafter to enforce strict compliance of the terms, covenants and conditions hereof. This Note may be extended or renewed in whole or in part by the Holder hereof and any related right or security therefor may be waived, exchanged, surrendered or otherwise dealt with, all without affecting the liability of Maker. Maker hereby waives presentment for payment, demand, protest, notice of protest, and notice of dishonor. Time is of the essence herein.

11. In the event any term, covenant, condition or other provision contained in this Note or in any instrument securing this Note is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect, alter, modify or impair in any manner whatsoever any other term, covenant, condition or other provision contained in this Note

or in any instrument securing this Note, the provisions of which shall continue to apply as if such invalid, illegal or unenforceable provision was not contained herein or therein.

12. Holder's recovery against any partner of Maker under this Note and the City Loan Documents shall be limited solely to the collateral given to Holder as security for Maker's performance under this Note and the City Loan Documents and to the general assets of Maker itself. Such recovery shall not be a lien, or the basis of a claim of lien or levy of execution, against the general assets of any general or limited partner of Maker. Notwithstanding the foregoing, Maker, any general partner of Maker and the general assets of any general partner of Maker shall be fully liable to Holder to the same extent that Maker would be liable absent the foregoing limitation of this Paragraph for: (a) fraud or willful misrepresentation on the part of Maker or such partners; (b) waste; (c) failure of such partner to pay any income or other taxes, assessments or other charges attributable to such partner which can create liens on any portion of the Project (to the full extent of any such taxes, assessments or other charges); (d) the amount of any money or value of any property received by such partner as a distribution of earnings or income from the Project if such distribution was prohibited under the terms of the City Loan Agreement (to the full extent of such distribution); (e) any breach by Maker of any covenant under Article 7 of the City Loan Agreement, entitled Hazardous Materials, any representation or warranty of Maker under such Article proving to have been untrue when made, or the presence of any significant Hazardous Materials in, on or about the Project which are discovered subsequent to the Effective Date; or (f) any obligation arising from the indemnity set forth in Section 11.10 of the City Loan Agreement (except for payment of principal and interest on this Note which shall remain non-recourse). In addition, the limitations hereof shall not be deemed to limit: (i) any right Holder might otherwise have to obtain injunctive relief against Maker, any partner of Maker or any other person or entity; (ii) any suit, action or proceeding (including without limitation exercise of the power of sale under or the filing of an action for judicial foreclosure of the Deed of Trust), in connection with the preservation, enforcement or foreclosure of the liens, mortgages, assignments and security interests now or at any time hereafter securing the payment and performance of all obligations under any of the City Loan Documents; or (iii) the collection of amounts which may become owing or payable under or on account of insurance, condemnation awards or damages for other public actions or surety bonds maintained or provided by Maker: provided, however, that the assertion by Holder of any such right, suit, action or collection of amounts shall not result in a momentary claim upon the general assets of any general or limited partner of Maker except as otherwise provided herein.

13. Whenever reference is made herein to "Maker" or "Holder", such reference shall be deemed to refer to and include the heirs, executors, legal representatives, successors and assigns thereof, it being expressly agreed that the rights and obligations of all parties named herein or liable hereunder shall inure to the benefit of and be binding upon such parties and their respective heirs, executors, legal representatives, successors and assigns. This Note and all provisions hereof shall be governed by and construed in accordance with the laws of the State of California, and any action brought relating to this Note shall be held exclusively in a state court in the County of Merced.

14. For the purpose of assuring compliance with the payment of this Note, representatives of the Holder shall have a right of access to the Project and the books and records of Maker pertaining to the Project, during normal business hours, upon at least twenty four (24) hours prior notice to Maker, including but not limited to the inspection of the books and records for determining the Net Cash Flow after Debt Service.

15. Prior to the recordation by Holder of a Certificate of Completion upon completion of the Project, the Maker shall not transfer, convey, assign, or lease the whole or any part of the Property or the Improvements thereon without the prior written approval of the Holder. Subsequent to the recordation of a Notice of Completion for the Project, maker may sell, transfer, assign, convey or encumber, mortgage or hypothecate the Property or the Project or any part thereof or any interest therein, and any of the general or limited partnership interests of the Maker in any manner; rent the apartment units to tenants in the ordinary course of business and in a manner otherwise meeting the requirements of the City Loan Documents and any other covenants, conditions or restrictions applicable to the Project (including the Construction Loan Documents and the Regulatory Agreement) - none of the foregoing shall require the consent of Holder.

16. Interest on the debt evidenced by this Note shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under applicable law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

17. The indebtedness evidenced by this Note is and shall be subordinate to the liens, terms, covenants and conditions of any construction and permanent loan made to the Maker in the original principal amount not to exceed Two Million One Hundred Thousand Dollars (\$2,100,000.00) and any and all loans refinancing such loan (collectively the "Senior Loan") and all documents, agreements, and instruments executed in connection with or securing the Senior Loan (the "Senior Loan Documents"), provided that the priority of Holder's security in the Property shall remain at no less than second position. The rights and remedies of the Payee and each subsequent holder of this Note are subject to these restrictions and limitations. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions of this Paragraph. The provisions of this Paragraph do not subordinate Payee's right to receive payments of the sums due hereunder except during the period of any uncured event of default under the Senior Loan Documents, and Payee shall pay to the holder of the Senior Loan any funds received by Payee during the period of any uncured event of default not later than 10 days after receipt by it of written demand from holder of the Senior Loan.

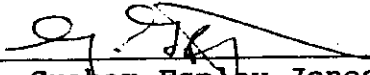
18. The person or persons executing this Note warrants and represents that he/she/they has/have the authority to execute this Note on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the undersigned Maker has caused this Note to be executed on the day, month and year first written above.

MAKER:

SUNNY VIEW OF MERCED, L.P.,  
a California Limited Partnership

By: Western Community Housing, Inc,  
California Nonprofit Corporation,  
its General Partner

By:   
Name: Graham Espley-Jones  
Title: President

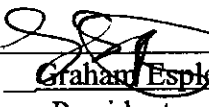
Address: ~~151 Kalmus Drive, Suite J-5~~  
Costa Mesa, CA 92626

IN WITNESS WHEREOF, the undersigned Maker has caused this Note to be executed on the day, month and year first written above.

MAKER:

SUNNY VIEW OF MERCED, L.P.,  
a California Limited Partnership

By: Western Community Housing, Inc,  
California Nonprofit Corporation,  
its General Partner

By:   
Name: Graham Espley-Jones  
Title: President

Address: 151 Kalmus Drive, Suite J-5  
Costa Mesa, CA 92626

Recorded in Official Records, Merced County

**M. STEPHEN JONES**

County Recorder

1/26/2006

8:37 AM

R04

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Merced, a California Charter Municipal Corp  
678 West 18<sup>th</sup> Street  
Merced, California 95340  
Attention: City Clerk

**CM City of Merced****G****Doc#: 2006 – 006143****Titles: 3 Pages: 29**

<b>Fees</b>	<b>0.00</b>
<b>Taxes</b>	<b>0.00</b>
<b>Other</b>	<b>0.00</b>
<b>PAID</b>	<b>\$0.00</b>

**DEED OF TRUST WITH  
ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(CITY TRUST DEED)**

The parties to this Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing ("**Deed of Trust**"), made as of: 12/5, 2005, are SUNNY VIEW OF MERCED, L.P., a California limited partnership ("**Trustor**"), FIRST AMERICAN TITLE COMPANY ("**Trustee**"), and THE CITY OF MERCED, a California Charter Municipal Corporation ("**Beneficiary**").

**ARTICLE 1. GRANT IN TRUST**

1.1 **Grant.** For the purpose of securing the payment and performance of the Secured Obligations defined and described in Section 2.1, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of the Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to all that certain real property located in the City of Merced, County of Merced, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein (the "**Land**"),

TOGETHER with all buildings and improvements now or hereafter located thereon and all materials intended for construction, reconstruction, alteration and repair of such buildings and improvements (collectively, "**Improvements**");

TOGETHER with all existing and future easements, rights, rights of way, franchises, tenements, hereditaments and appurtenances of the Land, and all development rights and credits, air rights, water, water rights, water stock related to the Land and all minerals, oil, gas and other hydrocarbon substances in, on or under the Land and any land lying in the streets, roads or highways, open or proposed, in front of or adjoining the Land and Improvements (collectively, "**Appurtenances**");

TOGETHER with all goods, materials, supplies, equipment, appliances, machinery, fixtures, furniture, furnishings and other articles and types of tangible personal property and any additions to,

substitutions for, changes in or replacements of the whole or any part thereof now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Land, Improvements and Appurtenances or any portion thereof, including all building materials and equipment now or hereafter delivered to the Land, Improvements and Appurtenances and intended to be installed in or about the same;

TOGETHER with all inventory, accounts, deposit accounts, accounts receivable, contract rights, development and use rights, permits, licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary) arising from or relating to the Land, Improvements and Appurtenances and any business conducted thereon by Trustor and any other intangible personal property and rights relating to the Land, Improvements and Appurtenances or any part thereof or to the operation thereof or used in connection therewith, including goodwill, trademarks and tradenames;

TOGETHER with all rents, issues, revenues, income, royalties and profits and all leases, rental agreements and other contracts and agreements relating to the use or possession of or otherwise derived from any of the Land, Improvements, Appurtenances or any of the other property described above, together with all guarantees thereof and all deposits (to the full extent permitted by law) and other security therefor;

TOGETHER with all proceeds of, additions and accretions to, substitutions and replacements of any of the foregoing (including, but not limited to, all claims to or demands thereto) from the voluntary or involuntary conversion of the Land, Improvements, Appurtenances or any of the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments in lieu thereof made by any public body or decree by court of competent jurisdiction for taking or for degradation of the value in any condemnation or eminent domain proceeding, and all causes of action and the proceeds thereof of all types for any damage or injury to the Land, Improvements, Appurtenances or any of the other property described above or any part thereof, including causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact (collectively "**Proceeds**"); together with all books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory.

All property, both real and personal, described above and conveyed to Trustee under this Deed of Trust shall hereinafter be collectively referred to as the "**Property**." The listing of specific rights or property shall not be interpreted as a limit of general terms.

1.2 **Address.** The address of the real property described herein is the 1102-1194 D Street, Merced, CA 95340. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Property as described on Exhibit A. Trustor is the owner of the real property described



in Exhibit A attached hereto and Beneficiary is the lender making the loan secured by this Deed of Trust.

## ARTICLE 2. OBLIGATIONS SECURED

2.1 **Obligations Secured.** Trustor makes this grant and assignment for the purpose of securing the following obligations ("**Secured Obligations**"):

(a) Payment to Beneficiary of all sums at any time owing under that certain Promissory Note Secured By Deed of Trust ("**Note**") of even date herewith, in the principal amount of One Million Seven Hundred Sixty-one Thousand Dollars (\$1,761,000.00) executed by Trustor and payable to the order of Beneficiary; and

(b) Payment and performance of all covenants and obligations on the part of Trustor under this Deed of Trust; and

(c) Payment and performance of all covenants and obligations on the part of Trustor under that certain City Loan Agreement ("**Loan Agreement**") of even date herewith by and between Trustor as borrower and Beneficiary, as lender and the payment and performance of all other obligations referred to in the Loan Agreement which would constitute a default thereunder if not performed as required; and

(d) Payment and performance of all covenants and obligations on the part of Trustor under all Loan Documents as defined in the Loan Agreement; and

(e) Payment and performance of all covenants and obligations on the part of Trustor if any, which any rider attached as an Exhibit to this Deed of Trust recites are secured hereby; and

(f) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

(g) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 **Obligations.** The term "**obligations**" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges,

prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.3 **Incorporation**. All terms of the Secured Obligations, Loan Documents and any other documents evidencing the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time. Any capitalized terms used herein and not otherwise defined herein have the meanings ascribed to them under the Loan Agreement.

### ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

3.1 **Assignment**. Subject to any prior assignment to the Senior Lender pursuant to the Senior Loan Documents, Trustor hereby irrevocably assigns to Beneficiary (a) all of Trustor's right, title and interest in, to and under all leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether now existing or entered into after the date hereof ("**Leases**"); and (b) all rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases ("**Rents**"). The term "**Leases**" shall also include all security deposits, guarantees and other security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Rents is not contingent upon possession of the Property, and may be exercised without possession of the Property.

3.2 **Grant of License**. Subject to any prior rights of the Senior Lender pursuant to the Senior Loan Documents, Beneficiary confers upon Trustor a license ("**License**") to collect and retain the Rents as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Rents pursuant to Section 6.5 without notice and without taking possession of the Property. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary. Subject to the License granted to Trustor hereunder, Trustor irrevocably appoints Beneficiary as its true and lawful attorney-in-fact, at the option of Beneficiary, to demand, receive and enforce all Leases and Rents, to give receipts, releases and satisfactions and to sue, in the

name of Trustor or Beneficiary, in order to enforce all such Leases and apply all litigation proceeds to the Secured Obligations.

3.3 **Effect of Assignment.** The foregoing irrevocable Assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Lessee, licensee, employee, invitee or other person. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

3.4 **Representations and Warranties.** Trustor represents and warrants that as of the date hereof, no Leases have been entered into.

3.5 **Covenants.** Trustor covenants and agrees at Trustor's sole cost and expense after completion of the Improvements on the Property to: (a) exercise Trustor's best efforts to keep all portions of the Property leased at all times at rental amounts permitted under the Loan Agreement and the Regulatory Agreement for the Tax Credits; (b) deliver to Beneficiary fully executed, counterpart original(s) or copies of each and every Lease, if requested to do so, and within twenty (20) days after the end of each calendar month, a certified rent roll for the prior month containing the names of all lessees of the Property, the date and term of their respective Leases, the apartment units occupied, the rent payable thereunder and the security deposit held; (c) execute and record such additional assignments of any Lease or specific subordinations of any Lease to the Deed of Trust, in form and substance acceptable to Beneficiary, as Beneficiary may request; (d) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (e) give Beneficiary prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the lessee or of the lessor; and (f) exercise Trustor's best efforts to avoid, prevent, and promptly remedy any and all code enforcement problems on the Land under the Merced Municipal Code, as said Code is amended from time to time. Trustor shall not, without Beneficiary's prior written consent or as otherwise permitted by any provision of the Loan Agreement: (i) execute any other assignment relating to any of the Leases except as required by the Senior Loan Documents; (ii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rent two (2) months in advance of the time when it becomes due (exclusive of security deposits); (iii) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder; (iv) consent to any assignment or subletting by any lessee; or (v) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance except for the Senior Loan Documents and Permitted Exceptions. Any such

attempted action in violation of the provisions of this Section 3.5 shall be null and void. Without in any way limiting the requirement of Beneficiary's consent hereunder, any sums received by Trustor in consideration of any termination (or the release or discharge of any lessee), modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Trustor shall be held in trust by Trustor for such purpose.

3.6 **Estoppel Certificates.** Within twenty (20) days after request by Beneficiary, Trustor shall deliver to Beneficiary and to any party designated by Beneficiary estoppel certificates executed by Trustor and, if available, by each of the lessees, in recordable form, certifying (if such be the case): (i) that the foregoing assignment and the Leases are in full force and effect; (ii) the date of each lessee's most recent payment of rent; (iii) that there are no defenses or offsets outstanding, or stating those claimed by Trustor or lessees under the foregoing assignment or the Leases, as the case may be; and (iv) any other information reasonably requested by Beneficiary.

#### **ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING**

##### **4.1 Security Interest.**

(a) Subject to the prior interests, if any, of the Senior Lender under the Senior Loan Documents, Trustor hereby grants and assigns to Beneficiary a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Trustor now or at any time hereafter has any interest (collectively, the "Collateral"):

i. All right, title and interest of Trustor in and with respect to all reservations and allocations for low income housing tax credits ("**Tax Credits**") available under Section 42 of the Internal Revenue Code of 1986, as amended, now or hereafter issued or awarded by the California Tax Credit Allocation Committee or other governmental agency having jurisdiction for a residential apartment project now or hereafter to be constructed on the Land, including without limitation, all applications and fees for such Tax Credits.

ii. All personal property, including, without limitation, all goods, materials, supplies, equipment, appliances, furniture, furnishings, fixtures, machinery, inventory and construction materials which Trustor now or hereafter owns or in which Trustor now or hereafter acquires an interest or right, including, without limitation, those which are now or hereafter located on or affixed to any of the Land or used or useful in the operation, use or occupancy thereof or the construction of any improvements thereon, including, without limitation, any interest of Trustor in and to personal property which is leased or subject to any superior security interest, or which is being manufactured or assembled for later installation into the improvements to be located or constructed on the Land, wherever located, and all books, records, leases and other documents, of whatever kind or character, relating to any of the Property.

iii. All fees, income, rents, issues, profits, earnings, receipts, royalties and revenues may accrue from said goods, fixtures, furnishings, equipment and building materials or any part thereof or from the Land, Improvements or Appurtenances or any part thereof, or which may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, or subleasing thereof;

iv. All of Trustor's present and future rights to receive payments of money, services or property including, without limitation, rights to all deposits from tenants of the, accounts receivable, deposit accounts, chattel paper, notes, drafts, letters of credit, contract rights (including, without limitation, all rights under any interest rate hedging or similar agreement), instruments, general intangibles and principal, interest and payments due on account of goods sold, services rendered, loans made or credit extended, together with title or interest in all documents evidencing or securing the same;

v. All other intangible property, permits, consents, approvals, licenses authorizations and other rights relating to the Land, Improvements or Appurtenances or the use thereof, or used in connection therewith, including but not limited to all governmental permits relating to construction or other activities on the Land, all names under or by which the project located on the Land may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to any of the Land, Improvements or Appurtenances, good will in any way relating to the Land, Improvements or Appurtenances, and all licenses and permits relating in any way to, or to the operation of, the project located on the Land;

vi. All contracts for and all proceeds from the sale or disposition of the Land, Improvements or Appurtenances or the sale or disposition of the aforesaid collateral;

vii. All right, title and interest of Trustor under all insurance policies covering any loss or damage to all or any part of the Property or any of the aforesaid collateral from any cause whatsoever, regardless of whether such insurance coverage is required by Beneficiary, and all proceeds, loss payments and premium refunds payable in connection with such insurance;

viii. All reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind relating to the Property, and all loan funds held by Beneficiary for the account of Trustor whether or not disbursed;

ix. All water stock relating to the Land or any portion of thereof;

x. All causes of action, claims, compensation and recoveries for any damage to or condemnation or taking of the Land, Improvements or Appurtenances or the aforesaid collateral, or for any conveyance in lieu thereof, whether direct or consequential, or

for any damage or injury to the Property or the aforesaid collateral, or for any loss or diminution in value of the Property or the aforesaid collateral;

xi. All architectural, structural, mechanical and engineering plans and specifications prepared for construction of improvements on or extraction of minerals from the Land, Improvements or Appurtenances and all studies, data and drawings related thereto; and also all contracts and agreements of the Trustor relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings or to the construction of improvements on or extraction of minerals or gravel from the Land.

xii. All replacements and proceeds of, and all additions and accessions to, any of the foregoing collateral, together with all books, records and files relating to any of the foregoing.

(b) As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a security agreement and a fixture filing under Sections 9334 and 9502 of the California Uniform Commercial Code ("UCC"), as amended or recodified from time to time, and is acknowledged and agreed to be a "construction mortgage" under such Sections. For purposes of subdivision (h) of Section 9334 of the UCC, "completion" of construction, work or Improvements shall not be deemed to occur prior to completion of all work, and installation or incorporation into the Improvements of all materials, for which sums secured hereby are disbursed by Beneficiary.

(c) Beneficiary shall have no duty or obligation to make or give any presentments, demands for performance, notices of non-performance, notices of protest or notices of dishonor in connection with any of the Collateral. Beneficiary has no responsibility for, and does not assume any of, Trustor's obligations or duties under any agreement or obligation which is part of the Collateral or any obligation relating to the acquisition, preparation, custody, use, enforcement or operation of any of the Collateral.

4.2 **Representations and Warranties.** Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity, except in favor of the Senior Lender; and (c) Trustor's principal place of business is located at the address shown in Section 7.15.

4.3 **Rights of Beneficiary.** In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding any other provision contained herein, in no event shall Beneficiary be deemed to have accepted any property

other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC §9621, or other applicable law.

**4.4 Rights of Beneficiary on Default.** Upon the occurrence of a Default (hereinafter defined) under this Deed of Trust, then subject to the rights of the Senior Lender under the Senior Loan Documents, in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:

(a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become purchaser at any such sales; and

(b) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral.

(c) It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9 of the UCC, Beneficiary, upon Default, may proceed under the UCC or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect to real property, as specifically permitted under Section 9604 of the UCC and treat both real and personal property interests as one parcel or package or security.

**4.5 Power of Attorney.** Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

#### **4.6 Possession and Use of Collateral.**

(a) Except as otherwise provided in this Section or the other Loan Documents (as defined in the Loan Agreement), so long as no Default exists under this Deed of Trust or any of the Loan Documents, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Loan Agreement.

(b) Trustor shall not permit any of the Collateral to be removed from the Improvements without the prior written consent of Beneficiary unless (i) the replacements of Collateral are of equivalent value and quality and (ii) Trustor has good and clear title to such replacements free and clear of any and all liens, encumbrances, security interests, ownership interests, claims of title (contingent or otherwise) or charges of any kind or the rights of any such conditional sellers, vendors or any other third parties have been expressly subordinated, at no cost to Beneficiary, to the lien and security interest granted hereby in a manner satisfactory to Beneficiary.

(c) It is understood and agreed that, in order to protect Beneficiary from the effect of Section 9334 of the UCC, in the event that (i) Trustor intends to purchase any goods which may become fixtures attached to the Property, or any part thereof, and (ii) such goods will be subject to a purchase money security interest held by a seller or any other party, Trustor shall, before executing any security agreement or other document evidencing such security interest, obtain the prior written approval of Beneficiary, and all requests for such written approval shall be in writing and contain the following information: a description of the fixtures to be replaced, added to, installed or substituted; the address at which the fixtures will be replaced, added to, installed or substituted, and the name and address of the proposed holder and proposed amount of the security interest. Any failure of Trustor to obtain such approval shall be a material breach of Trustor's covenants under this Deed of Trust, and shall, at the option of Beneficiary, entitle Beneficiary to all rights and remedies provided for herein upon default. No consent by Beneficiary pursuant to this section shall be deemed to constitute an agreement to subordinate any right of Beneficiary in fixtures or other property covered by this Deed of Trust.

### **ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES**

5.1 **Title.** Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty, Trustor lawfully holds and possesses fee simple title to the Property without limitation on the right to encumber the same, and that this Deed of Trust is a valid lien on the Property subject to no prior lien other than the lien of the Senior Loan Documents, taxes and assessments which are a lien not yet due and payable and the Permitted Exceptions.



## 5.2 **Taxes and Assessments.**

(a) Subject to Trustor's rights to contest payment of taxes as may be provided in the Loan Agreement, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company, including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property or upon any person, property, equipment or other facility used in the operation or maintenance thereof (collectively, "**Impositions**") which are or which may become a lien upon or cause a loss in value of the Property or any interest therein. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income. Upon request by Beneficiary, Trustor shall deliver to Beneficiary, within thirty (30) days after the date upon which any such Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof.

(b) If requested by Beneficiary, Trustor shall cause to be furnished to Beneficiary a tax reporting service covering the Property of the type, duration and with a company satisfactory to Beneficiary.

5.3 **Insurance.** Subject to the provisions of the Loan Agreement, Trustor covenants to insure the Property at Trustor's expense against such risks as Beneficiary may require under the Loan Agreement and, at Beneficiary's request, to provide evidence of such insurance and payment of all premiums to Beneficiary, and to comply with the requirements of any insurance companies insuring the Property. All insurance policies shall contain a provision that, notwithstanding any contrary agreement between Trustor and insurance company, such policies will not be canceled, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to Beneficiary. In the event Trustor fails to provide, maintain, keep in force or deliver to Beneficiary the policies of insurance required by this Deed of Trust, Beneficiary may (but shall have no obligation to) procure such insurance, and Trustor will pay all premiums thereon promptly upon demand by Beneficiary and until such payment is made by Trustor, the amount of all such premiums shall bear interest at the rate applicable to the principal balance outstanding under the Note.

5.4 **Tax and Insurance Impounds.** If the Senior Lender is not then requiring escrowing or impounding of taxes and insurance premiums, then at Beneficiary's option and upon its demand, Trustor, shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to:

(i) all taxes, assessments and levies imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Property and will become due for the tax year

during which such payment is so directed; and (ii) premiums for fire, other hazard and mortgage insurance next due. If Beneficiary determines that any amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Beneficiary shall notify Trustor of the increased amounts required to pay all amounts due, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Trustor is otherwise in Default hereunder or under any Secured Obligation, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Trustor hereunder or under any Secured Obligation, Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee whereupon Beneficiary and its Trustee shall be released from all liability with respect thereto. Within ninety-five (95) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor and no other party shall have any right or claim thereto.

**5.5 Performance of Secured Obligations.** Trustor shall promptly pay and perform each Secured Obligation when due. All sums payable by Trustor pursuant to this Deed of Trust, shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Land or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferent, diminution or reduction of any sum secured hereby and payable by Trustor.

5.6 **Liens, Encumbrances and Charges.** Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust (excepting the lien of the Senior Loan Documents). Subject to the provisions of the Loan Agreement regarding mechanics' liens, Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto.

5.7 **Damages; Insurance and Condemnation Proceeds.**

(a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary but, subject to the prior rights, if any, of the Senior Lender under the Senior Loan Documents, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies, whether or not required by the Beneficiary, payable by reason of any loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.8(a)(iv), Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim, and may apply the balance to the Secured Obligations in any order, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure. Trustor hereby authorizes and directs any affected insurance company to make payment of all proceeds directly to Beneficiary. If Trustor receives any such proceeds of insurance resulting from any casualty, Trustor shall promptly pay over such proceeds to Beneficiary.

(b) At its sole option, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work, the income from the Property will be sufficient to pay all expenses and debt service for

the Property; (bb) of the continuation of Leases acceptable to and required by Beneficiary; (cc) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable.

(c) Nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Property as provided in Section 5.8 hereof or restoring all damage or destruction to the Property, regardless of whether or not there are insurance proceeds available to Trustor or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure or waive any Default or notice of Default under this Deed of Trust or invalidate any act done pursuant to such notice.

**5.8 Maintenance and Preservation of the Property.** Subject to the provisions of the Loan Agreement, Trustor covenants: (i) to keep the Property in good condition and repair; (ii) not to remove or demolish the Property or any part thereof, not to alter, restore or add to the Property and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Property without Beneficiary's prior written consent or as provided in the Loan Agreement; (iii) to complete or restore promptly and in good and workmanlike manner the Property, or any part thereof which may be damaged or destroyed, without regard to whether Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations as provided herein; (iv) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (v) to comply with the requirements of Section 42 of the Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder and any other federal, state or local laws or regulations related thereto, including, without limitation, with respect to (x) Trustor's organization, business and operations, (y) the operation of the Property and (z) the maintenance of all Tax Credits heretofore or hereafter allocated to Trustor and/or the Property pursuant to said Section 42; (vi) not to commit or permit waste of the Property; (vii) to do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value; and (viii) not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects the Property or any part of it without Beneficiary's prior written consent.

**5.9 Defense and Notice of Losses, Claims and Actions.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee and shall pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of

the filing of any action or proceeding, of the occurrence of any casualty or damage to the Property, whether or not covered by insurance, and of any condemnation offer or action.

5.10 **Acceptance of Trust; Powers and Duties of Trustee.** Trustee accepts this trust when this Deed of Trust is recorded. From time to time upon written request of Beneficiary and presentation of this Deed of Trust or a certified copy thereof for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby, Trustee may, without liability therefor and without notice: (i) reconvey all or any part of the Property; (ii) consent to the making of any map or plat thereof; and (iii) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding, including, without limitation, actions in which Trustor, Beneficiary or Trustee shall be a party unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against loss, cost, liability or expense.

5.11 **Compensation; Exculpation; Indemnification.**

(a) Trustor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust, including attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limit any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property after a Default (hereinafter defined) or from any other act or omission of Beneficiary in managing the Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

(b) Notwithstanding any provision to the contrary, Trustor agrees to indemnify, protect, defend, and hold Trustee and Beneficiary harmless from all losses, damages, liabilities, injuries (including death of person or persons), claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other expenses which either may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the

execution of this Deed of Trust or performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Trustor to perform Trustor's obligations. The above obligation of Trustor to indemnify, protect, defend, and hold harmless Trustee and Beneficiary shall survive the release and cancellation of the Secured Obligations and the release and reconveyance or partial release and reconveyance of this Deed of Trust and shall apply to any damages or claims for damages whether or not insurance policies shall have been determined to apply. It is understood that the duty of Trustor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Trustee or Beneficiary of insurance certificates and endorsements does not relieve Trustor from liability under this indemnification and hold harmless clause.

(c) Trustor shall pay all amounts and indebtedness arising under this Section 5.11 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest of 12% per annum.

5.12 **Substitution of Trustees.** From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section 5.12 shall be conclusive proof of the proper substitution of such new Trustee.

5.13 **Due on Sale or Encumbrance.** Prior to the recordation by Lender of a Certificate of Completion upon completion of the Project, the Borrower shall not transfer, convey, assign, or lease the whole or any part of the Property or the Improvements thereon without the prior written approval of the Lender. This prohibition shall not apply subsequent to the recordation of the Certificate of Completion with respect to the Improvements upon the Property. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Project, or (i) prohibit the transfer of Borrower's limited partnership interests in any respect; (ii) prohibit the removal and replacement of the Borrower's general partner in accordance with the Borrower's partnership agreement; (iii) prohibit a transfer of the Property or the Improvements to the Borrower's general partner pursuant to the Borrower's partnership agreement as then in effect; or (iv) prohibit a transfer of the Property or the Improvements to any Affiliate of the Borrower's then general partner or the Borrower's then limited partner, so long as any and/or all of the foregoing transferees or assignees expressly and unconditionally assumes all of the duties and obligations of the Borrower and/or any subsequent transferee or assignee under this Agreement to the extent allocable to the portion transferred. Any sale, transfer, conveyance or assignment not made in strict compliance with the foregoing conditions shall constitute a default by the Borrower under this Agreement.

5.14 **Releases, Extensions, Modifications and Additional Security.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the

Property or in any manner obligated under the Secured Obligations (“**Interested Parties**”), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Property.

5.15 **Reconveyance.** Upon Beneficiary’s written request, and upon surrender to Trustee for cancellation of this Deed of Trust or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Trustee shall reconvey, without warranty, the Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as “the person or persons legally entitled thereto” and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.

5.16 **Subrogation.** Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.

5.17 **Right of Inspection.** Beneficiary, its agents and employees, may enter the Property at any reasonable time for the purpose of inspecting the Property and ascertaining Trustor’s compliance with the terms hereof.

## ARTICLE 6. DEFAULT PROVISIONS

6.1 **Default.** For all purposes hereof, the term “**Default**” shall mean (a) at Beneficiary’s option, the failure of Trustor to make any payment of principal or interest on the Note or to pay any other amount due hereunder or under the Note when the same is due and payable, whether at maturity, by acceleration or otherwise; (b) the failure of Trustor to perform any other obligation hereunder, or the failure to be true of any representation or warranty of Trustor contained herein and the continuance of such failure for any grace period, if any, allowed in the Loan Agreement for such failure, or (c) the existence of any Default as defined in the Loan Agreement or other Loan Documents.

6.2 **Rights and Remedies.** At any time after Default, Beneficiary and Trustee shall each have all the following rights and remedies:

(a) With or without notice, to declare all Secured Obligations immediately due and payable;

(b) With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons;

(c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subsection, Trustor waives the defense of laches and any applicable statute of limitations;

(d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;

(e) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, to enter upon, possess, manage and operate the Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Property, to make, terminate, enforce or modify Leases of the Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof;

(f) To execute a written notice of such Default and of its election to cause the Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the



Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary may purchase at the sale;

(g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine in their sole discretion;

(h) Upon sale of the Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Property.

**6.3 Remedies Not Exclusive.** Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any of the Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of

Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies.

6.4 **Application of Foreclosure Sale Proceeds.** After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (i) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest at 12% per annum; (ii) to payment of all other Secured Obligations; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

6.5 **Application of Other Sums.** All sums received by Beneficiary under Section 6.2 or Section 3.2, less all costs and expenses incurred by Beneficiary or any receiver under Section 6.2 or Section 3.2, including, without limitation, attorneys' fees, may be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.

6.6 **No Cure or Waiver.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.

6.7 **Payment of Costs, Expenses and Attorney's Fees.** Trustor agrees to pay to Beneficiary immediately and without demand all costs and expenses incurred by Trustee and Beneficiary pursuant to subsections (a) through (g) inclusive of Section 6.2 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the

date of expenditure until said sums have been paid at the rate of interest at 12% per annum then applicable to the principal balance of the Note as specified therein. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any attorneys' fees.

**6.8 Power to File Notices and Cure Defaults.** Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Leases and Rents in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.

**6.9 Limitation on Partners' Liability.** Beneficiary's recovery against any partner of Trustor under the Loan Documents shall be limited solely to the collateral given to Beneficiary as security for Trustor's performance under the Loan Documents and to the general assets of Trustor itself. Such recovery shall not be a lien, or the basis of a claim of lien or levy of execution, against the general assets of any general or limited partner of Trustor. Notwithstanding the foregoing, Trustor, any general partner of Trustor and the general assets of any general partner of Trustor shall be fully liable to Beneficiary to the same extent that Trustor would be liable absent the foregoing limitation of this Section for: (a) fraud or willful misrepresentation on the part of Trustor or such partner; (b) waste; (c) failure of such partner to pay any income or other taxes, assessments or other charges attributable to such partner which can create liens on any portion of the Property (to the full extent of any such taxes, assessments or other charges); (d) the amount of any money or value of any property received by such partner as a distribution of earnings or income from the Property if such distribution was prohibited under the terms of the Loan Agreement (to the full extent of such distribution); (e) any breach by Trustor of any covenant under Article 7, entitled Hazardous Materials of the Loan Agreement, any representation or warranty of Trustor under such Article proving to have been untrue when made, or the presence of any significant Hazardous Materials in, on or about the Property which are discovered subsequent to the Effective Date; or (f) any obligation arising from the indemnity set forth in Section 11.10 of the Loan Agreement (except for payment of principal and interest on the Note). In addition, the limitations hereof shall not be deemed to limit: (i) any right Beneficiary might otherwise have to obtain injunctive relief against Trustor, any general partner of Trustor or any other person or entity; (ii) any suit, action or proceeding (including without limitation exercise of the power of sale under or the filing of an action for judicial foreclosure of the Deed of

Trust), in connection with the preservation, enforcement or foreclosure of the liens, mortgages, assignments and security interests now or at any time hereafter securing the payment and performance of all obligations under the Loan Agreement or any of the Loan Documents; or (iii) the collection of amounts which may become owing or payable under or on account of insurance, condemnation awards or damages or other public actions or surety bonds maintained or provided by Trustor; provided, however, that the assertion by Beneficiary of any such right, suit, action or collection of amounts shall not result in a monetary claim upon the general assets of any general or limited partner of Trustor except as otherwise provided herein.

## **ARTICLE 7. MISCELLANEOUS PROVISIONS**

7.1 **Additional Provisions.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property and such further rights and agreements are incorporated herein by this reference.

7.2 **Financial Statements.** Trustor shall deliver to Beneficiary copies of such financial statements, balance sheets, profit and loss statements, operating statements, income and expense statements and other financial information in reasonable detail and at the times required by the Loan Agreement. All such statements shall be prepared in accordance with the requirements of the Loan Agreement and Beneficiary shall have the right to audit and inspect all books and records relating thereto.

7.3 **Trade Names.** At the request of Beneficiary, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names or fictitious business names under which Trustor intends to operate the Property or any business located thereon and representing and warranting that Trustor does business under no other trade names or fictitious business names with respect to the Property. Trustor shall immediately notify Beneficiary in writing of any change in said trade names or fictitious business names, and will, upon request of Beneficiary, execute any additional financing statements and other certificates necessary to reflect the change in trade names or fictitious business names.

7.4 **Merger.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Property unless Beneficiary consents to a merger in writing.

7.5 **Obligations of Trustor, Joint and Several.** If more than one person has executed this Deed of Trust as "**Trustor**", the obligations of all such persons hereunder shall be joint and several.

7.6 **Trustor Waiver of Rights.** Trustor waives to the extent permitted by law, (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment

before sale of any portion of the Property, and, (ii) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created, and (iii) all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties; provided, however, nothing contained herein shall be deemed to be a waiver of Trustor's rights under Section 2924c of the California Civil Code.

7.7 **Waiver of Marshalling Rights.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation ("**Other Property**") marshalled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.

7.8 **Statements by Trustor.** Trustor and Beneficiary shall, at any time and from time to time upon not less than twenty (20) days prior written notice from the other, execute, acknowledge and deliver to the requesting party a statement (i) stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest; (ii) certifying that this Deed of Trust and the other Secured Obligations are unmodified and in full force and effect or, if modified, stating the nature thereof and certifying that each Secured Obligation, as so modified, is in full force and effect and the date to which principal, interest and other sums secured hereby have been paid and (iii) acknowledging that there are no uncured Default under this Deed of Trust or any other Secured Obligation or specifying such Defaults, if any are claimed. Any such certificate may be conclusively relied upon by the party requesting it and any prospective purchaser or assignee of any Secured Obligation. Either party's failure to deliver such certificate within such time shall be conclusive upon such party that (i) the Secured Obligations are in full force and effect, without modification, and (ii) there are no uncured Defaults hereunder.

7.9 **Rules of Construction.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "**Property**" means all and any part of the Property and any interest in the Property.

7.10 **Further Assurances.** Trustor shall promptly make, execute, acknowledge and deliver, in form and substance reasonably satisfactory to Beneficiary, all such additional instruments, agreements and other documents, and Trustor shall do all other acts as may at any time hereafter be requested by Beneficiary, to effectuate and carry out the purposes of this Deed of Trust and each of the Secured Obligations.

7.11 **Successors in Interest.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 7.11 does not waive or modify the provisions of Section 5.13.

7.12 **Execution in Counterparts.** This Deed of Trust may be executed in any number of counterparts, each of which, when executed and delivered to Beneficiary, will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.

7.13 **Governing Law.** This Deed of Trust shall be construed in accordance with the laws of the State of California, except to the extent that Federal laws preempt the laws of the State of California, and any action brought relating to this Deed of Trust shall be held exclusively in a state court in the County of Merced.

7.14 **Incorporation.** All Exhibits attached hereto are incorporated into this Deed of Trust by this reference.

7.15 **Notices.** All notices or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class U.S. mail, postage prepaid, except that notice of a Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by commercial courier service, charges prepaid. Notices so sent shall be deemed given when actually received at the addresses set forth below, except that notices sent by mail shall be deemed received three (3) calendar days following the date of mailing. For purposes of notice, the addresses of the parties shall be:

Trustor:

SUNNY VIEW OF MERCED, L.P.  
320 Golden Shore Drive, Suite 200  
Long Beach, California 90802-4217  
Attn: Brian Gentner, Esq.  
Fax No. (562) 902-0918

With copy to (which shall not constitute notice to Trustor):

Multi-Housing Investments, LLC  
320 Golden Shore, Suite 200  
Long Beach, CA 90802  
Attn: Jeffrey Weiss  
Fax No.: (562) 256-2003

Beneficiary:

City of Merced, a California Charter Municipal Corporation  
678 West 18<sup>th</sup> Street  
Merced, California 95340

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Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Trustor shall forward to Beneficiary, without delay, any notices, letters or other communications delivered to the Property or to Trustor naming Beneficiary, "Lender" or the "Construction Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Trustor to perform its obligations to Beneficiary under the Note or the Loan Agreement.

7.16 **Authority to Execute.** The person or persons executing this Deed of Trust warrants and represents that he/she/they has/have the authority to execute this Deed of Trust on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.


[SIGNATURE ON NEXT PAGE]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

“TRUSTOR”

SUNNY VIEW OF MERCED, L.P.,  
A California Limited Partnership

By: Western Community Housing, Inc,  
California Nonprofit Corporation,  
its General Partner

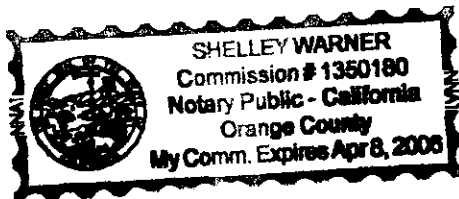
By:   
Name: Graham Espley-Jones  
Title: President



STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF ORANGE                    )

On DEC. 14<sup>th</sup>, 2005, before me, SHELLEY WARNER, Notary Public, personally appeared GRAHAM ESLEY-JONES, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



  
NOTARY PUBLIC

GOVERNMENT CODE 27361.7

I CERTIFY UNDER PENALTY OF PERJURY THAT THE  
NOTARY SEAL ON THE DOCUMENT TO WHICH THIS  
STATEMENT IS ATTACHED READ AS FOLLOWS:

NAME OF NOTARY: Shelley Warner

DATE COMMISSION EXPIRES: 4-8-06

COMMISSION NUMBER: 1350180

PLACE OF EXECUTION: Orange County

EXECUTION DATE: 12-14-05

SIGNATURE: Arabi Garza

FIRM NAME (IF APPLICABLE): City of Merced

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## **EXHIBIT A**

### **LEGAL DESCRIPTION**

Parcel 2, of Parcel Map titled City of Merced Lot Split #03-06, recorded on October 29, 2003 in Book 94 of Parcel Maps, at Pages 33 & 34, as Document No. 2003070795 in the Merced County Recorder's Office, State of California.

Assessors Parcel No: 035-010-062

*María - Please file attached documents behind this Resolution in the vault. Thanks! Emily S.*

RESOLUTION NO. 2005-147

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, APPROVING AND AUTHORIZING THE EXECUTION OF THE LOAN AGREEMENT BETWEEN THE CITY OF MERCED AND SUNNYVIEW OF MERCED, L.P.**

**WHEREAS**, The City of Merced ("City") has received Home Investment Partnership Act (HOME) funds from the United States Department of Housing and Urban Development (HUD) pursuant to Title 2 of the National Affordable Housing Act of 1990; and,

**WHEREAS**, Sunnyview of Merced, L.P., a California limited partnership ("Borrower") has requested HOME funds loan over the next three (3) years (Fiscal Years 2005 through 2007), in the total amount of \$1,761,000.00, to assist in the development of an affordable housing apartment complex in the City commonly known as "Sunnyview"; and,

**WHEREAS**, The City and Borrower have negotiated a proposed Loan Agreement, Regulatory Agreement, Promissory Note and Deed of Trust, attached hereto as Exhibits A, B, C, and D respectively, providing the Borrower with funds to assist with the development of Sunnyview as an affordable housing apartment complex in the City; and,

**WHEREAS**, The City Council, following the public hearing process, has agreed to lend the Borrower \$1,761,000.00 from HOME funds for the "Sunnyview" affordable housing apartment complex.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** The City Council hereby approves and authorizes the execution of the Loan Agreement and the Regulatory Agreement, both in the form attached hereto with Sunnyview of Merced, L.P., and the City Manager and City Clerk are hereby authorized and directed to execute said documents on behalf of the City.

**SECTION 2.** Any amendments, changes, or modifications to the Loan Agreement and/or the Regulatory Agreement in the form attached hereto shall require authorization and approval by the City and City Council.

**PASSED AND ADOPTED** by the City Council of the City of Merced at a regular meeting held on the 5th day of December 2005, by the following called vote:

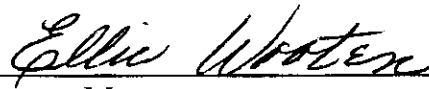
AYES: Council Members: SANDERS, CORTEZ, SPRIGGS,  
GABRIALT-ACOSTA, WOOTEN

NOES: Council Members: NONE

ABSENT: Council Members: OSORIO, 1 vacancy

ABSTAIN: Council Members: NONE

APPROVED:

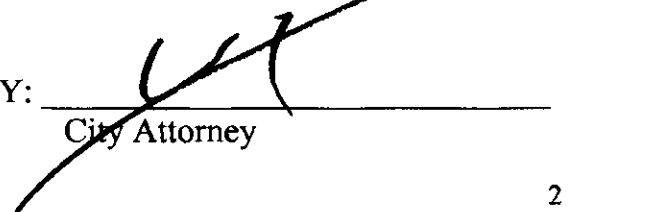
  
Mayor

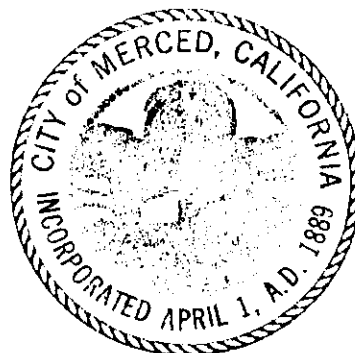
ATTEST:  
JAMES G. MARSHALL, CITY CLERK

BY:   
Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

BY:   
City Attorney



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## CITY LOAN AGREEMENT

This City Loan Agreement ("Agreement"), dated as of December 5, 2005 is made by and between SUNNY VIEW OF MERCED, L.P., a California limited partnership ("Borrower"), and the City of Merced, a California Charter Municipal Corporation ("Lender").

### RECITALS

A. Borrower owns certain real property in the City of Merced, County of Merced, State of California described in Exhibit A hereto ("Property").

B. Borrower proposes to construct on the Property certain improvements consisting of the Improvements (defined below).

C. Borrower expects to obtain a construction loan for the construction of the Improvements (defined below as the "Senior Construction Financing"). The proceeds of the Senior Construction Financing may not cover the entire budgeted cost of constructing the Improvements. Therefore, Borrower is entering into this Agreement wherein Lender agrees to loan to Borrower certain funds from the United States Department of Housing and Urban Development HOME Program necessary to cover the difference between (a) the budgeted cost of constructing the Improvements in accordance with this Agreement and (b) the anticipated proceeds of the Senior Construction Financing, on the terms and conditions contained herein, if needed.

NOW, THEREFORE, in consideration of the covenants herein contained, Borrower and Lender agree as follows:

### ARTICLE 1 DEFINITIONS

1.1 Defined Terms. As used herein (including any Exhibits attached hereto), the following terms shall have the meanings set forth below (unless expressly stated to the contrary).

"Account" means an account with Lender into which Loan proceeds and Borrower's Funds will be deposited.

"ADA" means the Americans with Disabilities Act, 42 U.S.C. Sections 12101 *et seq.*, as hereafter amended or modified.

"Affiliate" means, when used with reference to a specified Person, any Person (i) that directly or indirectly controls or is controlled by or is under common control with the specified Person or of which the specified Person owns a majority of the ownership interests, (ii) that is an officer or director of, partner in or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner or trustee, or with respect to which the specified Person serves in a similar capacity or (iii) that, directly or indirectly, is the beneficial owner

of 10% or more of any class of equity securities of the specified Person or of which the specified Person is directly or indirectly the owner of 10% or more of any class of equity securities. "Affiliate" of the Partnership or a General Partner does not include a Person who is a partner in one or more partnerships or joint ventures with the Partnership or any other Affiliate of the Partnership if such a Person is not otherwise an Affiliate of the Partnership or such General Partner.

**"Agreement" or "Loan Agreement"** means this Agency Loan Agreement.

**"Authority"** means California Tax Credit Allocation Committee or other governmental agency having jurisdiction for the allocation of Tax Credits in the State.

**"Bankruptcy Code"** means the Bankruptcy Reform Act of 1978 (11 U.S.C. Sections 101 *et seq.*) as hereafter amended or modified.

**"Border Zone Property"** means any property designated as "border zone property" under the provisions of California Health & Safety Code Sections 25220 *et seq.*, and any regulations promulgated thereunder.

**"Borrower"** means Sunny View of Merced, L.P., a California limited partnership.

**"Borrower's Funds"** means all funds of Borrower deposited into the Account in accordance with this Agreement, including, without limitation, pursuant to Subsection 3.1(b) (Conditions Precedent to All Disbursements) and Subsection 5.6 hereof (Changes and Change Orders).

**"Budget"** means the budget for the Project approved by Lender and as modified from time to time pursuant to the terms of this Agreement. As of the date hereof the Budget is in the form of Exhibit B hereto.

**"Business Day"** means a day of the week (but not a Saturday, Sunday or holiday) on which national banking associations are open to the public for business in Merced, California. Unless specifically referenced in this Agreement as a Business Day, all references to "days" shall be to calendar days.

**"City"** means the City of Merced, State of California.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Collateral"** means all goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the Property or (ii) the Improvements, together with all rents, issues, deposits and profits of the Project; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Project or any business now or hereafter conducted thereon by Borrower; all permits, consents, approvals, licenses, authorizations

and other rights granted by, given by or obtained from, any governmental entity with respect to the Project; all deposits or other security now or hereafter made with or given to utility companies by Borrower with respect to the Project; all advance payments of insurance premiums made by Borrower with respect to the Project; all plans, drawings and specifications relating to the Project; all loan funds held by Lender, whether or not disbursed; all funds deposited with Lender pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Project or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

**"Completion Date"** means the Completion Date for the Improvements as defined in the Senior Loan Documents and shown in the Construction Schedule approved by Lender.

**"Condemnation Proceeds"** means all compensation, awards, damages, rights of action and proceeds awarded to Borrower by reason of any taking of or damage to the Property or the Project, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation proceeding, or in any other manner.

**"Construction Contract" or "Construction Agreement"** means that certain Construction Agreement made by and between Borrower and the General Contractor, as the same may be amended from time to time, as approved by Lender.

**"Construction Schedule"** means a construction schedule, approved by Lender, showing a trade-by-trade breakdown of the estimated periods of commencement and completion of construction in the form of Exhibit C hereto.

**"County"** means County of Merced, State of California.

**"Deed of Trust"** means that certain Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (Construction Trust Deed) of even date herewith, executed by Borrower as Trustor, First American Title Insurance Company as Trustee, for the benefit of Lender, as Beneficiary, as hereafter amended, supplemented, replaced or modified.

**"Default"** shall have the meaning ascribed to such term in Section 10.1 hereof (Defaults).

**"Effective Date"** means the date the Deed of Trust is recorded in the Office of the County Recorder of the County.

**"General Assignments"** shall include Assignments of the Plans and Specifications; the Architect's Agreement; the Construction Contract; all contracts with soils, electrical, mechanical and structural engineers, if any; all subcontracts; any property management or brokerage agreements regarding the Project; and, to the extent to which they may be assigned, all other rights, licenses, permits, franchises, authorizations, approvals and agreements relating to construction of the Project, or required for the use, occupancy or operation of the Project.



**“General Contractor” or “Contractor”** means a general contractor licensed and bonded in the State with a track record for successful completion of projects similar to the Project, and who will provide a performance and completion bond and a labor and materials bond for the full amount of the cost of construction of the Project, and subject to the approval of Lender.

**“General Partner”** means Western Community Housing, Inc, a California nonprofit corporation, which is the General Partner of Borrower.

**“Hazardous Materials”** shall have the meaning ascribed to such term in Section 7.1 hereof.

**“Hazardous Materials Claims”** shall have the meaning ascribed to such term in Section 7.1 hereof.

**“Hazardous Materials Laws”** shall have the meaning ascribed to such term in Section 7.1 hereof.

**“Improvements”** means a 113-unit very low income affordable housing apartment project together with related parking facilities and on and off-site improvements, including, without limitation, curbs, gutters, landscaping, street improvements, and underground utilities, all of which shall be constructed in accordance with the Plans and Specifications, and all appurtenances and fixtures thereto and thereon.

**“Lender”** means the City of Merced, a California Charter Municipal Corporation, and its successors and assigns.

**“Loan”** means the principal sum that Lender agrees to lend and Borrower agrees to borrow pursuant to this Agreement in the principal amount of the Loan Amount.

**“Loan Amount”** means up to the maximum amount of One Million Seven Hundred and Sixty-one Thousand Dollars (\$1,761,000.00), or such other amount as may be mutually agreed upon by Lender and Borrower in writing.

**“Loan Documents”** means this Agreement and those documents, as hereafter amended, supplemented, replaced or modified, properly executed and in recordable form, if necessary, listed in Exhibit D hereto as Loan Documents for the Loan.

**“Maturity Date”** means, if not sooner paid as provided in the Note, thirty-five (35) years from the date of initial funding of this Loan.

**“Note”** means that certain Promissory Note Secured by Deed of Trust of even date herewith, executed by Borrower as Maker, in favor of Lender as Holder, and any modification, extension or renewal thereof.

**“Partnership Agreement”** means that certain Agreement of Limited Partnership of Sunny View of Merced, L.P., by and between the General Partner and Multi-Housing Investments, LLC, a Colorado limited liability company as the Limited Partner.

**"Permanent Lender"** means the lender of the Permanent Loan made or to be made to the Partnership as approved by Lender.

**"Permanent Loan" or "Permanent Financing"** means a permanent loan having a term of at least 30 years, with an interest rate not to exceed 8.75%, a part of the proceeds of which are used to pay off any Senior Construction Financing, which loan is secured by a mortgage or other security interest encumbering all or a portion of the Project, and which loan is subject to the approval of Lender, and repayment of which is to be in fixed monthly payments of principal and interest not to exceed the applicable amortization schedule.

**"Permitted Exceptions"** means the liens or security interests encumbering all or a portion of the Project which are in favor of Lender or which have been approved in writing by Lender, including the Senior Loan Documents, which are subject to the approval of Lender, the Regulatory Agreement, which is subject to the approval of Lender and the items shown on Exhibit G attached hereto which have been approved by Lender.

**"Plans and Specifications"** means the final plans and specifications for the Project, with evidence of appropriate governmental approvals shown thereon. As of the date hereof, the Plans and Specifications are the Plans and Specifications described in Exhibit E hereto.

**"Project"** means the Improvements and the Property.

**"Project Costs"** means the total, as shown on the Budget, of all costs, expenses and fees required to acquire the Property and construct the Project in accordance with the Plans and Specifications.

**"Property"** means the real property in the City of Merced, County of Merced, State of California described in Exhibit A hereto.

**"Regulatory Agreement"** means any Regulatory Agreement to be entered into between the Borrower and the Authority with respect to Low Income Housing Tax Credits allocated to the Project, which Regulatory Agreement shall be recorded against the Project.

**"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 D as Related Documents.

**"Senior Construction Financing" or "Senior Construction Loan"** means a construction loan for construction of the Improvements, at an interest rate not to exceed 8.75%, repayable in thirty-six (36) months from the proceeds of other debt or equity, which loan is secured by a mortgage or other security interest encumbering all or a portion of the Project, and which loan is subject to the approval of Lender.

**"Senior Lender"** means an institutional Construction Lender approved by Lender.

**"Senior Loan Documents"** means the documents and instruments executed by Borrower in favor of the Senior Lender and evidencing, securing or relating directly to the Senior Construction Financing, including but not limited to the building loan agreement made by and between the Senior Lender and Borrower, and which documents and instruments are subject to the approval of Lender.

**"Senior Loan Proceeds"** means the proceeds of the Senior Construction Financing.

**"State"** means California.

**"Stored Materials"** mean materials purchased or to be purchased by Borrower or the General Contractor at the date of a request for disbursement, but not yet installed or incorporated into the Project.

**"Survey"** means the ALTA Survey described in Section 5.15 hereof.

**"Tax Credits"** means federal low income housing tax credits under Code Section 42 of the Internal Revenue Code of 1986, as amended.

**"Termination Date"** means Maturity Date.

**"Title Company"** means First American Title Insurance Company or such other title insurance company satisfactory to Lender.

**"Title Policy"** means a title insurance policy in the form of an American Land Title Association Standard Loan Policy Form 1970 (L.P. 10), with ALTA Endorsement Form 1 Coverage or its equivalent in accordance with standard custom and usage in the County and State, acceptable to the Lender, insuring that on the Effective Date Borrower owns fee simple title to the Property and that the Deed of Trust is a valid lien on the Property in the amount of the Loan Amount, subject to no lien other than the lien of the deed of trust securing the Senior Construction Financing and the Permitted Exceptions, and containing such endorsements as Lender may require. Except as approved by Lender in writing prior to the Effective Date, the Title Policy shall not contain any survey exceptions, exceptions for rights of parties in possession, easements not of record or installments of taxes or special assessments (other than taxes and special assessments not then payable), or any other exceptions to coverage not approved by Lender. The Title Policy shall contain such reinsurance agreements as Lender may require. During the term of the Loan, Lender may require other endorsements to the Title Policy, including, without limitation, CLTA Endorsements 101.2, 102.5, 116 and 122, or their equivalent in accordance with standard custom and usage in the County and State, acceptable to Lender.

1.2 **Exhibits Incorporated.** All exhibits attached hereto, are hereby incorporated into this Agreement.

## ARTICLE 2 THE LOAN

2.1 Loan. By and subject to the terms and conditions of this Agreement, provided that Borrower has obtained all other necessary financing commitment for the Project, including, but not limited to tax credits, loans, and equity capital, Lender agrees to lend to Borrower and Borrower agrees to borrow from Lender funds up to the Loan Amount. Amounts disbursed to or on behalf of Borrower pursuant to this Agreement shall be used to finance construction of the Improvements and for such other purposes and uses as may be permitted under this Agreement and the Loan Documents.

2.2 Evidence of Indebtedness and Maturity. The Loan shall be evidenced by the Note in the principal amount of the Loan Amount. The outstanding principal balance of the Loan, together with accrued interest thereon and all other amounts payable by Borrower under the terms of the Loan Documents, shall be due and payable on the Maturity Date.

2.3 Interest. The Loan Amount shall bear interest at the rate per annum specified in the Note, which interest shall be due and payable as specified therein. Borrower hereby authorizes Lender to disburse proceeds of the Loan to pay interest on the Note as and when due, without further application or request for disbursement from Borrower. Lender in its sole discretion may make such disbursements notwithstanding the fact that a Default has occurred and is continuing under the terms of this Agreement or any other Loan Document. Such disbursements shall be added to the outstanding principal balance of the Note. The authorization hereby granted shall be irrevocable, and no further direction or authorization from Borrower shall be necessary for Lender to make such disbursements. Nothing contained in this Section 2.3 shall prevent Borrower from paying interest from its own funds or shall require Lender to disburse Loan proceeds to pay interest if the conditions set forth in Section 3.1 and 3.2 are not satisfied.

2.4 Prepayment. Borrower may prepay the Note in whole or in part at any time without penalty or premium, but Borrower may not re-borrow any portion of the Note previously prepaid. The Loan is not a "revolving" loan.

2.5 Security. Borrower's obligations under the Note and under this Agreement shall be secured by, *inter alia*, the Loan Documents listed on Exhibit D, including but not limited to the Deed of Trust, other than this Agreement and the Note.

2.6 [RESERVED]

2.7 Loan Documents. Borrower shall deliver to Lender concurrently herewith, each of the Loan Documents, properly executed and in recordable form, as applicable, together with the Related Documents.

2.8 Opinion of Legal Counsel. Prior to the Effective Date, Borrower shall provide, at Borrower's expense, an opinion of legal counsel in form and content satisfactory to Lender to the effect that: (a) upon due authorization, execution and recordation or filing as may be specified in the

opinion, each of the Loan Documents shall be legal, valid and binding instruments, enforceable against the makers thereof in accordance with their respective terms; (b) Borrower is duly formed and has all requisite authority to enter into the Loan Documents; (c) the Senior Loan Documents have been validly entered into between Borrower and the Senior Lender; (d) the Regulatory Agreement has been validly entered into between Borrower and the Authority; (e) Borrower is sufficiently capitalized such that no indebtedness other than the Senior Construction Financing, Borrower's equity, and this Loan is necessary for acquisition of the Property and the construction and completion of the Improvements; and (f) such other matters, incident to the transactions contemplated hereby, as Lender may reasonably request.

2.9 Effective Date and Termination. The date of this Agreement and 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 (the "Effective Date"). If any condition precedent to Lender's obligation to make the first disbursement of Loan proceeds hereunder has not been satisfied (or waived by Lender in its sole discretion) before the Termination Date for any reason other than Lender's default hereunder, then upon the Termination Date, Lender shall have no further obligation to Borrower hereunder; and if the first disbursement of Loan proceeds hereunder have not been made by the Termination Date, for any reason other than Borrower's default hereunder, then upon the Termination Date Borrower shall have no further obligation to Lender hereunder, and if the Deed of Trust has previously been recorded, Lender shall promptly and fully reconvey the Deed of Trust.

2.10 Maturity Date. All sums due and owing under this Agreement and the Loan Documents shall be repaid in full on the Maturity Date. All payments due to Lender under this Agreement and the Loan Documents, whether at the Maturity Date or otherwise, shall be paid in immediately available funds.

2.11 Full Repayment and Reconveyance. Upon receipt of all sums owing and outstanding under this Agreement and the Loan Documents, Lender shall issue a full reconveyance of the Project 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 Project, if any (it being agreed that Lender has no obligation to issue any such set aside letter, letter of credit or other form of undertaking). 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 3**  
**CONDITIONS PRECEDENT**

3.1 Conditions Precedent to All Disbursements. Lender's obligation to make any disbursements or perform any other obligations under the Loan Documents shall be subject at all times to the satisfaction of each of the following conditions precedent:

(a) There shall exist no Default, as defined in this Agreement, or Default as defined in any of the other Loan Documents, or any event or condition which would constitute a Default thereunder after notice or passage of time.

(b) Any undisbursed Loan funds together with all sums, if any, to be provided by Borrower as shown in Exhibit B, and any available and undisbursed Senior Loan Proceeds shall be at all times equal to or greater than the amount which Lender from time to time determines necessary to: (i) pay, through completion, all costs of development, construction, marketing and leasing of the Project and Improvements in accordance with the Loan Documents; (ii) pay all sums which may accrue under the Loan Documents and Senior Loan Documents prior to repayment of the Loan and the Senior Construction Loan; and (iii) enable Borrower to perform and satisfy all of the covenants of Borrower contained in the Loan Documents and the Senior Construction Loan (and during the times all such conditions are satisfied, the Loan shall be deemed "in balance" for purposes of this Agreement), and Borrower shall have certified to Lender that the Loan is in balance. If Lender determines at any time that the undisbursed Loan funds are insufficient for said purposes, Borrower shall deposit the amount of such deficiency in the Account within seven (7) days of Lender's written demand.

(c) Lender shall have received all Loan Documents, other documents, instruments, insurance policies, and forms of evidence or other materials required of Borrower or requested by Lender under the terms of this Agreement or any of the Loan Documents, including but not limited to the documents listed in Exhibit D hereto which have been approved by Lender.

(d) On or before the Effective Date, Borrower and General Contractor shall have entered into the Construction Agreement pursuant to the terms and conditions of which General Contractor is to construct the Improvements. Concurrently herewith, Borrower shall deliver to Lender an assignment to Lender of Borrower's rights under the Construction Agreement and any bond posted by the General Contractor as security for Borrower's obligations under this Agreement and the Loan Documents, including the consent of the General Contractor thereto, in form and substance satisfactory to Lender.

(e) There shall be distribution of funds from the United States Department of Housing and Urban Development HOME Program to Lender in an amount sufficient to make distribution to Borrower under Section 4.2 of this Agreement.

(f) Reserved.

3.2 Additional Conditions Precedent to Initial Disbursement. In addition to the conditions precedent set forth in Section 3.1, Lender's obligation to (i) make the initial disbursement of the Loan, or (ii) perform any other obligations under the Loan Documents, shall be subject to the satisfaction of each of the following conditions precedent before the Termination Date:

(a) Lender shall have received and approved in form and substance satisfactory to Lender the following: (i) a soils report for the Project; (ii) approval of environmental review under the National Environmental Policy Act (NEPA); (iii) an environmental questionnaire and environmental site assessment with respect to the presence, if any, of Hazardous Materials on the Project; (iv) two sets of the Plans and Specifications, certified as complete by the Architect, together with evidence of all necessary or appropriate approvals of governmental agencies; (v) copies of all agreements which are material to completion of the Improvements; (vi) copies of all building permits and similar permits, licenses, approvals, development agreements and other authorizations of governmental agencies required in connection with the development of the Project; and (vii) copies of any initial study, negative declaration, mitigated negative declaration, environmental impact report, environmental impact statement, notice of determination or notice of exemption prepared, adopted, certified or filed by or with any governmental agency in connection with the Project.

(b) Lender shall have received and shall have approved all documents and instruments executed or to be executed by Borrower in connection with the Senior Construction Financing, including the Senior Loan Documents, all of which documents and instruments shall be in form and substance satisfactory to Lender.

(c) If applicable, Lender shall have entered into a subordination and intercreditor agreement with the Senior Lender in form and substance satisfactory to Lender in its sole and absolute discretion.

(d) The deed of trust securing Borrower's obligations under the Senior Construction Financing shall have been recorded in the Official Records of the County and all conditions precedent to Senior Lender's initial disbursements shall have been satisfied, with the exception of the funding of the Loan.

(e) The Deed of Trust and a UCC-1 Financing Statement described in Exhibit D hereto shall have been recorded in the Official Records of the County.

(f) Reserved.

(g) The Title Company shall have delivered to Lender the Title Policy or a proforma Title Policy together with a commitment to issue such policy, and all of the documents described therein, satisfactory to Lender, and Lender shall have received the Survey satisfactory to Lender.

(h) Lender shall have received evidence satisfactory to Lender that Borrower has received a preliminary reservation or an allocation of federal low income housing tax credits under

Code Section 42 from the Authority in the total amount of no less than Seventeen Million Nine Hundred Eighty-seven Thousand One Hundred and Ninety Dollars (\$17,987,190.00).

#### **ARTICLE 4 DISBURSEMENTS OF THE LOAN**

4.1 Account, Pledge and Assignment, and Disbursement Authorization. The following sums shall be deposited into the Account:

- (a) The proceeds of the Loan, when qualified for disbursement;
- (b) Borrower's Funds; and
- (c) If the Senior Lender so permits, the Senior Loan Proceeds, when disbursed by the Senior Lender.

Proceeds of the Loan shall be deposited into the Account or otherwise disbursed to or for the benefit or account of Borrower under the terms of this Agreement. Disbursements hereunder may be made by Lender upon the written request of any person who has 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 at the address shown in Section 11.2 hereof. As additional security for Borrower's performance under the Loan Documents, Borrower hereby irrevocably pledges and assigns to Lender, subject to the prior interest of the Senior Lender therein, all monies at any time deposited in the Account.

4.2 Loan Disbursements. Subject to the conditions set forth in Sections 3.1 (Conditions Precedent to All Disbursements), and 3.2 (Additional Conditions Precedent to Initial Disbursement) hereof, the proceeds of the Loan and Borrower's Funds shall be disbursed as follows: the first disbursement of Five Hundred and Eighty-seven Thousand Dollars (\$587,000.00) shall be made upon the closing of this Loan; the second disbursement of Five Hundred and Eighty-seven Thousand Dollars (\$587,000.00) shall occur on the first day of the 13<sup>th</sup> month after the closing of this Loan, and the third and final disbursement of Five Hundred and Eighty-seven Thousand Dollars (\$587,000.00) shall occur on the first day of the 25<sup>th</sup> month after the closing of this Loan. Disbursements made after the deposit of Borrower's Funds shall be made first from Borrower's Funds. All disbursements of Loan proceeds shall be held by Borrower in trust and applied by Borrower solely for the purposes for which the funds have been disbursed. Lender has no obligation to monitor or determine Borrower's use or application of the disbursements.

4.3 Use of Disbursements. Borrower shall use disbursements of the Loan only for the payment of or reimbursement for Project Costs as shown on the Budget and approved by Lender pursuant to subsection 4.4 hereof, and only as such Project Costs are incurred by Borrower.

4.4 Senior Loan Disbursements. All requests to Senior Lender for disbursement under the Senior Construction Loan shall be subject to Lender's review and approval of such requests



before such requests are submitted to the Senior Lender. Lender's approval shall not unreasonably be withheld, delayed or conditioned. Any such request shall be deemed approved by Lender if Lender has not given its approval or disapproval within five (5) Business Days after Lender's receipt of the request in writing. Lender shall review and approve all payment requests on a monthly basis.

## **ARTICLE 5 CONSTRUCTION**

5.1 Completion of Construction. Borrower shall diligently and continuously construct the Improvements in accordance with the Construction Schedule approved by Lender, and as provided in the Senior Loan Documents, and shall complete the Improvements on or before the Completion Date.

5.2 Extensions of Time. The time within which construction of the Improvements must be completed shall be extended for a period of time equal to such extensions and only such extensions of time permitted by the Senior Loan Documents.

5.3 General Contractor. Borrower shall require General Contractor to perform in accordance with the terms of the Construction Agreement and Borrower shall not amend, modify or alter the responsibilities of General Contractor under the Construction Agreement without the prior written consent of Lender.

5.4 Architect. Borrower shall require Architect to perform in accordance with the terms of the Architect's Agreement and Borrower shall not amend, modify or alter the responsibilities of Architect under the Architect's Agreement without the prior written consent of Lender.

5.5 No Defaults under Construction Contract and Architect's Agreement. Borrower shall comply with and shall not suffer to exist a default, or any event which, with the passage of time or the giving of notice or both, would constitute a default by Borrower, under the Construction Contract or the Architect's Agreement. Immediately upon the occurrence of a default under the Construction Contract or the Architect's Agreement (whether by Borrower or the other party or parties thereto), Borrower shall deliver written notice to Lender of such default, specifying the nature and circumstances thereof.

5.6 Changes and Change Orders.

(a) Changes in Laws and Restrictive Covenants. Borrower shall not change or in any manner cause or seek a change in any laws, requirements of governmental authorities and obligations created by private contracts and leases which now or hereafter may significantly affect the ownership, construction, equipping, fixturing, use or operation of the Project without the prior written consent of Lender.

(b) Changes in Cost of Contracts. Borrower shall not agree to any increases in the cost or amount of the Construction Contract without the prior written consent of Lender. Any changes to the scope of work for the Project exceeding for each individual change \$10,000 or in the

aggregate a total amount of \$50,000 for all changes must be approved by Lender prior to proceeding with such work, which approval shall not be unreasonably withheld.

(c) Plans and Specifications; Lender Consent. Borrower shall not make any changes in the Plans and Specifications without the prior written consent of Lender regardless of financial impact, which shall not be unreasonably withheld.

(d) Working Drawings. Borrower shall at all times maintain, for inspection by Lender, a full set of working drawings of the Improvements.

(e) Submission Requirements. Unless the Construction Lender requires a different time frame shorter than provided hereunder, Borrower shall submit all proposed changes regardless of dollar amount to Lender at least ten (10) days prior to the commencement of construction relating to such proposed changes, whether or not such change is subject to Lender's consent, with such submissions to be made on a Contractor's Change Estimate or Change Order AIA form or such other form acceptable to Lender, signed by Borrower and, if required by Lender, also by the Architect and the Contractor, with a written description of the proposed change, and with all appropriate backup documentation and information from subcontractors, and with a review of conditions from the Architect or applicable consultant approved by Lender.

(f) Consent Process. Borrower acknowledges that Lender's review of any changes to the Plans and Specifications and the required consent may result in delays in construction, and hereby consents to any reasonable delays. Lender agrees to use its reasonable efforts to promptly review any such requested changes. At its option, Lender may require Borrower to provide: (i) evidence satisfactory to Lender of the cost and time necessary to complete the proposed change; and (ii) a deposit in the amount of any increased costs into the Account.

(g) Final Plans and Specifications. Within thirty (30) days after completion of the Improvements, Borrower shall deliver to Lender a complete set of "as built" Plans and Specifications for the completed Improvements.

5.7 Contractor/Construction Information. Within fifteen (15) days after Lender's written request, Borrower shall deliver to Lender from time to time in a form acceptable to Lender: (a) a list detailing the name, address and phone number of each contractor, subcontractor and material supplier to be employed or used for construction of the Improvements together with the dollar amount, including changes, if any, of each contract and subcontract, and the portion thereof, if any, paid through the date of such list; (b) copies of each contract and subcontract identified in such list, including any changes thereto and including types of work and contract or subcontract amount; (c) a cost breakdown of the projected total cost of constructing the Improvements, and that portion, if any, of each cost item which has been incurred; (d) copies of current financial statements of the General Contractor relative to the Project; and (e) 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. Borrower agrees that Lender may disapprove any contractor, subcontractor or material supplier which, in Lender's good faith determination, is deemed financially or otherwise unqualified or is disapproved by the Senior Lender; provided, however, that the absence of any such

disapproval shall not constitute a warranty or representation of qualification by Lender. Lender may contact the General Contractor or any contractor, subcontractor or material supplier to discuss the course of construction.

5.8 Prohibited Contracts. Without the prior written consent of Lender, Borrower shall not contract for any materials, furnishings, equipment, fixtures or other parts or components of the Improvements, if any third party shall retain any ownership interest (other than lien rights created by operation of law) in such items after their delivery to the Property and Improvements. Borrower shall have five (5) days to effect the removal of any such retained interest.

5.9 Liens and Stop Notices.

(a) If a claim of lien is recorded which affects the Property or Improvements or a bonded stop notice is served upon Lender, Borrower shall, upon the earlier of (i) twenty (20) calendar days of such recording or service or (ii) five (5) calendar days after Lender's demand: (x) pay and discharge the claim of lien or bonded stop notice; (y) effect the release thereof by recording or delivering to Lender (or to the Senior Lender, if the Senior Lender shall so require) a surety bond in sufficient form and amount; or (z) provide Lender with other assurances which Lender deems, in its sole discretion, to be satisfactory for the payment of such claim of lien or bonded stop notice and for the full and continuous protection of Lender from the effect of such lien or bonded stop notice. Notwithstanding the foregoing, Borrower shall have the right to contest in good faith and with reasonable diligence the validity of any such liens or claims upon furnishing to Title Company such security or indemnity as the latter may require to induce it to issue its Title Insurance Policy or an interim endorsement thereto insuring against all such claims or liens and, provided further, that Lender will not be required to make any further disbursements of the Loan until all such mechanics' or materialmen's liens or claims of lien shown on the title insurance commitment or any interim endorsement have been so insured against by the Title Company to Lender's satisfaction. In the case of stop notices, Borrower shall have the right to contest, in good faith and with reasonable diligence, the validity of any stop notice, provided that Borrower shall immediately file with Lender a bond in form and amount sufficient to release such stop notice. Borrower agrees that Lender shall have no obligation to make any further disbursements of the Loan until all stop notices have been fully released or discharged to Lender's satisfaction.

(b) If Borrower fails to discharge, release or contest promptly any liens, claims of lien or stop notices and provide the assurances required by Subsection 5.9(a), then without limiting any of its rights and remedies, Lender may, but shall have no obligation to, procure the release and discharge of any such lien or stop notice and any judgment or decree thereon, and in furtherance thereof may, in its sole discretion, effect any settlement or compromise or furnish any security or indemnity as may be required by the Title Company. All amounts expended by Lender in connection with the provisions of this Subsection 5.9(b) shall be deemed to constitute a disbursement of the Loan. In settling, compromising or arranging for the discharge of any liens or stop notices under this Subsection 5.9(b), Lender shall not be required to establish or confirm the validity or amount of the lien or stop notice.

5.10 Construction Responsibilities. Borrower shall construct the Improvements in a good and workmanlike manner according to the Plans and Specifications and the recommendations of any soils or engineering report and in strict compliance with the terms of the Senior Loan Documents. All construction shall be free and clear of defects in and liens or claims of liens for materials supplied or labor or services performed in connection with the Project. The Project shall comply with the Plans and Specifications and shall be contained wholly within the lot lines of the Property and shall not encroach on any other real estate, easements, building lines or set-back requirements. Borrower shall comply with all applicable laws, ordinances, rules, regulations, building restrictions, recorded covenants and restrictions, and requirements of all regulatory authorities having jurisdiction over the Property or Improvements. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Property and Improvements, including, without limitation, the quality and suitability of the Plans and Specifications and their compliance with all governmental requirements, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all disbursements. Lender is not obligated to supervise, inspect or inform Borrower or any third party of any aspect of the construction of the Improvements or any other matter referred to above.

5.11 Correction of Defects. Within five (5) days after knowledge or notice thereof, Borrower shall proceed with diligence to correct all defects in the Project and any departure from the Plans and Specifications except as approved by Lender. The disbursement of any Loan proceeds shall not constitute a waiver of Lender's right to require compliance with this covenant with respect to any such defect or departure from the Plans and Specifications.

5.12 Assessments and Community Facilities Districts. Without the prior written consent of Lender, Borrower shall not cause or consent to the formation of any assessment district or community facilities district which includes all or any part of the Property and Improvements pursuant to: (a) the Mello-Roos Community Facilities Act of 1982; (b) the Municipal Improvement Act of 1913; or (c) any other comparable or similar statute or regulation. Borrower shall not cause or otherwise consent to the levying of special taxes or assessments against the Property and Improvements by any such assessment district or community facilities district.

5.13 Delay. Borrower shall promptly notify Lender in writing of any event causing delay or interruption of construction, or the timely completion of construction of the Project. The notice shall specify the particular work delayed, and the cause and period of each delay.

5.14 Inspections. Lender shall have the right to enter upon the Property from time to time at any reasonable time to inspect the Improvements and the materials and construction work to verify Borrower's compliance with this Agreement including to verify information disclosed by or required of Borrower pursuant to this Agreement. Without limiting the generality of the foregoing, Lender shall have the right to examine all contracts, records, test reports, plans and shop drawings concerning the Project, which Borrower shall keep at the construction site or at Borrower's offices. Borrower shall cause the General Contractor and subcontractors to cooperate with Lender pursuant to this Section. Borrower shall require the General Contractor to maintain and make available for

inspection by Lender or its representatives, upon demand, daily log sheets covering the period since the immediately preceding inspection, which log sheets shall show dates, weather conditions, number of workers and subcontractors on the job and the progress of construction, and testing and inspection reports. Any inspection or review of the Project by Lender is solely to determine whether Borrower is properly discharging its obligations to Lender and may not be relied upon by Borrower or by any third party as a representation or warranty of compliance with this Agreement or any other agreement. Lender owes no duty of care to Borrower or any third party to protect against, or to inform Borrower or any third party of, any negligent, faulty, inadequate or defective design or construction of the Improvements as determined by Lender.

5.15 Surveys. Concurrently herewith, Borrower shall deliver to Lender an ALTA perimeter survey of the Property satisfactory to Lender. Upon completion of the Improvements, Borrower shall deliver to Lender an ALTA as-built survey satisfactory to Lender and acceptable to the Title Company for purposes of issuing an ALTA policy of title insurance, and showing the location of the Improvements and confirming that the Improvements are located entirely within the boundaries of the Property. All such surveys shall meet the requirements of the Senior Lender, and shall: (a) be prepared and certified by a licensed engineer or surveyor acceptable to the Senior Lender, Lender and the Title Company for the benefit of the Borrower, the Lender and the Title Company as having been made in accordance with ALTA minimum detail requirements, or other comparable standards in the County and State acceptable to Lender, and with such certification, otherwise be in form and substance satisfactory to said title insurer and the Lender; and (b) confirm (1) the legal description and boundaries of the Property; (2) the location of all easements and building setback lines appurtenant to, or affecting, the Project or the Property, whether visible or of record; (3) that the location of the improvements constructed on the Property do not encroach upon any easement or setback lines or violate any building or other restriction of record; (4) the location of all encroachments onto the Project or the Property from buildings or other improvements on adjacent property; and (5) all encroachments by the improvements constructed on the Property over or onto any easements, or setback or building lines on adjacent property.

5.16 Title Policies. Upon the Effective Date, the Borrower shall deliver to Lender the Title Policy (as defined herein) satisfactory to Lender, issued by the Title Company in favor of Lender for initial funding of the Loan. Upon completion of foundations of the Improvements, Lender may require a foundation endorsement satisfactory to Lender be issued by the Title Company for the Title Policy issued to Lender. Upon completion of construction of the Improvements, Borrower shall cause the Title Policy to be reissued by the Title Company in favor of Lender as a full ALTA extended coverage loan policy satisfactory to Lender, in the full amount of the Loan, and including CLTA form 100 endorsement and such other endorsements as Lender may require. All such Title Policies issued to Lender shall satisfy all title policy requirements of the Senior Lender.

5.17 Prohibition Against Transfer of Property, the Improvements, and Assignment of Agreement. Prior to the recordation by Lender of a Certificate of Completion upon completion of the Project, the Borrower shall not transfer, convey, assign, or lease the whole or any part of the Property or the Improvements thereon without the prior written approval of the Lender. This prohibition shall not apply subsequent to the recordation of the Certificate of Completion with respect to the Improvements upon the Property. This prohibition shall not be deemed to prevent the

granting of easements or permits to facilitate the development of the Project, or (i) prohibit the transfer of Borrower's limited partnership interests in any respect; (ii) prohibit the removal and replacement of the Borrower's general partner in accordance with the Borrower's partnership agreement; (iii) prohibit a transfer of the Property or the Improvements to the Borrower's general partner pursuant to the Borrower's partnership agreement as then in effect; or (iv) prohibit a transfer of the Property or the Improvements to any Affiliate of the Borrower's then general partner or the Borrower's then limited partner, so long as any and/or all of the foregoing transferees or assignees expressly and unconditionally assumes all of the duties and obligations of the Borrower and/or any subsequent transferee or assignee under this Agreement to the extent allocable to the portion transferred. Any sale, transfer, conveyance or assignment not made in strict compliance with the foregoing conditions shall constitute a default by the Borrower under this Agreement.

In the absence of specific written agreement by the Lender, no such transfer, assignment or approval by the Lender shall be deemed to relieve the Borrower or any other party from any obligation under this Agreement until completion of the Improvements as evidenced by a Certificate of Completion.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES**

As a material inducement to Lender to enter into and perform this Agreement, Borrower represents and warrants to Lender as of the date hereof, and as of the Effective Date, and as of each request for a disbursement of Loan Proceeds and continuing thereafter that:

6.1 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 and develop the Project and Improvements as contemplated by this Agreement and the Loan Documents.

6.2 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.

6.3 Formation and Organizational Documents. Borrower has delivered to Lender all formation and organizational documents of Borrower and of the general partners of Borrower, and all such formation and organizational documents remain in full force and effect and have not been amended or modified since they were delivered to Lender. Borrower shall immediately provide Lender with copies of any amendments or modifications of the formation or organizational documents.

6.4 No Violation. Borrower's execution, delivery, and performance under the Loan Documents do not: (a) require any consent or approval not heretofore obtained under any partnership agreement, articles of incorporation, bylaws, Senior Loan Documents, or other documents; (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, including without limitation, Code Section 42 and all regulations promulgated thereunder; (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.

6.5 Compliance with Laws. Borrower has, and at all times shall have obtained, all permits, licenses, exemptions, and approvals necessary to construct, occupy, operate, market and lease the Project, and shall maintain compliance with all governmental requirements applicable to the Project and all other applicable statutes, laws, regulations and ordinances pertaining to the Property and the Project or necessary for the transaction of the Borrower's business. The Plans and Specifications have been approved by all federal, state and local authorities or instrumentalities which have jurisdiction over the Property or construction thereon and the beneficiaries of any such covenants. The Property consists of legal and separate lots under applicable law and for tax assessment purposes.

6.6 Tax Credit Compliance and Allocations. Borrower has complied at all times fully with the requirements of Code Section 42, and applicable State law and all regulations promulgated thereunder and any other federal, state or local laws or regulations related thereto, including, without limitation, with respect to (x) Borrower's organization, business and operations, (y) the operation of the Project and (z) the maintenance of all low income housing tax credits heretofore or hereafter allocated to Borrower and/or the Project pursuant to said Section 42 and applicable State law. Borrower has received a preliminary reservation of low income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, from the Authority in the total amount of Seventeen Million Nine Hundred Eighty-seven Thousand One Hundred and Ninety Dollars (\$17,987,190.00).

6.7 Litigation or Other Proceedings. 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 any of its general partners, or against the Property, that would or could materially affect the Loan, the Loan Documents, the Senior Construction Financing, the Permanent Financing, the Property or the Improvements in any manner.

6.8 Financial Condition. All financial statements and information heretofore delivered to Lender by Borrower, including, without limitation, information relating to the financial condition of Borrower, the Property, the Improvements, and the general partner of Borrower, fairly and accurately represent the financial condition of the subject thereof and have been prepared (except as expressly noted therein) on a federal income tax basis, consistently applied. Borrower acknowledges and agrees that Lender may request and obtain additional information from third parties regarding any of the above, including, without limitation, credit reports.

6.9 No Material Adverse Change. There has been no material adverse change in the financial condition of Borrower and/or any general partner of Borrower since the dates of the latest financial statements furnished to Lender and, except as otherwise disclosed to Lender in writing,

Borrower has not entered into any material transaction which is not disclosed in such financial statements.

6.10 Loan Proceeds and Adequacy. The Loan proceeds, together with the Senior Loan Proceeds, Borrower's Funds and all other sums, if any, to be provided by Borrower as shown in Exhibit B, are sufficient to construct the Improvements in accordance with the terms and conditions of this Agreement. The sum of (a) the maximum principal amount of the Senior Construction Financing and (b) the maximum principal amount of the Loan shall not exceed the total Project Costs.

6.11 Senior Construction Loan. The Senior Construction Loan Documents are in full force and effect, and no party is in default thereunder.

6.12 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 material misrepresentation or omission.

6.13 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.

6.14 Utilities; Access. All utility services, including, without limitation, gas, water, sewage, cable television, electrical and telephone, necessary for the development and occupancy of the Project and Improvements are available to the Property and are not or will not be subject to any conditions, other than normal charges to the utility supplier, which would limit the use of such utilities, or Borrower has taken all steps necessary to assure that all such services shall be available upon completion of the Improvements. All public streets and public or private easements necessary for access to the Property and for construction and operation of the Project are available to the boundaries of the Property.

6.15 Americans With Disabilities Act Compliance. The Improvements have been designed and shall be constructed and completed, and thereafter maintained, in strict accordance and full compliance with all of the requirements of the ADA. Borrower shall be responsible for all ADA compliance costs.

6.16 Compliance with Agreements. The execution, delivery and performance of this Agreement and the Loan Documents have not and shall not constitute a breach or default under any other agreement, law or court order under which Borrower or any general partner of Borrower is a party or is bound, or which shall affect the Property or the construction, use, occupancy and operation of the Project or any part thereof.

6.17 Project Costs. On a line-by-line and total basis, the Project Costs shown in Exhibit B, as the same may be modified pursuant to the terms hereof, are true, correct and complete, and represent the total of all costs, expenses and fees which Borrower expects to pay or may be or



become obligated to pay to construct, occupy, lease and operate the Project through the Maturity Date including, without limitation, the construction by the General Contractor pursuant to the Construction Contract.

6.18 Collateral. Borrower is now and shall continue to be the sole owner of the Collateral, free from any adverse lien, security interest or adverse claim of any kind whatsoever, except for the Permitted Exceptions.

6.19 Senior Loan Documents. All of the representations and warranties of Borrower contained in the Senior Loan Documents are and shall remain true and correct and complete.

6.20 Related Agreements. All representations and warranties of Borrower and the General Partner of Borrower or their Affiliates in the Borrower's Partnership Agreement or Related Documents are and shall remain true and correct and complete.

6.21 No Condemnation. No condemnation or other like proceedings are pending or threatened against the Property or any part thereof, or which would impair the full utilization of the Project in any manner whatsoever.

## ARTICLE 7 HAZARDOUS MATERIALS

7.1 Special Representations and Warranties. Without in any way limiting the other representations and warranties set forth in this Agreement, and after reasonable investigation and inquiry, Borrower hereby specially represents and warrants to the best of Borrower's knowledge as of the date of this Agreement, except as previously disclosed by Borrower to Lender in writing, as follows:

(a) Hazardous Materials. The Property and Improvements are not and have 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" or "toxic substances" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances or regulations (collectively, the "**Hazardous Materials**"). Neither Borrower nor, to the best of Borrower's knowledge, any third party has constructed, used, deposited, generated, manufactured, stored, placed, located or disposed of on, under or about the Property or transported to or from the Property any 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 ("Hazardous Materials Claims") pending or threatened against Borrower, the Property or Improvements by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.

(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.

7.2 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 except as appropriate in connection with residential use and occupancy.

(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.

7.3 Reports and Inspection By Lender. Borrower agrees to submit to Lender prior to the Effective Date and thereafter, if requested by Lender at any time and from time to time, a current up-to-date Phase I Environmental Report or other report, satisfactory to Lender, certifying that the Property and the Improvements are not and have not been a site involving, directly or indirectly, the

use, generation, manufacturing, treatment, storage, release, disposal or presence of any Hazardous Materials. 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 Material into, onto, beneath or from the Property and Improvements.

7.4 Hazardous Materials Indemnity. Notwithstanding any provision to the contrary, Borrower hereby agrees to protect, defend, indemnify and hold harmless Lender, its directors, officers, employees, agents, successors and assigns from and against any and all losses, damages, liabilities, injuries (including death or person or persons), claims, actions, judgments, court costs and legal or other expenses (including, without limitation, attorneys' fees and expenses) which Lender may incur as a direct or indirect consequence of the use, generation, manufacture, storage, release, disposal, transportation or presence of any Hazardous Materials in, on, under or about the Property or Improvements, together with interest from the date the indebtedness under this indemnity arises until paid at the rate of interest applicable to the principal balance of the Note. It is understood that the duty of Borrower to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Lender of insurance certificates and endorsements required under this Agreement does not relieve Borrower from liability under this indemnification and hold harmless clause. BORROWER'S DUTIES AND OBLIGATIONS TO PROTECT, 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.

7.5 Legal Effect of Section. Borrower and Lender agree that: (a) this Article 7 is intended as Lender's written request for information (and Borrower's response) concerning the environmental condition of the real property security pursuant to California Code of Civil Procedure Section 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 Section 736, and as such it is expressly understood that Borrower's duty to protect, defend, indemnify, and hold harmless Lender and its directors, officers, employees, agents, successors and assigns 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 8 COVENANTS OF BORROWER**

As a material inducement to Lender to enter into this Agreement and to make each disbursement of the Loan, Borrower hereby covenants as follows:

8.1 No Liens, Etc. Excepting the lien of the Senior Loan Documents and the Permitted Exceptions, Borrower shall not permit any lien, levy, attachment or restraint to be made or filed

against the Property or the Project or, subject to the rights of the Senior Lender under the Senior Loan Documents, permit any receiver, trustee or assignee for the benefit of creditors to be appointed to take possession of the Property or any portion of the Project.

8.2 Compliance with Senior Construction Financing. Borrower shall comply with, perform and observe all requirements, covenants and agreements of and under the Senior Construction Loan Documents, including without limitation making all payments required to be made thereunder, as and when so required to be made. Borrower shall commit no breach or default under the Senior Construction Loan Documents. Borrower shall commit no breach or default under the Senior Loan Documents, nor shall Borrower suffer to exist any event or condition which, with the passing of time or the giving of notice or both, would become a default by Borrower or an event of default under the Senior Construction Loan Documents. Immediately upon the occurrence of a default under the Senior Loan Documents (whether by Borrower or any other party), Borrower shall deliver written notice to Lender of such default, specifying the nature and circumstances thereof.

8.3 Permanent Financing. None of the proceeds of the Permanent Financing shall be used for any purpose other than payment of the Senior Construction Loan until the Loan has been paid, unless Lender consents in writing to any such use.

8.4 Compliance with Laws. Borrower shall comply and, to the extent it is able, shall require others to comply with all laws and requirements of governmental authorities having jurisdiction over the Property or construction of the Project and shall furnish Lender with reports of any official searches for violation of any requirements established by such governmental authorities. Borrower shall comply and, to the extent it is able, shall require others to comply with all restrictive covenants and all obligations created by private contracts and leases which affect ownership, construction, equipping, fixturing, use or operation of the Project. Borrower covenants and warrants that the Project, when completed, shall comply with all applicable building, zoning and land use laws, requirements, ordinances, and all federal, state, and local laws and regulations, and shall not violate any restrictions of record against the Property or the terms of any lease of all or any portion of the Property. Borrower shall deliver to Lender, promptly after receipt thereof, copies of all permits and approvals received from governmental authorities relating to the construction, use, occupancy or operation of the Project.

8.5 Tax Credit Compliance with Code Section 42. Borrower shall comply fully with the requirements of Code Section 42, and all regulations promulgated thereunder and any other federal, state or local laws or regulations related thereto, including, without limitation, with respect to (x) Borrower's organization, business and operations, (y) the operation of the Project and (z) the maintenance of all low income housing tax credits heretofore or hereafter allocated to Borrower and/or the Project pursuant to Code Section 42.

8.6 Ownership of Collateral. Borrower shall be the sole owner of all Collateral acquired after the date hereof, free from any adverse lien, security interest or adverse claim of any kind whatsoever, except for security interests and liens in favor of Lender and prior security interest in favor of the Senior Lender pursuant to the Senior Loan Documents, and except for the Permitted

Exceptions. Borrower shall not convey or encumber any portion of the Collateral without the prior written consent of Lender.

8.7 No Transfers or Encumbrances; Ownership of Project and Borrower. Borrower shall not, without the prior written consent of Lender, sell, transfer, convey or encumber, mortgage or hypothecate the Property, the Project or any part thereof or any interest therein, in any manner, whether voluntarily or involuntarily or by operation of law, nor shall Borrower enter into any agreement to do any of the foregoing. No general partnership interest in Borrower or any interest in any general partner of Borrower may be assigned, transferred, hypothecated, pledged or disposed of in any manner, whether voluntarily or involuntarily or by operation of law, without the prior written consent of Lender. As used herein, "transfer" includes the transfer, assignment, conveyance or hypothecation of legal or beneficial ownership of (i) any general partnership interest in Borrower, (ii) any partnership interest in any general partner of Borrower that is a partnership, or (iii) any of the voting stock in any general partner of Borrower that is a corporation.

8.8 Compliance with Loan Documents. Borrower shall perform, observe and comply with all conditions and provisions of this Agreement, whether or not a disbursement is requested. Borrower shall comply and, to the extent it is able, shall cause compliance by parties thereto, with all Loan Documents and with the Construction Contract and the Architect's Agreement.

8.9 Financial Statements and Reports. Borrower, at its expense, shall furnish or cause to be furnished to Lender the following:

(a) As soon as possible, and in any event not later than five days after the occurrence of any Default, a statement of an authorized representative of Borrower describing the details of such Default and any curative action Borrower proposes to take;

(b) As soon as available, and in any event not later than sixty (60) days after the close of each fiscal year of Borrower, financial statements of Borrower, including a profit and loss statement, reconciliation of capital accounts and a consolidated statement of changes in financial position of Borrower as at the close of and for such fiscal year, all in reasonable detail, certified by an authorized representative of Borrower and accompanied by the unqualified report of a certified public accountant acceptable to Lender;

(c) Commencing on the twentieth (20th) day of the first full calendar month following the commencement of leasing activity for the Project (unless sooner requested by Lender), and thereafter on the twentieth (20th) day of every calendar month until the Loan is repaid in full, a report showing the status of the leasing of apartments in the Project, in form and substance satisfactory to Lender, certified as true and complete by the General Partner;

(d) Commencing on the forty-fifth (45th) day of the fiscal quarter immediately succeeding the quarter in which the first tenant in the Project begins paying rent under an executed lease, and thereafter on the forty-fifth (45th) day of each following fiscal quarter until the Loan is repaid in full, cash flow statements showing actual sources and uses of cash during the preceding fiscal quarter certified to be true, complete and accurate by the General Partner, and an updated

projected cash flow statement for the Project through the Maturity Date, certified by the General Partner to be a true and complete projection of such cash flow accurate to the best of Borrower's knowledge and ability after due investigation and analysis thereof;

(e) As soon as available, and in any event not later than at the time of filing with the Internal Revenue Service, the federal tax returns (and supporting schedules, if any) of Borrower; and

(f) Concurrently with the delivery to the Senior Lender, a copy of all financial statements and reports delivered to the Senior Lender.

8.10 Operating Expenses. Borrower shall pay when due, all expenses, costs and disbursements of every kind and nature incurred by or on behalf of Borrower during the term of the Loan with respect to the operation, maintenance and management of the Project.

8.11 Brokers. Borrower shall pay any and all valid claims of any brokers or agents with whom it has dealt who claim a right to any fees in connection with arranging the acquisition or financing of the Property or Improvements, and shall protect, defend, indemnify, and hold Lender and its directors, officers, employees, agents, successors and assigns harmless from such claims, whether or not they are valid.

8.12 Trade Names. Borrower shall immediately notify Lender in writing of any change in the place of business of, or the change in the legal, trade or fictitious business names used by, Borrower or the constituent General Partner(s) of Borrower and shall, upon Lender's request, execute any additional financing statements and other certificates necessary to reflect the change in trade names or fictitious business names.

8.13 No Partnership Distributions. Borrower shall not, without the prior written consent of Lender, make any distribution of partnership assets to any partner of Borrower, except if such a partnership distribution is permitted under the terms of Borrower's Partnership Agreement or Related Documents, including, without limitation, repayment of any loans made by a partner of the Borrower or any accrued interest thereon, and return of capital contributions or distributions upon termination, liquidation or dissolution of Borrower. Notwithstanding any provision to the contrary, no proceeds of the Loan shall be distributed to any partner of Borrower for any reason and at any time.

8.14 Further Assurances. Borrower shall execute and deliver from time to time, promptly after any written request therefor by Lender, any and all instruments, agreements and documents and shall take such other action as may be necessary or desirable in the reasonable opinion of Lender to maintain, perfect or insure Lender's security provided for herein and in the Loan Documents, including, without limitation, the execution of UCC-1 continuation statements, the execution of such amendments to the Deed of Trust and the Loan Documents and the delivery of such endorsements to the Title Policy, all as Lender shall require, and shall pay all fees and expenses (including attorneys' fees) related thereto.

8.15 Maintenance of Existence. Borrower and its general partner(s) shall maintain and preserve their existence and all rights and franchises material to their business. Western Community Housing, Inc, a California nonprofit public benefit corporation, shall maintain and preserve its non-profit status under Code Section 501(c)(3) and shall cause the Borrower to obtain and maintain the property tax exemption for the Project under California Revenue and Taxation Code Section 214(g).

8.16 Litigation; Condemnation. Borrower shall give Lender written notice of any litigation or condemnation action or proceeding commenced or threatened against Borrower, the Property or the Improvements and shall deliver to Lender copies of all notices, and other information regarding such proceeding or action, in all cases within five (5) days after receipt or, if generated by Borrower, transmittal thereof.

8.17 Construction Materials. Borrower shall not use in the construction of the Improvements any asbestos or other known hazardous or toxic substance, material or waste under applicable federal, state or local laws or regulations, whether or not such substances or materials are Hazardous Materials.

8.18 Representations and Warranties. Until repayment of the Note and satisfaction of all other obligations secured by the Deed of Trust, the representations and warranties of Borrower set forth in this Agreement and the Loan Documents shall remain true and complete.

8.19 Assignment. Without the prior written consent of Lender, 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 the expertise, reputation, and prior experience of Borrower in developing and constructing affordable multi-family housing, Lender's knowledge of Borrower, and Lender's understanding that this Agreement is more in the nature of an agreement involving personal services than a standard loan where Lender would rely on security which already exists.

8.20 Management of Property. Borrower shall enter into a Property Management Agreement ("**Property Management Agreement**"), with a qualified, licensed and experienced low income housing management agent ("**Management Agent**"). Borrower shall use its best efforts to cause the Management Agent to lease each unit in the Project upon its completion for amounts not less than the rental amounts in the Proforma Leasing Schedule. Borrower shall comply with all requirements of Borrower, as owner, under the Property Management Agreement. The Property Management Agreement shall provide for a right of cancellation by Borrower or Lender, without cause, upon 30 days written notice to the Management Agent.

8.21 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 and Borrower's Funds, and the same shall be available for inspection and copying by Lender upon reasonable prior notice.

8.22 Compliance with Related Agreements. Borrower and the General Partner of Borrower shall perform, observe and comply with all covenants, conditions, restrictions, obligations, representations and warranties of the Borrower and the General Partner of Borrower in the Borrower's Partnership Agreement, the Regulatory Agreement and Related Documents and in any documents or instruments evidencing, securing or pertaining to any other loan or indebtedness secured by the Property or the Project whether prior or subordinate to the Loan Documents.

8.23 Subordination. Lender agrees to execute reasonable subordination agreements with any Senior Construction Lender and/or Permanent Lender, subject to approval by Lender's legal counsel.

## ARTICLE 9 INSURANCE AND CONDEMNATION

Borrower shall, while any obligation of Borrower under any Loan Document remains outstanding, maintain at Borrower's sole expense, with licensed insurers approved by Lender, the following policies of insurance in form and substance satisfactory to Lender:

9.1 Property Insurance. 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).

9.2 Liability Insurance. 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.

9.3 General. Borrower shall provide to Lender the originals of all required insurance policies, or other evidence of insurance acceptable to Lender. All insurance policies shall provide that the insurance shall not be cancelled, allowed to lapse without renewal, surrendered or materially changed without thirty (30) days prior written notice to Lender. Lender shall be named under a Lender's Loss Payable Endorsement (form #438BFU or equivalent) on all hazard insurance policies which Borrower actually maintains with respect to the Property and Improvements, and Lender, its officers, employees, and agents shall be named as an additional insured on all liability insurance policies maintained by Borrower with respect to the Property and Improvements. Borrower shall provide to Lender evidence of any other hazard or liability insurance Lender may deem necessary at any time during the Loan. All policies of insurance required hereunder shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act of negligence of Borrower or any party holding under Borrower which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Borrower. Without limiting the generality of the foregoing, Borrower shall maintain the insurance coverages described in Exhibit H attached hereto and incorporated by reference herein. If Borrower fails to maintain any insurance coverage required hereunder or pursuant hereto, Lender may (but shall not be obligated to) obtain such insurance at Borrower's expense, and Borrower shall pay all premiums thereon upon demand of Lender. Until



paid by Borrower, the amount of such premiums advanced by Lender shall be added to the principal amount of the Loan and bear interest at the default rate specified in the Note.

9.4 Insurable Value. After the Project has been completed and until repayment of the Loan, Borrower shall also provide from time to time at the written request of Lender, but not more often than once annually, satisfactory evidence of the insurable value of the Project. Borrower shall bear the cost, if any, of such insurance appraisal or valuation report.

9.5 Loss Proceeds. If the Property or the Project shall be damaged or destroyed by an insured peril or otherwise, then subject to the rights of the Senior Lender under the Senior Loan Documents, Lender may, at its option, upon written notice to Borrower, settle, adjust or compromise any and all claims. All proceeds of insurance with respect to any damage or destruction shall be payable to Lender and Borrower hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Lender and Borrower promptly shall pay over to Lender any such proceeds received by Borrower. Such proceeds of insurance shall be applied in the manner required by the Deed of Trust.

9.6 Eminent Domain. In the event that any proceeding or action be commenced for the taking of the Property or the Project, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation proceeding, or in any other manner, or should Borrower receive any notice or other information regarding such proceeding, action, taking or damage, Borrower shall give prompt written notice thereof to Lender. Lender shall be entitled at its option, without regard to the adequacy of its security, to appear in and prosecute in its own name any condemnation action or proceeding. Lender shall also be entitled to make any compromise or settlement in connection with such taking or damage with respect to Lender's Interest. Subject to the rights of the Senior Lender under the Senior Loan Documents, (a) all Condemnation Proceeds are hereby assigned to Lender and Borrower agrees to execute such further assignments of the Condemnation Proceeds as Lender may require, and (b) all such Condemnation Proceeds shall be applied or distributed in the manner required by the Deed of Trust.

## **ARTICLE 10 DEFAULTS AND REMEDIES**

10.1 Defaults. The occurrence of any one or more of the following shall constitute a Default by the Borrower under this Agreement and the Loan Documents and the occurrence of any such Default shall not require any further notice to Borrower except as specifically provided in such Subsection:

(a) Monetary. Borrower's failure to pay any sums due within the time provided in the Senior Loan Documents, or under any other lien or encumbrance which is prior or superior to the Loan Documents, or Borrower's failure to pay within ten (10) days after the date when due any sums payable under the Note or any of the Loan Documents; or Borrower's failure to comply with any other covenant contained in this Agreement which calls for the payment or deposit of money,

without curing such failure within ten (10) days after written notice from Lender, or, if less, within the period specified in the particular provision at issue; or

(b) Performance of Obligations. Borrower's failure to perform any obligation other than those in Subsection 10.1(a) above under any of the Loan Documents within the lesser of (i) thirty (30) days after written notice from Lender, or, if less, the period of time specified in the particular provision at issue, or (ii) the applicable cure period for equivalent obligations under the Senior Loan Documents, or under any other lien or encumbrance which is prior or superior to the Loan Documents; or

(c) Construction; Use. If (i) there is any material deviation in the work of construction from the Plans and Specifications or governmental requirements or the appearance or use of defective workmanship or materials in constructing the Improvements, and Borrower fails to remedy the same to Lender's satisfaction within fifteen (15) days after Lender's written demand to do so; or (ii) there is a cessation of construction of the Improvements prior to completion for a continuous period of more than thirty (30) days (except as otherwise permitted by the Senior Loan Documents); or (iii) the construction, sale or leasing of any of the Improvements in accordance with the Loan Documents is prohibited, enjoined or delayed for a continuous period of more than thirty (30) days; or (iv) utilities or other public services necessary for the full occupancy and utilization of the Property and Improvements are curtailed for a continuous period of more than thirty (30) days; or

(d) Liens, Attachment; 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 twenty (20) 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; or (iii) the sequestration or attachment of, or any levy or execution upon any of the Property or Improvements, any other collateral provided by Borrower under any of the Loan Documents, any monies in the Account, or any substantial portion of the other assets of Borrower, which sequestration, attachment, levy or execution is not released, expunged or dismissed prior to the earlier of thirty (30) days or the sale of the assets affected thereby; or

(e) Representations and Warranties. (i) Any representation or warranty of Borrower in any of the Loan Documents shall have become untrue in any material respect and such condition shall not have been cured within fifteen (15) days after written notice to Borrower from Lender requesting cure; or (ii) any material adverse change in the financial condition of Borrower or any other person or entity in any manner obligated to Lender under the Loan Documents from the financial condition represented to Lender as of the Effective Date; or

(f) Voluntary Bankruptcy; Insolvency; Dissolution. (i) The filing of a petition by Borrower for relief under the Bankruptcy Code, or under any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; (ii) 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; (iii) the filing by the General Partner of Borrower, or any shareholder, partner, or joint venturer of such General Partner, of an involuntary petition against Borrower under the Bankruptcy Code or other debtor relief law; (iv) a general assignment by Borrower for the benefit of creditors; or (v) Borrower applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or

(g) 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 sixty (60) days after the date of filing of such involuntary petition; or

(h) Partners. The occurrence of any of the events specified in Subsection 10.1(f) or 10.1(g) as to the General Partner of Borrower; or

(i) Change In Management or Control. The occurrence of any material or adverse change or circumstance in the management or organization of Borrower or the General Partner of Borrower; or

(j) 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, subject to no prior liens other than the lien of the Senior Construction Financing and the Permitted Exceptions, 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 or the consent of Lender; or

(k) Adverse Financial Condition - Other Than Borrower. Any material adverse change in the financial condition of the General Partner from the condition shown on the financial statement(s) submitted to Lender and relied upon by Lender in making the Loan; or

(l) Senior Construction Financing. The expiration, termination, failure to fund, failure to procure, occurrence of a default or breach by either Borrower or Senior Lender, or failure of Borrower to satisfy any of the terms, covenants or conditions, of the Senior Construction Loan Documents, or the Senior Construction Financing for any reason whatsoever; or

(m) Very Low Income Affordable Housing. The failure to rent the units in the Project to Very Low Income Households in compliance with the requirements under the City Regulatory Agreement; or

(n) Key Person or Entity. The retirement, death, incapacity or withdrawal of the General Partner, and Borrower's failure to provide a substitute or replacement reasonably acceptable to Lender within thirty (30) days after the occurrence of any such retirement, death, incapacity or withdrawal; or

(o) Transfer of Assets. The sale, assignment, pledge, hypothecation, mortgage or transfer of the assets of Borrower, or any General Partner of Borrower, including any violation of the provisions of Section 8.7 hereof (No Transfers or Encumbrances; Ownership of Project and Borrower) of this Agreement, provided that the rental of apartment units to tenants in the ordinary course of business and otherwise meeting the requirements of the Loan Documents and any other covenants, conditions or restrictions applicable to the Project (including the Senior Loan Documents and the Regulatory Agreement) shall not require the further consent of Lender under Section 8.7 of this Agreement; or

(p) Hazardous Materials. The discovery of any significant Hazardous Materials 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 or use of the Property and Improvements; or

(q) Reserved.

(r) Default Under Related Agreements. Any breach or default of Borrower or the General Partner of Borrower under any of the covenants, conditions, restrictions, obligations, representations or warranties of the Borrower or the General Partner of Borrower in the Borrower's Partnership Agreement, or by Borrower or the General Partner or any parties under the Related Documents or the Regulatory Agreement, or in any document or instrument evidencing, securing or pertaining to any other loan or indebtedness secured by the Property or the Project, whether prior or subordinate to the Loan Documents;

(s) Default Under Permitted Exceptions. Any breach or default of Borrower under any Permitted Exceptions, or under any other liens or encumbrances now or hereafter encumbering all or a portion of the Project, or any indebtedness or obligations secured thereby;

(t) Failure of Disbursement Conditions. Inability of Borrower to satisfy any condition for the receipt of a disbursement requested by Borrower hereunder, or to resolve the situation to the satisfaction of Lender, for a period in excess of thirty (30) days after written notice from Lender;

(u) Bankruptcy of General Contractor. The bankruptcy or insolvency of the General Contractor or the withdrawal or termination of the General Contractor from proceeding with construction of the Project and the failure of Borrower to procure a contract at the same price, or, if at a higher price, to supply the additional funds thereby required with a new general contractor satisfactory to Lender within thirty (30) days from the occurrence of such bankruptcy, insolvency or withdrawal;

(v) Abandoning the Property. Borrower abandons the Property or ceases to do business or terminates its business for any reason whatsoever or fails to maintain its existence in good standing in the State.

10.2 Acceleration Upon Default; Remedies. Upon the occurrence of any Default specified in this Article 10, Lender may, at its sole option, declare all sums owing to Lender under the Note, this Agreement and the Loan Documents immediately due and payable without presentment, demand, protest or further notice of any kind. Upon such acceleration, Lender may, in addition to all other remedies permitted under this Agreement and the Loan Documents and at law or equity, apply any sums in the Account or in its possession to the sums owing under the Loan Documents, and any and all obligations of Lender to fund further disbursements under the Loan shall terminate.

10.3 Disbursements to Third Parties. Upon the occurrence of a Default occasioned by Borrower's failure to pay money to a third party as required by this Agreement, Lender may but shall not be obligated to make such payment from the Loan proceeds, Borrower's Funds, or other funds of Lender. If such payment is made from proceeds of the Loan or from Borrower's Funds, Borrower shall immediately deposit with Lender, upon written demand, an amount equal to such payment. If such payment is made from funds of Lender, Borrower shall immediately repay such funds upon written demand of Lender. In either case, the Default with respect to which any such payment has been made by Lender shall not be deemed cured until such deposit or repayment (as the case may be) has been made by Borrower to Lender.

10.4 Lender's Completion of Construction. Upon the occurrence of a Default, Lender may (but shall not be obligated to), upon five (5) days prior written notice to Borrower, and with or without legal process, take possession of the Property and Improvements, remove Borrower and all agents, employees and contractors of Borrower from the Property and Improvements, complete the work of construction and market and sell or lease the Property and/or Improvements.

For this purpose, Borrower irrevocably appoints Lender as its attorney-in-fact, which agency is coupled with an interest. As attorney-in-fact, Lender may (but shall not be obligated to), in Borrower's name, take or omit to take any action Lender may deem appropriate, including, without limitation, to exercise Borrower's rights under the Loan Documents and all contracts concerning the Property and/or Improvements.

10.5 Lender's Cessation of Construction. If Lender determines at any time that the Improvements are not being constructed in accordance with the Plans and Specifications and all governmental requirements, Lender may immediately cause all construction to cease on any of the Improvements affected by the nonconforming condition. Borrower shall thereafter not allow any construction work, other than corrective work, to be performed on any of the Improvements affected by the nonconforming condition until such time as Lender notifies Borrower in writing that the nonconforming condition has been corrected.

10.6 Repayment of Funds Advanced. Any funds expended by Lender in the exercise of its rights or remedies under this Agreement and the Loan Documents shall be payable to Lender upon demand, together with interest at the rate applicable to the principal balance of the Note from the date the funds were expended.

10.7 Rights Cumulative, No Waiver. All Lender's rights and remedies provided in this Agreement and the Loan Documents, together with those granted by law or at equity, are cumulative

and may be exercised by Lender at any time. Lender's exercise of any right or remedy shall not constitute a cure of any Default unless all sums then due and payable to Lender under the Loan Documents are repaid and Borrower has cured all other Defaults. No waiver shall be implied from any failure of Lender to take, or any delay by Lender in taking, action concerning any Default or failure of condition under the Loan Documents, or from any previous waiver of any similar or unrelated Default or failure of condition. Any waiver or approval under any of the Loan Documents shall be in writing and shall be limited to its specific terms.

10.8 Attorney-in-Fact. Borrower hereby constitutes and appoints Lender, or an independent contractor selected by Lender, as its true and lawful attorney-in-fact with full power of substitution for the purposes of completion of the Project and performance of Borrower's obligations under this Agreement in the name of the Borrower, and hereby empowers said attorney-in-fact to do any or all of the following upon the occurrence of a Default:

(a) to use any of the funds of Borrower, including any balance of the Loan and any funds which may be held by Lender for Borrower, for the purpose of effecting completion of the Project in the manner called for by the Plans and Specifications;

(b) to make such additions, changes and corrections in the Plans and Specifications as shall be necessary or desirable to complete the Project in substantially the manner contemplated by the Plans and Specifications;

(c) to employ any contractors, subcontractors, agents, architects and inspectors required for said purposes;

(d) to employ attorneys to defend against attempts to interfere with the exercise of the powers granted hereby;

(e) to pay, settle or compromise all existing bills and claims which are or may be liens against the Property or the Project or may be necessary or desirable for the completion of the Project or clearance of objections to or encumbrances on title;

(f) to execute all applications and certificates in the name of Borrower, which may be required by any construction contract;

(g) to prosecute and defend all actions or proceedings in connection with the Project and to take such action, require such performance and do any and every other act as is deemed necessary with respect to the completion of the Project which Borrower might do on its own behalf;

(h) to let new or additional contracts with the same contractor(s) or others to the extent not prohibited by their existing contracts;

(i) to employ watchmen and erect security fences to protect the Project from injury; and

(j) to take such action and require such performance as it deems necessary under any of the bonds or insurance policies to be furnished hereunder, to make settlements and compromises with the sureties or insurers thereunder, and in connection therewith to execute instruments of release and satisfaction.

It is understood and agreed that the foregoing power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked until repayment of the Loan.

10.9 Abatement of Lender Obligations; Additional Remedies. Upon the occurrence of any Default, Lender's obligation to make further disbursement of the Loan shall abate (at Lenders's sole option), and Lender shall have the right to exercise any and all rights and remedies under this Agreement, the Loan Documents or as otherwise provided by law or in equity.

## **ARTICLE 11 MISCELLANEOUS**

11.1 Assignment. Borrower shall not assign any of its rights under this Agreement, without the prior written consent of Lender.

11.2 Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by courier (including, without limitation, Federal Express or other express mail service) or sent by registered or certified mail (postage prepaid) through the United States Postal Service to the addresses shown below or such other addresses which the parties may provide to one another in accordance herewith. Such notices, requests and demands, if delivered by hand, shall be deemed given when actually received, except that notices sent by mail shall be deemed received three (3) calendar days following the date of mailing.

To Lender:           City of Merced  
678 West 18<sup>th</sup> Street  
Merced, California 95340  
Attention: City Clerk

To Borrower:       Sunny View of Merced, L.P.  
320 Golden Shore Drive, Suite 200  
Long Beach, California 90802-4217  
Attn: Brian Gentner, Esq.  
Facsimile No.: (562) 901-0918

With a copy to (which shall not constitute notice to the Borrower):

Multi-Housing Investments, LLC  
320 Golden Shore Drive, Suite 200  
Long Beach, California 90802-4217

Attn: Jeffrey Weiss  
Facsimile No.: (562) 256-2003

11.3 Authority to File Notices. Borrower irrevocably appoints Lender as its attorney-in-fact, with full power of substitution, to file for record, at the Borrower's cost and expense and in Borrower's name, any notices of completion, notices of cessation of labor, or any other notices that Lender considers necessary or desirable to protect its security upon occurrence of a Default.

11.4 Payments. All payments under this Agreement, the Note or any Loan Documents shall be made to Lender in immediately available funds not later than 11:30 a.m. Pacific Time on the dates such payments are to be made. Any payment received after 11:30 a.m. shall be deemed received by Lender on the next Business Day.

11.5 No Waiver. No disbursement of proceeds of the Loan shall constitute a waiver of any conditions to Lender's obligation to make further disbursements nor, in the event Borrower is unable to satisfy any such conditions, shall any such waiver have the effect of precluding Lender from thereafter declaring such inability to constitute a Default under this Agreement.

11.6 Lender Approval of Instruments and Parties. All proceedings taken in accordance with transactions provided for herein; all waivers of lien, surveys, appraisals and documents required or contemplated by this Agreement; the power, authority, capability and expertise of persons responsible for the execution and preparation thereof; and the form of the general contracts, subcontracts, all leases, bonds and guaranties shall be satisfactory to and subject to approval by Lender. Lender's counsel shall be provided with copies of all documents which they may reasonably request in connection with this Agreement.

11.7 Third-Party Consultants. Lender may hire such third-party consultants as it reasonably deems necessary, the reasonable costs of which shall be paid by Borrower, to provide the following services: (a) review final Plans and Specifications; (b) review the Budget and the Construction Schedule; (c) conduct compliance inspections with respect to the progress of construction of the Project and approve each element of a request for disbursement relating to construction costs; and (d) perform such other services as may, from time to time, be required by Lender to protect its security interest in the Project, including, without limitation, establishing the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Agreement.

11.8 Payment of Expenses. Borrower shall pay all taxes and assessments and all expenses, charges, costs and fees provided for in this Agreement or relating to the Loan or construction of the Project, including all fees, charges, and taxes in connection with recording or filing any of the Loan Documents, title insurance premiums and charges, fees of any consultants, fees and expenses of Lender's counsel (which attorneys may be employees of Lender), fees and expenses of Lender's special counsel (which may include fees billed for law clerks, paralegals and other persons not admitted to practice law but performing services under the supervision of an attorney), printing, photocopying and duplicating expenses, air freight charges, escrow fees, costs of surveys, escrow fees, and premiums of hazard insurance policies and surety bonds and fees for any appraisal, market or feasibility study required by Lender. Lender shall provide Borrower with invoices for such



expenses, which invoices Borrower shall pay pursuant to the terms of the Loan Documents. All such expenses, charges, costs and fees shall be Borrower's obligation whether or not Borrower has requested and met the conditions for a disbursement of the Loan. This obligation on the part of Borrower shall survive the repayment of the Loan and reconveyance of the Deed of Trust. Borrower hereby authorizes Lender, in its discretion, to pay such expenses, charges, costs and fees at any time by a disbursement of the Loan.

11.9 Disclaimer by Lender. Lender shall not be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. Lender shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Property or the Project. Borrower is not and shall not be an agent of Lender for any purpose. Lender is not a joint venture partner with Borrower or with the constituent partners in Borrower in any manner whatsoever. Lender makes no warranty, guarantee, or representation of any kind concerning Borrower's ability to obtain and/or qualify for tax credits under applicable state and/or federal laws and regulations. Prior to a Default under this Agreement or the Loan Documents and the exercise of remedies granted herein, Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment of funds directly to a contractor, subcontractor, or provider of services be deemed to create any third party beneficiary status or recognition of same by Lender. Approvals granted by Lender for any matters covered under this Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval.

11.10 Indemnification. Notwithstanding any provision to the contrary, Borrower hereby agrees to protect, defend, indemnify and hold Lender, its directors, officers, employees, agents, successors and assigns harmless from and against any and all losses, damages, liabilities, injuries (including death of person or persons), claims, actions, judgments, court costs and legal or other expenses (including, without limitation, attorneys' fees and expenses) which Lender may incur as a 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 Loan Documents in any material respect; (c) any failure at any time of any of Borrower's representations or warranties to be true and correct in any material respect; or (d) any negligent or wrongful act or omission by Borrower or General Partner of Borrower, any contractor, subcontractor or material supplier, engineer, architect or other person or entity with respect to any of the Property or Improvements. Borrower shall pay to Lender within ten (10) days of Lender's written notification, 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. It is understood that the duty of Borrower to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Lender of insurance certificates and endorsements required under this Agreement does not relieve Borrower from liability under this indemnification and hold harmless clause. **BORROWER'S DUTY AND OBLIGATIONS TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER SHALL SURVIVE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE DEED OF TRUST.**

11.11 Inconsistencies with Loan Documents. In the event of any inconsistencies between the terms of this Agreement and any terms of any of the Loan Documents, the terms of this Agreement shall govern and prevail.

11.12 Titles and Headings. The titles and headings of sections of this Agreement are intended for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

11.13 Changes, Waivers, Discharge and Modifications in Writing. No provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

11.14 Choice of Law; Venue and Jurisdiction. This Agreement and the transaction contemplated hereunder shall be governed by and construed in accordance with the laws of the State of California, except to the extent that Federal laws preempt the laws of the State of California, and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

11.15 Disbursements in Excess of Loan Amount. In the event the total disbursements by Lender exceed the Loan Amount, to the extent permitted by the laws of the State, the total of all disbursements shall be secured by the Deed of Trust. All other sums expended by Lender pursuant to this Agreement or any Loan Document shall be deemed to have been paid to Borrower and shall be secured by, among other things, the Deed of Trust.

11.16 Time is of the Essence. Time is of the essence of each and every term of this Agreement.

11.17 Completion of Construction. For purposes of subdivision (h) of Section 9334 of the California Commercial Code, "completion of construction" shall not be deemed to occur prior to completion of all work, and installation or incorporation into the Improvements of all materials, for which Loan proceeds are disbursed by Lender.

11.18 Submission of Agreement. The submission of this Agreement to Borrower or its agent or attorney for review or signature does not constitute a commitment by Lender to make the Loan to Borrower, and this Agreement shall have no binding force or effect until its execution and delivery by both Borrower and Lender.

11.19 Limitation on Partners' Liability. Lender's recovery against any partner of Borrower under the Loan Documents shall be limited solely to the collateral given to Lender as security for Borrower's performance under the Loan Documents and to the general assets of Borrower itself. Such recovery shall not be a lien, or the basis of a claim of lien or levy of execution, against the general assets of any general or limited partner of Borrower. Notwithstanding the foregoing, Borrower, any general partner of Borrower and the general assets of any general partner of Borrower shall be fully liable to Lender to the same extent that Borrower would be liable absent the foregoing

limitation of this Section for: (a) fraud or willful misrepresentation on the part of Borrower or such partner; (b) waste; (c) failure of such partner to pay any income or other taxes, assessments or other charges attributable to such partner which can create liens on any portion of the Project (to the full extent of any such taxes, assessments or other charges); (d) the amount of any money or value of any property received by such partner as a distribution of earnings or income from the Project if such distribution was prohibited under the terms of this Agreement (to the full extent of such distribution); (e) any breach by Borrower of any covenant under Article 7, entitled Hazardous Materials, any representation or warranty of Borrower under such Article proving to have been untrue when made, or the presence of any significant Hazardous Materials in, on or about the Project which are discovered subsequent to the Effective Date; or (f) any obligation arising from the indemnity set forth in Section 11.10 hereof, except for payment of principal and interest in the Note. In addition, the limitations hereof shall not be deemed to limit: (i) any right Lender might otherwise have to obtain injunctive relief against Borrower, any partner of Borrower or any other person or entity; (ii) any suit, action or proceeding (including without limitation exercise of the power of sale under or the filing of an action for judicial foreclosure of the Deed of Trust), in connection with the preservation, enforcement or foreclosure of the liens, mortgages, assignments and security interests now or at any time hereafter securing the payment and performance of all obligations under this Agreement or any of the Loan Documents; or (iii) the collection of amounts which may become owing or payable under or on account of insurance, condemnation awards or damages for other public actions or surety bonds maintained or provided by Borrower; provided, however, that the assertion by Lender of any such right, suit, action or collection of amounts shall not result in a monetary claim upon the general assets of any general or limited partner of Borrower except as otherwise provided herein.

**11.20 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.

**11.21 Actions.** Borrower agrees that Lender, in exercising the rights, duties or liabilities of Lender or Borrower under the Loan Documents, may commence, appear in or defend any action or proceeding purporting to affect the Property, the Improvements, or the Loan Documents and Borrower shall immediately reimburse Lender upon demand for all such expenses so incurred or paid by Lender, including, without limitation, attorneys' fees and expenses and court costs.

**11.22 Right of Contest.** Borrower may contest in good faith any claim, demand, levy or assessment by any person other than Lender which would constitute a Default if : (a) Borrower pursues the contest diligently, in a manner which Lender determines is not prejudicial to Lender, and does not impair the rights of Lender under any of the Loan Documents; and (b) Borrower deposits with Lender any funds or other forms of assurance which Lender in good faith determines from time to time appropriate to protect Lender from the consequences of the contest being unsuccessful. Borrower's compliance with this Section shall operate to prevent such claim, demand, levy or assessment from becoming a Default.

**11.23 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.

11.24 Attorneys' Fees and Expenses; Enforcement. If any attorney is engaged by Lender to enforce or defend any provision of this Agreement, any of the Loan Documents or Related Documents, or as a consequence of any potential default or Default under the Loan Documents, with or without the filing of any legal action or proceeding, Borrower shall immediately pay to Lender, upon demand, the amount of all reasonable attorneys' fees and expenses and all costs incurred by Lender in connection therewith, 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. For the purpose of this Agreement and the Loan Documents, the term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of any attorney, and "reasonable" attorneys' fees shall mean the standard rates charged by Lender's regular outside litigation counsel from time to time.

11.25 Lender's Consent. Wherever in this Agreement there is a requirement for Lender's consent or approval, it is understood by such phrase that Lender shall exercise its consent or approval in its sole and absolute discretion.

11.26 Loan Sales and Participations; Disclosure of Information. Borrower agrees that Lender may elect, at any time, to sell, assign or grant participations in all or any portion of its rights and obligations under the Loan Documents, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities, at Lender's sole discretion ("Participant"). Borrower further agrees that Lender may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Lender with respect to: (a) the Property and Improvements and their operation; (b) any party connected with the Loan (including, without limitation, the Borrower, any partner of Borrower, any constituent partner of Borrower, any guarantor and any non-borrower trustor); and/or (c) any lending relationship other than the Loan which Lender may have with any party connected with the Loan. In the event of any such sale, assignment or participation, Lender and the parties to such transaction shall share in the rights and obligations of Lender as set forth in the Loan Documents only as and to the extent they agree among themselves. In connection with any such sale, assignment or participation, Borrower further agrees that the Loan Documents shall be sufficient evidence of the obligations of Borrower to each purchaser, assignee, or participant, and upon written request by Lender, Borrower shall enter into such amendments or modifications to the Loan Documents as may be reasonably required in order to evidence any such sale, assignment or participation. The indemnity obligations of Borrower under the Loan Documents shall also apply with respect to any purchaser, assignee or participant.

11.27 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 Loan Documents. Any reference to Lender in any of the Loan Documents shall include Lender's agents, employees or independent contractors.

11.28 Tax Service. Lender is authorized to secure, at Borrower's expense, a tax service contract with a third party vendor which shall provide tax information on the Property and Improvements satisfactory to Lender.

11.29 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

11.30 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 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 in any of the Loan Documents to the Property or Improvements shall include all or any part of the Property or Improvements. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing.

11.31 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.

11.32 Counterparts. This Agreement, any of the Loan Documents (except for the Note), any Related Documents and any subsequent modifications, amendments, waivers, consents or supplements thereof, if any, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all such counterparts together, shall constitute one and the same instrument.

11.33 Relationship of Parties. No right or benefit conferred on Lender under this Agreement shall constitute or be deemed to constitute Lender a partner or a joint venturer with Borrower. Borrower and Lender specifically acknowledge that the relationship between Borrower and Lender is solely that of Borrower and Lender and that all payments required to be made by Borrower to Lender under this Agreement and other Loan Documents are required solely by reason of that relationship.

11.34 Authority to Execute. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

IN WITNESS WHEREOF, Lender and Borrower have caused this Agreement to be duly executed and delivered as of the date first written hereinabove.

**"BORROWER":**

SUNNY VIEW OF MERCED, L.P.,  
A California Limited Partnership

By: Western Community Housing, Inc,  
California Nonprofit Corporation,  
its General Partner

By:   
Name: Graham Espley-Jones  
Title: President

**"LENDER":**

CITY OF MERCED  
A California charter municipal corporation

BY:   
City Manager

ATTEST:  
JAMES G. MARSHALL, CITY CLERK

By: *[Signature]*  
Deputy City Clerk

APPROVED AS TO FORM:

By: *[Signature]*  
City Attorney

250831 P# 75668  
ACCOUNT DATA:

BY: *[Signature]*  
Verified by Finance Officer

MR #1909  
11/30/05  
RF

033-130552-29-00  
\$587,000 - over three years per dept  
funds available mth 11-30-05  
S. R.

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**Exhibits**

Exhibit A	Real Property Description
Exhibit B	[Budget/Financial Requirements Analysis]
Exhibit C	Construction Schedule
Exhibit D	Loan Documents and Related Documents
Exhibit E	Description of Plans and Specifications
Exhibit F	Reserved
Exhibit G	Permitted Exceptions
Exhibit H	Required Insurance



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**EXHIBIT A**

**DESCRIPTION OF REAL PROPERTY**

City of Merced:

Parcel 2, of Parcel Map titled City of Merced Lot Split #03-06, recorded on October 29, 2003 in Book 94 of Parcel Maps, at Pages 33 & 34, as Document No. 2003070795 in the Merced County Recorder's Office, State of California.

Assessors Parcel No: 035-010-062

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## **EXHIBIT B**

### **[BUDGET]**

[The Budget is to be approved by Lender in writing. Lender shall not be obligated to make any advances under this Agreement until it has approved a Budget in writing. Advancing any funds by Lender without having first approved a Budget shall not constitute a waiver of Lender's right to approve a Budget prior to any other advances.]

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## **EXHIBIT C**

### **CONSTRUCTION SCHEDULE**

[The Construction Schedule is to be approved by Lender in writing. Lender shall not be obligated to make any advances under this Agreement until it has approved a Construction Schedule in writing. Advancing any funds by Lender without having first approved a Construction Schedule shall not constitute a waiver of Lender's right to approve a Construction Schedule prior to any other advances.]

## EXHIBIT D

### LOAN DOCUMENTS AND RELATED DOCUMENTS

A. Loan Documents. The documents listed below, and amendments, modifications and supplements thereof which have received the prior written consent of Lender, together with any documents executed in the future that are approved by Lender and the recitation 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 Secured by Deed of Trust of even date herewith executed by Borrower in favor of Lender;
3. The Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (Construction Trust Deed) ("**Deed of Trust**") of even date herewith executed by Borrower, as Trustor, the title company approved by Lender as Trustee, for the benefit of Lender, as Beneficiary;
4. Uniform Commercial Code - Financing Statement - Form UCC-1, of even date herewith, executed by Borrower as Debtor in favor of Lender as Secured Party in conjunction with the above;

B. Related Documents (which are **not** Loan Documents):

1. The Partnership Agreement of Borrower, and the Certificate of Limited Partnership of Borrower (LP-1) filed with the State, and any amendments thereto, and a current Certificate of Status (good standing) for Borrower from the Secretary of State of the State.
2. The Articles of Incorporation and Bylaws of the General Partner of Borrower, and any amendments thereto, and a current Certificate of Status (good standing) for the General Partner of Borrower from the California Secretary of State.
3. All insurance policies and certificates of insurance for the insurance required in Exhibit H hereto.

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## **EXHIBIT E**

### **DESCRIPTION OF PLANS AND SPECIFICATIONS**

The Plans and Specifications for the Project prepared by the Architect are to be approved in writing by Lender. Lender shall not be obligated to make any advances under this Agreement until it has approved the Plans and Specifications in writing. Advancing any funds by Lender without having first approved the Plans and Specifications shall not constitute a waiver of Lender's right to approve the Plans and Specifications prior to any other advances.

The Plans and Specifications for the Project shall be per the plans approved by the City of Merced for building permit purposes.

## **EXHIBIT H**

### **REQUIRED INSURANCE**

1. During construction of the Improvements, Borrower shall maintain or cause to be maintained the following insurance coverages, all in form acceptable to Lender, and in each instance containing provision for not less than 30 days prior written notice to Lender before the same is canceled, allowed to expire, or the coverage reduced:

(a) builder's risk insurance in the amount determined by Lender, which shall be an amount not less than the completed value of the Improvements on a replacement cost basis, without allowance for depreciation and without regard to the balance of the Loan outstanding, such insurance to be on an "all risks" basis, specifically including (without limitation) coverage against fire, extended coverage, vandalism and malicious mischief, and including coverage for materials in storage and while in transit, such insurance to include course of construction provisions or a course of construction endorsement, and to include a standard non-contributory mortgage clause in favor of Lender;

(b) commercial general liability insurance on an "occurrence" basis against claims for "personal injury", including death, bodily injury or property damage liability and in such an amount as Lender may from time to time find to be prudent under the circumstances, but in no event less than \$5,000,000, and naming Lender as an additional insured;

(c) workers' compensation and employer's liability insurance with respect to claims by employees of Borrower and by any contractor and the employees of any contractor supplying labor or materials with respect to the Project;

(d) unless Borrower establishes to Lender's satisfaction that the Property is not located within a flood zone, flood insurance;

(e) such additional insurance as may be required by Lender from time to time.

2. After substantial completion of the Improvements, Borrower shall maintain or cause to be maintained the following insurance coverages, all in form acceptable to Lender, and in each instance containing provision for not less than 30 days prior written notice to Lender before the same is canceled, allowed to expire, or the coverage reduced:

(a) property hazard insurance on an "all risks" replacement cost basis; to include a standard lender (mortgagee) loss payee clause or endorsement in favor of Lender;

(b) commercial general liability insurance on an "occurrence" basis against claims for "personal injury" liability, including death, bodily injury or property damage liability and in such an amount as Lender may from time to time find to be prudent under the circumstances, but in no event less than \$5,000,000, and naming Lender as an additional insured;

(c) workers' compensation and employer's liability insurance;

(d) unless Borrower establishes to Lender's satisfaction that the Property is not located within a flood zone, flood insurance; and

(e) such additional insurance as may be required by Lender from time to time.

3. The insurance requirements specified herein may be satisfied by a blanket policy maintained by or for the benefit of Borrower, provided that the following requirements are satisfied:

(a) The Project is specifically identified as an insured property in the policy or a schedule attached thereto; and

(b) The policy is endorsed to provide that in all events no less than the limits of liability specified above shall be available in the event of a loss relating to the Project, despite any other losses which may have been sustained during any applicable policy period; and

(c) Lender is furnished with a certified copy of all relevant portions of the policy (excluding reference to other properties covered or other insureds, if desired by Borrower), and the originals of (i) of the endorsement referred to in paragraph (b) above, and (ii) current certificates of insurance from time to time indicating that the premiums for such insurance are fully paid and the coverage in force at all times.

4. Notwithstanding anything to the contrary herein, the Borrower shall at all times maintain such insurance so as to comply with the requirements of the Senior Lender and Senior Loan Documents. All casualty insurance policies obtained by Borrower for the Property and the Project, covering any loss or damage from any cause, shall include Lender as a loss payee under a lender (mortgagee) loss payee clause satisfactory to Lender, and all proceeds of such insurance shall be payable to Lender, subject to the rights of the Senior Lender. All liability insurance policies obtained by Borrower for the Property and the Project shall name Lender and its directors, officers, employees, agents, successors and assigns as an additional insured.

**AMENDMENT  
TO  
CITY LOAN AGREEMENT**

This First Amendment to City Loan Agreement (the "**First Amendment**") is made and entered as of May 1, 2006 by and between the City of Merced, a California Charter Municipal Corporation (the "**City**") and Sunny View of Merced, L.P., a California limited partnership (the "**Owner**").

**RECITALS**

A. The City and the Owner entered into that certain City Loan Agreement (the "**Agreement**") which was executed by the City on December 5, 2005.

B. The City and the Owner desire to amend the Agreement, to correct and modify certain terms of the Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of other good and valuable consideration the receipt of which is acknowledged, the parties agree as follows:

1. The definition of "Improvements" set forth in the Agreement is modified to read as follows: "Improvements means a 113-unit low income and very low income affordable housing apartment project together with related parking facilities and on and off-site improvements, including, without limitation, curbs, gutters, landscaping, street improvements, and underground utilities, all of which shall be constructed in accordance with the Plans and Specifications, and all appurtenances and fixtures thereto and thereon."
2. The following definition of Low Income Households is added to the Agreement: "Low Income Households shall mean households with Adjusted Income that do not exceed the maximum level of income for low income households under HUD regulations for Merced County, California, adjusted for household size."
3. The following definition of Very Low Income Households is added to the Agreement: "Very Low Income Households shall mean households with Adjusted Income that do not exceed the maximum level of income for very low income households under HUD regulations for Merced County, California, adjusted for household size."

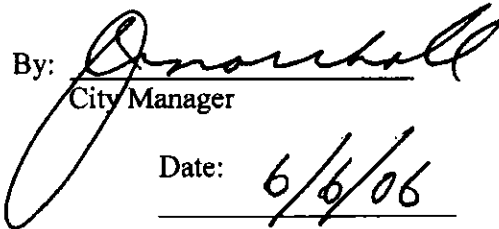


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4. The Budget attached as Exhibit B to the City Loan Agreement is hereby replaced in its entirety with the revised Budget attached hereto as Exhibit B.
  5. The Construction Schedule attached as Exhibit C to the City Loan Agreement is hereby replaced in its entirety with the revised Construction Schedule attached hereto as Exhibit B.
  6. Except for the changes set forth in this Amendment, the Agreement is not modified, is ratified by the parties and remains in full force and effect.
  7. This First Amendment may be executed in counterparts, and when taken together shall constitute a single, integrated, and fully executed agreement.

**SIGNATURE PAGE IS THE NEXT PAGE**

IN WITNESS WHEREOF, the City and the Developer have for themselves and their successors and assigns executed this Amendment to City Loan Agreement by their duly authorized representatives which shall become effective the date in which the last of the parties, whether City or Developer, executes this document.

**THE CITY OF MERCED,**  
A California Charter Municipal  
Corporation  
("City")

By:   
City Manager  
Date: 6/6/06


ATTEST:  
JAMES G. MARSHALL, CITY CLERK

By:   
Deputy City Clerk

APPROVED AS TO FORM:

By:  5/30/06  
City Attorney

250731  
ACCOUNT DATA:

BY:   
Verified by Finance Officer

ME # 1909  
no funds required stalo rep TR

**SUNNY VIEW OF MERCED, L.P.**

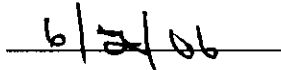
**a California limited partnership  
("Developer")**

By: **Western Community Housing, Inc.**  
a California nonprofit public benefit corporation,  
Its: General Partner

By:   
Graham Espley-Jones, President

Taxpayer I.D. No.: 95-4751332

ADDRESS: 151 Kalmus Drive, Suite J-5  
Costa Mesa, Ca 92626  
TELEPHONE: (714) 549-4100  
FAX: (714) 549-4600  
E-MAIL: graham@wchousing.com

Date: 

[ALL OFFICER/PRINCIPAL SIGNATURES TO BE NOTARIZED]

STATE OF CALIFORNIA )

) ss.

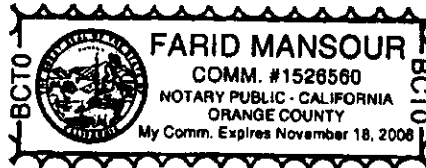
COUNTY OF Orange )

On 6-2-2006 before me, FARID MANSOUR, Notary Public, personally appeared  
Graham ESPley Jones

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the parson(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature (Seal)



STATE OF CALIFORNIA )

) ss.

COUNTY OF Merced )

On June 6, 2006 before me, Nobie M. Reynolds personally appeared  
James G. Marshall

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the parson(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature (Seal)

Nobie M. Reynolds  
Nobie M. Reynolds  
Notary

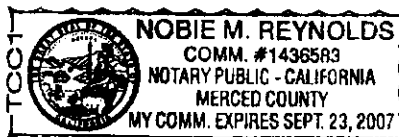


EXHIBIT  
"B"

Schedule of Values

Sunny View Apartments  
Merced, CA

1526- DEMOLITION			Comments
2100	Contaminated Site Remediation		
2220	Demolition	\$0	N/A
15260	Asbestos Removal	\$0	N/A
TOTAL DEMOLITION		\$0	N/A

1534- ON-SITE			Comments
1970	Dust Control		
2045	Import/Export Soils	\$0	
2230	Clearing/Grubbing	\$32,060	Export moved from Phase I
2311	Rough Grading	\$0	
2312	Finish Grading	\$347,348	
2313	Fine Grading	\$44,495	
2340	Fill Soil Stabilization	\$0	
2360	Yardfill Soil Treatment	\$0	
2370	Erosion Control	\$0	
2610	Water Distribution	\$32,060	
2630	Sewer Distribution	\$337,850	
2650	Gas Distribution	\$178,830	
2680	Electrical Distribution (Primary)	\$67,316	
2690	Electrical Distribution (Secondary)	\$87,170	
2581	Telephone Distribution (Primary)	\$14,865	
2582	Telephone Distribution (Secondary)	\$14,865	
2583	CATV Distribution (Primary)	\$7,300	
2584	CATV Distribution (Secondary)	\$14,125	
2620	Trenching	\$0	
2630	Storm Drainage	\$0	
2740	Asphalt Pavement	\$271,100	
2750	Concrete Pavement	\$178,850	
2760	Pavement Sloping/Traffic Warnings	\$0	
2770	Concrete Curbs & Gutters	\$80,360	
2780	Precast Concrete Pavers	\$0	
2820	Perimeter Fences & Gates (Tubular Steel)	\$0	
2821	Perimeter Fences & Gates (Wood)	\$25,320	
2822	Perimeter Fences & Gates (Chainlink)	\$0	
2830	Retaining Walls	\$0	
2840	Parking Bumpers	\$0	
4220	Perimeter Walls (Concrete Masonry Units)	\$0	
TOTAL ON-SITE		\$1,700,250	

1522- OFF-SITE			Comments
2311	Rough Grading		
2312	Finish Grading	\$18,360	
2313	Fine Grading	\$7,085	
2610	Water Distribution	\$0	
2630	Sewer Distribution	\$28,850	
2650	Gas Distribution	\$8,000	
2680	Electrical Distribution (Primary)	\$0	
2581	Telephone Distribution (Primary)	\$28,600	Street light relocation
2582	CATV Distribution (Primary)	\$0	
2630	Storm Drainage	\$0	
2740	Asphalt Pavement	\$0	
2750	Concrete Pavement	\$131,860	
2760	Pavement Sloping/Traffic Warnings	\$20,300	
2770	Concrete Curbs & Gutters	\$28,400	
2775	Concrete Sidewalks	\$0	
2780	Precast Concrete Pavers	\$0	
2830	Retaining Walls	\$0	
2880	Traffic Signs and Signals	\$0	
4220	Concrete Masonry Units (CMU)	\$14,125	
TOTAL OFF-SITE		\$281,100	

## Schedule of Values

Sunny View Apartments  
Merced, CA

1836-	BASE CONSTRUCTION		Comments
1740	Final Cleaning	\$28,700	
3200	Concrete Reinforcement	\$23,200	
3310	Structural Concrete	\$498,560	
3400	Precast Concrete Slab Tracis	\$36,000	
3540	Lightweight Concrete Underlayment	\$79,860	
4220	Concrete Masonry Unit	\$0	
4730	Stratified Stone Veneer	\$0	
4810	Block Veneer	\$0	
5120	Structural Steel	\$9,828	
5500	Misc. Metal Fabrications	\$14,980	
5610	Metal Stairs	\$208,100	
5830	Metal Handrails and Railings	\$16,225	
6101	Rough Carpentry (Materials)	\$1,369,828	
6102	Rough Carpentry (Labor)	\$714,350	
6200	Finish Carpentry	\$350,650	
6410	Cabinets (National Contract)	\$228,128	
6415	Counter Tops	\$108,008	
7109	Waterproofing	\$19,775	
7180	Deck Coating	\$80,130	
7210	Building Insulation	\$114,730	
7310	Asphalt Shingle Roofing	\$0	
7320	Concrete Tile Roofing	\$662,078	
7490	Sliding	\$0	
7505	Flashing & Gasket Metal	\$4,500	
7616	Standing Seam Roof	\$0	
7719	Roof Accessories, Gutters & Downspouts	\$42,879	
7808	Fire & Smoke Protection	\$15,330	
8100	Metal Doors & Frames	\$7,760	
8210	Wood Doors	\$0	
8220	Fiberglass Doors	\$0	
8280	Sliding Wood & Plastic Doors	\$0	
8310	Specialty Doors	\$0	
8380	Overhead Garage Doors	\$0	
8500	Windows & Sliding Glass Doors	\$168,065	
8700	Finish Hardware	\$37,445	
8830	Mirrors	\$12,715	
9220	Exterior Plaster	\$818,575	
9250	Gypsum Board	\$775,485	
9310	Ceramic Tile	\$17,430	
9800	Floor Covering - Res Center	\$18,605	
9850	Resilient Flooring - Units	\$59,030	
9880	Carpet - Units (Materials)	\$18,321	
9890	Carpet - Units (Labor)	\$46,860	
9911	Painting (Interior)	\$184,325	
9912	Painting (Exterior)	\$81,898	
9913	Wallcoverings - Res Center	\$0	
10150	Tub/Shower Enclosures	\$3,080	
10308	Manufactured Fireplace	\$0	
10520	Fire Extinguishers	\$0,695	
10559	Mailboxes	\$0	See blocks, below
10800	Towel Bath Accessories	\$35,318	
11450	Appliances (National Contract)	\$124,775	
12490	Window Treatments - units only	\$40,828	
12480	Window Treatments - recreation bldg only	\$8,420	
13706	Intrusion Alarm	\$1,178	Frame only
13860	Fire Alarm (DESIGN BUILD)	\$148,320	
14300	Elevators	\$0	N/A
14560	Traffic Chute	\$0	N/A
15100	Plumbing	\$870,870	
15300	Fire Protection System	\$134,193	
15410	Garbage Disposals (National Contract)	\$0	
15700	HVAC	\$460,970	
16200	Electrical	\$1,104,145	
16500	Electrical Fixtures	\$0	In electrical
16510	Electrical Fixtures (Isidor)	\$0	In electrical
16721	Telephone Prewire	\$0	In electrical
16722	Emergency Call (DESIGN BUILD)	\$0	N/A
16770	Cable TV and TV Common Antenna (DESIGN BUILD)	\$0	In electrical
TOTAL BASE CONSTRUCTION		\$5,230,515	

## Schedule of Values

Sunny View Apartments  
Merced, CA

1538-	EXTERIOR COMMON AREA		Comments
2775	Concrete Structural Pool Deck	\$455,845	
2790	Recreational Amenities	\$21,889	
2810	Insulation Systems	\$44,738	
2820	Perimeter Fences & Gates (Tubular Steel)	\$78,676	
2821	Perimeter Fences & Gates (Wood)	\$0	
2822	Perimeter Fences & Gates (Chain-Link)	\$0	
2823	Blacktop Gates/Intercom at Entry Gate	\$0	
2870	Outdoor Furniture (OFO)	\$4,120	
2900	Playground Equipment	\$28,536	
2900	Landscape Planting (Materials)	\$88,215	
2910	Landscape Planting (Labor)	\$38,218	
4220	Trench Enclosure (Concrete Masonry Units)	\$40,023	
6100	Trails	\$0	
10400	Storage (Storage)	\$3,260	
10430	Building Storage (Accessories)	\$15,539	
10430	Exterior Mount Signage	\$7,535	
10630	Corporis	\$0	
10650	Mail (Kiosk)	\$18,245	
11480	Barbecue Equipment	\$7,535	
12-400	Recreation Building Interiors (OFO)	\$0	
13180	Pool	\$78,640	
13190	Spa	\$0	
10520	Exterior Site Lighting (Fixtures)	\$15,640	
10521	Exterior Site Lighting (Labor)	\$0	
10720	Intercom	\$0	N/A
TOTAL EXTERIOR COMMON AREA		\$1,433,850	

## Schedule of Values

Sunny View Apartments  
Merced, CA

1540-	GENERAL REQUIREMENTS		Comments
1510	General Contract Bond (If Required)	\$0	
1520	Insurance	\$0	
1500	City License	\$0	
1512	Project Manager	\$0	
1514	Project Superintendent	\$73,628	
1516	Assistant Project Superintendent	\$52,268	
1518	General Labor	\$53,750	
1522	Testing Inspection and Laboratory (By Owner)	\$0	
1512	Temporary Fire Protection	\$10,780	
1514	Temporary Electric (Distributed)	\$8,040	
1514	Temporary Electric (Usage)	\$8,448	
1516	Temporary Telephone	\$7,568	
1518	Temporary Water	\$8,500	
1521	Contractor Tools & Supplies	\$3,300	
1522	First Aid Kit	\$300	
1524	Field Office	\$11,500	
1526	Job Office Supplies	\$5,180	
1526	Trash Site	\$44,725	
1528	Temporary Toilet	\$3,578	
1580	Security	\$38,315	
1582	Storage Bin	\$20,010	
1584	Temporary Fencing	\$13,105	
1740	Site Maintenance	\$25,867	
TOTAL GENERAL REQUIREMENTS		\$411,277	

TOTALS	
TOTAL DEMOLITION	\$0
TOTAL ON-SITE	\$1,700,450
TOTAL OFF-SITE	\$281,100
TOTAL BASE CONSTRUCTION	\$9,237,515
TOTAL EXTERIOR COMMON AREA	\$930,550
SUB TOTAL	\$12,869,515

TOTAL GENERAL REQUIREMENTS	\$411,277	3.39%
CONTRACTOR'S FEE	\$0	
TOTAL OVERHEAD	\$0	
SUB TOTAL	\$411,277	3.39%

CONTINGENCIES	\$0
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GRAND TOTAL	\$13,280,792
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## **EXHIBIT C**

### **Construction Schedule**

<b>Milestone</b>	<b>Revised Schedule</b>
Permits	November-05
Mobilization	May-06
Grading	June-06
Underground Utilities	July-06
Foundations	August-06
Framing	October-06
Finish Work	February-07
Completion of Site Work	June-07
Certificate of Occupancy	July-07

**M. STEPHEN JONES**  
County Recorder

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CM City of Merced

G

THE CITY OF MERCED  
A California Charter Municipal Corporation  
678 West 18<sup>th</sup> Street  
Merced, California 95340  
Attention: City Clerk

Doc#: 2006-006144



Titles:	1	Pages:	19
Fees		0.00	
Taxes		0.00	
Other		0.00	
PAID		\$0.00	

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE  
No recording fee required; this document exempt from fee pursuant to  
Section 27383 of the California Government Code

## REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Regulatory Agreement") is made and entered into as of this 5<sup>th</sup> day of December, 2005, by and between the CITY OF MERCED, a California Charter Municipal Corporation (the "City") and SUNNY VIEW OF MERCED, L.P., a California limited partnership (the "Developer").

### --RECITALS--

A. The City and the Developer have entered into that certain Affordable Housing Loan Agreement, dated as of 12/5, 2005 (the "Agreement"). A copy of the Agreement is on file with the City Clerk and incorporated herein by this reference.

B. Pursuant to the terms of the Agreement, the City will provide partial resources to the Developer for development of a 113-unit low-income and very low-income affordable housing project ("Project" herein) located at 1102-1144 D St in the City of Merced, said real property more specifically described in the Legal Description attached herein as Exhibit "A." In particular, City has agreed to provide the Developer with certain Low and Moderate-income Housing HOME funds in support of the Project to cover the difference between the budgeted cost of constructing the Project and the anticipated proceeds of the Senior Construction Financing and Borrower's equity, subject to certain conditions, hereinafter referred to as the "City Loan."

C. In consideration for the City Loan, the Developer has agreed to maintain one hundred and thirteen (113) of the rental dwelling units in the Project as available at "affordable rent" to low-income households and one (1) manager's unit to a low-income household as these terms are defined in the Agreement for the term of this Regulatory

Agreement and to further agree to observe all the terms and conditions set forth below.

D. The City has agreed to provide the City Loan on the condition that the Project be maintained and operated in accordance with Health and Safety Code Sections 33334.2 and 33413 and in accordance with certain additional restrictions concerning affordability, operation, and maintenance of the Project, as specified in this Regulatory Agreement.

E. In order to ensure that the Project will be used and operated in accordance with these conditions and restrictions, the City and the Developer wish to enter into this Regulatory Agreement for themselves and their successors and assigns.

THEREFORE, THE CITY MERCED, ITS SUCCESSORS AND ASSIGNS AND THE DEVELOPER, ITS SUCCESSORS AND ASSIGNS HEREBY COVENANT AND AGREE AS FOLLOWS:

## ARTICLE 1

### DEFINITIONS

1.1 Definitions. When used in this Regulatory Agreement, certain terms and phrases as denoted by an initially capitalized letter shall have the same meaning as found in the Agreement unless the specific context of the usage of a term or phrase may otherwise require, and certain additional defined terms which appear below in this Section 1.1 shall have the meaning in this Regulatory Agreement as ascribed below:

- a. "Adjusted Income" shall mean the total anticipated annual income of all persons in a household which occupies (or is proposed to occupy) a Unit as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor state housing program regulation that utilizes a reasonably similar method of calculation of adjusted annual income. In the event that no such program exists, the City shall provide the Developer with a reasonably similar method of calculation of adjusted income as provided in 25 California Code of Regulations Section 6914.
- b. "Agreement" means that certain City Loan Agreement dated as of December 5, 2005, by and between the Developer and the City. A copy of the Agreement is on file with the City Clerk and is incorporated herein by this reference.
- c. "Certificate of Occupancy Date" means the date of issuance by the City of the initial certificate of occupancy for the Project.
- d. "City" shall mean the City of Merced, California.

- e. "Closing Date" shall mean the date of recordation of this Regulatory Agreement.
- f. "HUD" shall mean the United States Department of Housing and Urban Development.
- f. "Management Agent" shall mean the experienced management agent selected by the Developer for the management of Project as provided in Section 5.2 of this Regulatory Agreement.
- g. "Developer" shall mean SUNNY VIEW OF MERCED, L.P., a California limited partnership.
- h. "Site" shall mean the real property described in Exhibit "A" attached hereto and incorporated herein.
- i. "Regulatory Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.
- j. "Rent" shall mean the total of each monthly payment by the tenants of a Unit to the Developer for the following: use and occupancy of the Unit and land and associated facilities, including parking (other than parking services acquired by tenants on an optional basis); any separately charged fees or service charges assessed by the Developer which are required of all tenants, other than security deposits; the cost of an adequate level of service for utilities paid by the tenant, including garbage collection, sewer, common area, water, electricity, gas and other heating, and refrigeration costs, but not telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Developer, and paid by the tenant.
- k. "Restricted Units" shall mean the one hundred thirteen (113) Housing Units which are affordable Rent to Very Low Income Households - restricted pursuant to this Regulatory Agreement.
- l. "Very Low-Income Households" shall mean households with Adjusted Income that do not exceed the maximum level of income for very low income households under HUD regulations for Merced County, California, adjusted for household size.
- m. "Term" shall mean the period of twenty (20) years, following the issuance by City of a Certificate of Completion for the Housing Units on the Site and ending on the twentieth (20<sup>th</sup>) anniversary following such date.
- n. "Housing Units" shall mean the one hundred thirteen (113) Very Low-Income and one (1) Low-Income Household management rental dwelling

unit to be constructed on the Site.

## ARTICLE 2

### VERY LOW-INCOME HOUSEHOLD RESTRICTED UNITS -- RENT AND OCCUPANCY AFFORDABILITY COVENANTS --

2.1 Occupancy Requirement. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest, that during the twenty (20) years following issuance by City of a Certificate of Completion for the Housing Units on the Site, not less than one hundred thirteen (113) of the Units (the "Restricted Units") shall be rented or occupied by, or if vacant, available for rental and occupancy exclusively by Very Low Income Households and one (1) manager's unit shall be rented or occupied by, or if vacant, available for rental and occupancy by a Low Income Households as defined in Health and Safety Code Section 50105 and in the Agreement. The Developer acknowledges that City has made no commitment to provide financial rental assistance to the Very Low income households, or to persons and families of low or moderate income.

2.2 Allowable Rent for Restricted Units.

a. Subject to Section 2.3 below and the provisions of Section 50053(b)(2) of the California Health & Safety Code, the Rent charged the occupants of the Restricted Units shall not exceed thirty percent (30%) of one-twelfth of Income Household, adjusted for household size.

b. In calculating the allowable Rent for the Restricted Units, the household size shall be assumed to be four and one-half (4.5) person per Three-bedroom Unit and five and one-half (5.5) person per Four-bedroom Unit. Utilizing the United States Department of Housing and Urban Development's income limits for Merced County in year 2005, the initial allowable Rent for the Restricted Units will be as follows:

Type of Unit	Median Income Restriction	Allowable Rent/month
3 BD – 2 BA	30%	\$382
	40%	\$510
	50%	\$638
	60%	\$765
4 BD – 2 BA	30%	\$427
	40%	\$570
	50%	\$712
2 BD – 2 BA (manager)	60%	\$552

c. At least one hundred eighty (180) calendar days prior to increasing Rent on any Restricted Unit, the Developer shall submit to the City for review and approval a

written request for such increase. Households occupying Units shall be given at least ninety (90) days written notice prior to any increase in Rent.

Rent for a Restricted Unit may only be increased one time per year and the Rent levels following an increase, or upon a new occupancy, shall not exceed the applicable Rent levels set forth in Section 2.2.a., above.

### 2.3 Increased Income of a Household Occupancy of a Restricted Unit.

a. In the event, upon recertification of an occupant household's income for a Restricted Unit, the Developer discovers that a [Very] Low Income Household no longer qualifies as a Very Low Income Household, then such household shall not be required to vacate the Project and the Rent chargeable to that household shall be increased to an amount of Rent which is the lesser amount of (i) thirty percent (30%) of that household's actual monthly income; or (ii) the amount payable by the tenant under State. However, when the Restricted Unit is vacated by that household or another unrestricted Unit is vacated, the Unit shall be rented to a Very Low Income Household at the Rent level allowed in Section 2.2 for a Restricted Unit as of the date of commencement of such a new occupancy. Moreover, a Unit occupied by a Very Low Income Household shall be deemed, upon the termination of such Very Low Income Household's tenancy to be continuously occupied by a Very Low Income Household until that Unit is reoccupied.

b. If the Project is subject to state or federal rules governing low income housing tax credits, the provisions of those rules regarding continued occupancy by, and Rent charged to, households whose incomes exceed the eligible income limitation shall apply in place of the provisions set forth in Section 2.3.a., above.

### 2.4 Lease Provisions.

a. The Developer shall include in leases or rental agreements for all Restricted Units provisions which authorize owner to immediately terminate the tenancy of any household one or more of whose members misrepresented any fact material to the household's qualification as a Very Low Income. Each lease or rental agreement for a Restricted Unit shall also provide that the household is subject to annual certification in accordance with Section 4.1 below, and that, if the household's income increases above the applicable limits for a Very Low Income Household such household's Rent may be subject to increase to the lesser of (i) thirty percent (30%) of that household's actual adjusted monthly income; or (ii) the amount payable by the Tenant under the State.

b. The leases for Restricted Units shall provide that if the Project is subject to State or federal rules governing low income housing tax credits, the provisions of those rules regarding continued occupancy by, and increases in Rent for households whose incomes exceed the eligible income limitation shall apply in place of the provisions set forth in Section 2.4.a, above.

### 2.5 Rental Process.

a. Initial Leasing Preference. Prior to opening the residential rental property, Developer shall cooperate with City to communicate the availability of the Housing Units to individuals residing or working in the City of Merced to encourage the greatest possible opportunity for such residents of, or persons working in, Merced to lease the Housing Units.

b. Rental Agreement. The initial form rental agreement to be used by Developer for the rental of any of the Housing Units ("Rental Agreement"), and any changes to such form Rental Agreement regarding the provisions required by this Section to be included in the form Rental Agreement, as set forth below, other than matter related to the tenant's identity, the identity of the unit, the rental amount, discounts and the like, shall be reasonably approved in advance by City's Housing Program Coordinator prior to the initial use of the lease form and prior to the first use of the changed lease form. Such Rental Agreement shall include, but not be limited to (i) a provision prohibiting the storage of any personal property of any kind in the parking areas on the Site; (ii) a provision requiring all balconies, if any, to be free from visible storage items, including, but not limited to, clothes, laundry, or solid coverings; and (iii) the following provision:

- (i) Any member of the Resident's household, or a guest or other person under the Resident's control shall not engage in criminal activity, including drug-related criminal activity, on or near property premises. 'Drug-related criminal activity' means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use of a Controlled Substance 21 U.S.C. Section 802.
- (ii) Resident, any member of the Resident's household, or a guest or other person under the Resident's control shall not engage in any act intended to facilitate criminal activity, including drug-related criminal activity, on or near property premises.
- (iii) Resident or members of the household will not permit the dwelling unit to be used for, or to facilitate, criminal activity, including drug-related criminal activity, regardless of whether the individual engaging in such activity is a member of the household or a guest.
- (iv) Resident or members of the household will not engage in the manufacture, sale, or distribution of illegal drugs at any location, whether on or near property premises or otherwise.
- (v) Resident, any member of the Resident's household, or a guest or other person under the Resident's control shall not engage in acts of violence, including, but not limited to the unlawful discharge of firearms on or near property premises.

2.6 Survival of Covenant. Notwithstanding any foreclosure or transfer to a lender with a position senior to City, the conditions, covenants, and restrictions contained in this City Regulatory Agreement shall run with the land and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by City and its successors and assigns, against the Developer and its successors and assigns, to or of the Site or any portion thereof or any interest therein, any party in possession or occupancy of said Site or portion thereof.

2.7 City Beneficiary to Covenants. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that City shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of City and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect. City shall have the right, in the event of any breach of any such agreement or covenant to exercise all the rights and remedies, and to maintain any action at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

### ARTICLE 3

#### OPERATION AND MAINTENANCE OF THE PROJECT

3.1 Use as Rental Housing. The Project shall be operated only as rental housing for Very Low-Income Households, including not more than one (1) of the Housing Units, which may be used and occupied by on-site resident manager(s) employed by the Developer and/or the Management Agent.

3.2 Compliance with the Agreement. The Developer shall comply with all the terms and provisions of the Agreement.

3.3 Compliance with Law. Developer shall comply with all applicable Federal, State, and municipal laws, rules and ordinances, including but not limited to HUD regulations.

3.4 Taxes and Assessments. The Developer shall pay all real and personal property taxes, City business license taxes, assessments and charges and all franchise, income, employment, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Site; provided, however, that the Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge against it, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.



3.5 **Nondiscrimination.** All of the Units shall be available for occupancy on a continuous basis to Very Low-Income Household members of the general public (who are also income eligible with respect to the Restricted Units). The Developer shall not give preference to any particular class or group of persons in renting the Units. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, age, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit. Neither the Developer nor any person claiming under or through the Developer, shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of any Unit. All deeds, leases or contracts made or entered into by owner as to the Units or the Site or portion thereof, shall contain covenants prohibiting discrimination as prescribed herein. The Developer shall include a statement in all advertisements, notices and signs for the availability of Units for rent to the effect that owner is an Equal Housing Opportunity Provider.

#### **ARTICLE 4**

##### **VERY LOW-INCOME HOUSEHOLD CERTIFICATION AND REPORTING**

4.1 **Income Certification.** The Developer shall obtain and complete prior to initial occupancy and thereafter maintain on file income certifications from each tenant household renting any of the Restricted Units. The Developer shall make a good faith effort to verify that the income provided by an applicant or occupying Very Low-Income Household in an income certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain an income tax return for the most recent tax year; (2) conduct a credit agency or similar search; (3) obtain an income verification form from the applicant's current employer; (4) obtain an income verification form from the United States Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (5) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. On the anniversary of the occupancy of such Restricted Unit the Developer shall recertify the household income of the Very low-Income Household occupying the Restricted Unit. Copies of tenant income certification shall be available to the City upon request.

4.2 **Annual Restricted Unit Rental Affordability Report to City.** Commencing on the 30th day of September following the Certificate of the Occupancy Date, and on or before each September 30th thereafter throughout the Term of this Regulatory Agreement, the Developer shall submit an annual compliance report to the City, in a form approved by the City. The annual compliance report shall include for each Restricted Unit covered by this Regulatory Agreement, the Rent and the income and family size of the Very Low-Income Household occupying the Restricted Unit. The report shall also state the date the tenancy commenced for each Restricted Unit and such other

information as the City may be required by law to obtain; provided, however, that the City shall take reasonable steps to maintain the confidential nature of the information contained therein relating to any Restricted Unit.

4.3 Additional Information. The Developer shall provide any additional information reasonably requested by the City, including without limitation such Project-related income and expense accounting information. The City shall have the right to examine and make copies of all books, records or other documents of Developer which pertain to any Unit; provided, however, that the City shall take reasonable steps to maintain the confidential nature of the information contained therein.

4.4 Records. The Developer shall maintain complete, accurate and current records pertaining to the Units, and shall permit any duly authorized representative of the City (during business hours and upon not less than seventy-two (72) hours notice) to inspect records, including records pertaining to income and household size of tenant households of Restricted Units; provided, however, that the City shall take reasonable steps to maintain the confidential nature of the information contained therein relating to any household.

## **ARTICLE 5**

### **PROPERTY MANAGEMENT**

5.1 Management Responsibilities. The Developer shall be responsible for management of the Project, including, without limitation, the selection of tenants, certification and recertification of household size, and income for the Restricted Units, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, graffiti abatement, and security. The City shall have no responsibility for the management or operation of the Site or the Project.

5.2 Management Agent. The Project shall at all times be managed by an experienced management agent (the "Management Agent") with demonstrated ability to operate residential rental facilities similar to the Project in a manner that will provide decent, safe, and sanitary housing. For the purposes hereof, if the Developer directly performs the functions of the Management Agent by its employees or by means of a service contract with an entity owned or controlled by the Developer, such a Management Agent shall be deemed approved by the City. If the Management Agent is an entity or person other than the Developer, its employees or an entity owned or controlled by the Developer, the Developer shall submit for the City's approval the identity of any proposed Management Agent, together with additional information relevant to the background, experience and financial condition of any proposed Management Agent as reasonably requested by the City. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Developer in writing. Unless the proposed

Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. The Developer is hereby approved by the City as the Management Agent for the Project.

5.3. Maintenance of the Site and the Project.

a. The Developer shall maintain the Site and the Project in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. In the event that, at any time during the term of this Regulatory Agreement, there is an occurrence of an adverse condition on any area of the Site in contravention of the general maintenance standard described above (hereinafter referred to as a "Maintenance Deficiency"), then the City shall notify the Developer in writing of the Maintenance Deficiency and give the Developer fifteen (15) days from receipt of such notice to cure the Maintenance Deficiency as identified in the notice. In the event the Developer fails to cure or commence to cure the Maintenance Deficiency within the time allowed, the City may conduct a public hearing following transmittal of written notice thereof to the Developer ten (10) days prior to the scheduled date of such public hearing in order to verify whether a Maintenance Deficiency exists and whether the Developer has failed to comply with the provision of this Section 5.3.a. If, upon the conclusion of a public hearing, the City makes a finding that a Maintenance Deficiency exists and that there appears to be non-compliance with the general maintenance standard, as described above, thereafter the City shall have the right to enter the Site and perform all acts necessary to cure the Maintenance Deficiency, or take other action at law or equity the City may then have to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency as authorized by this Section 5.3.a shall become a lien on the Site. If the amount of the lien is not paid within thirty (30) days after written demand for payment by the City has been presented to the Developer, the City shall have the right to enforce the lien in the manner as provided in Section 5.3.c.

b. Graffiti which is visible from any public right-of-way which is adjacent or contiguous to the Site shall be removed by the Developer from any exterior surface of a structure or improvement on the Site by either painting over the evidence of such vandalism with a paint which has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water as appropriate. In the event that graffiti is placed on the Site and such graffiti is visible from an adjacent or contiguous public right-of-way and thereafter such graffiti is not removed within forty-eight (48) hours following the time of its application; then in such event and without notice to the Developer, the City shall have the right to enter the property and remove the graffiti. Notwithstanding any provision of Section 5.3 to the contrary, any sum expended by the City for the removal of graffiti from the Site as authorized by this Section 5.3.b, shall become a lien on the Site. If the amount of the lien is not paid within thirty (30) days after written demand for payment by the City to the Developer, the City shall have the right to enforce its lien in the manner as provided in Section 5.3.c.

c. The parties hereto further mutually understand and agree that the rights

conferred upon the City under this Section 5.3 expressly include the power to establish and enforce a lien or other encumbrance against the Site, or any portion thereof, in the manner provided under Civil Code Sections 2924, 2924b and 2924c in the amount reasonably necessary to restore the Site to the maintenance standard required under Section 5.3a, or Section 5.3.b, including reasonable attorneys fees and costs of the City associated with the abatement of the Maintenance Deficiency or removal of graffiti and the collection of the costs of the City in connection with such action. The provisions of this Section 5.3 shall be a covenant running with the land for the Term of the Regulatory Agreement and shall be enforceable by the City, and its successors and assigns. Nothing in the foregoing provisions of this Section 5.3 shall be deemed to preclude the Developer from making any alternations, additions, or other changes to any structure or improvement or landscaping on the Site, provided that such changes comply with applicable law. No lien as may arise under this Section 5.3 shall interfere with or be superior to the security interest of any mortgage secured by the Site.

5.4 Insurance Coverage. The Developer shall cause to have in full force and effect during the term of this Regulatory Agreement insurance coverage as follows:

- (i) If any building or improvements erected by the Developer on the Site shall be damaged or destroyed by an insurable cause, the Developer shall, at its own cost and expense, diligently repair or restore the Site and the Project consistent with the original plans and specifications for the Project. Such work or repair shall be commenced within One Hundred Twenty (120) days after the damage or loss occurs and shall be completed within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, the Developer shall make up the deficiency;
- (ii) a policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than either (i) a combined single limit of THREE MILLION DOLLARS (\$3,000,000.00) or (ii) bodily injury limits of TWO MILLION DOLLARS (\$2,000,000.00) per person, property damage limits of TWO MILLION DOLLARS (\$2,000,000.00) per occurrence and THREE MILLION DOLLARS (\$3,000,000.00) DOLLARS in the aggregate.
- (iii) a policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Developer and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Developer in the course of carrying out the activities in this Regulatory Agreement.
- (iv) a policy of comprehensive automobile liability insurance written on a per

occurrence basis in an amount not less than either (i) bodily injury liability limits of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) per person and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) per occurrence and property damage liability limits of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per occurrence and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) in the aggregate or (ii) combined single limit liability of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00). Said policy shall include coverage for owned, non-owned, leased and hired vehicles.

All of the above policies of insurance shall be primary insurance and shall name the City and its officers, employees, and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against the City and its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to City. In the event any of said policies of insurance are canceled, the Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the City Clerk. No operation of the Project shall commence until the Developer has provided City with certificates of insurance or appropriate insurance binders evidencing the above insurance coverages, and said certificates of insurance or binders are approved by City.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated at least "A(vii)" or better in the most recent edition of Bests Insurance Rating Guide or an equivalent rating in The Key Rating Guide or in the Federal Register unless such requirements are modified or waived by the City Manager due to unique circumstances.

The Developer agrees that the provisions of this Section shall not be construed as limiting in any way the extent to which the Developer may be held responsible for the payment of damages to any persons or property resulting from the Developer's activities or the activities of any person or persons for which the Developer is otherwise responsible.

## **ARTICLE 6**

### **MISCELLANEOUS**

6.1 Term. The provisions of this Regulatory Agreement shall apply to the Site for the entire Term. This Regulatory Agreement shall bind any successor, heir or assign of the Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, with or without the approval of the City, except as expressly released by the City.

6.2 Indemnity. Developer shall indemnify, protect, defend, save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or

negligent acts, errors, or omissions of Developer or Developer's officers, partners, employees, volunteers, and agents during performance of this Regulatory Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Developer or its employees, subcontractors, or agents, or by the quality or character of Developer's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused solely by the gross negligence of the City. It is understood that the duty of Developer to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Regulatory Agreement does not relieve Developer from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Regulatory Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Regulatory Agreement, Developer acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

6.3 Non-Liability of Officials, Employees and Agents. The City and its officers, agents, and employees shall not be personally liable to the Developer for any obligation created under the terms of this Regulatory Agreement except in the case of actual fraud or willful misconduct by such person.

6.4 Covenants to Run With the Land. The Developer hereby declares its express intent that the covenants and restrictions set forth in this Regulatory Agreement are affordable housing covenants and that each and every provision of this Regulatory Agreement shall run with the land, and shall bind all successors in title to the Site and/or the Project; provided, however, that on the expiration of the Term of this Regulatory Agreement said covenants and restrictions shall expire except as provided in Section 3.5 herein relating to nondiscrimination.

6.5 Enforcement by the City. If the Developer fails to perform any obligation under this Regulatory Agreement, and fails to cure the default within thirty (30) days after the City has notified the Developer in writing of the default or, if the default cannot be cured within thirty (30) days, fails to commence to cure within thirty (30) days and thereafter diligently pursue such cure, the City shall have the right to enforce this Regulatory Agreement by any or all of the following actions, or any other remedy provided by law:

- a. Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel the performance of the obligations of the Developer under this Regulatory Agreement, and/or for damages.
- b. Enforce Liens. The City may enforce and execute upon the lien rights of the City as conferred under Section 5.3 of this Regulatory Agreement.

6.6 Attorneys' Fees and Costs. In any action brought to enforce this

Regulatory Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

6.7 Recording and Filing. The City and the Developer shall cause this Regulatory Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Merced, California.

6.8 Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California, except those provisions preempted by federal law, and any action brought relating to this Regulatory Agreement shall be held exclusively in a state court in the County of Merced.

6.9 Amendments. This Regulatory Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Merced, California.

6.10 Notice. All notices given or certificates delivered under this Regulatory Agreement shall be: (i) deemed received on the date of delivery or refusal if personally delivered by a commercial service which furnishes signed receipts of delivery; or (ii) deemed delivered within three (3) business days if mailed by certified mail, return receipt requested, postage prepaid, addressed as shown on the signature page. Any of the parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

6.11 Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Regulatory Agreement shall not in any way be affected or impaired thereby.

6.12 Notice of Default. Developer shall cause a Request for Notice to City to be recorded on the Project Site in conjunction with the recordation of First Lien deed of trust or mortgage. A statutory notice of default as set forth in the California Civil Code shall be provided to the City. Such notice shall be sent to:

CITY OF MERCED, CALIFORNIA  
678 West 18<sup>th</sup> Street  
Merced, California 95340  
Attention: City Clerk

Sunny View of Merced, L.P.  
320 Golden Shore Drive, Suite 200  
Long Beach, California 90802-4217

Attn: Brian Gentner, Esq.  
Facsimile No.: (562) 901-0918

And a copy (which copy shall not constitute notice to Borrower):  
Chernove & Associates, Inc.  
520 S. Virgil Avenue, #302  
Los Angeles, CA 90020  
Attn: Sheldon Chernove, Esq.

6.13 Relationship of Parties. The relationship between the City and the Developer during the term of this Regulatory Agreement shall not be construed as a joint venture, equity venture, or partnership. The City does not undertake nor assume any responsibility or duty to the Developer or any third party with respect to the ownership of the Site or the operation of the Project or the actions of the Developer. The Developer shall have no authority to act as an agent of the City or to bind the City to any obligation.

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

6.15 Other Agreements. The Developer represents that it has not entered into any agreements that would restrict or compromise its ability to comply with the terms of this Regulatory Agreement. The Developer shall not enter into any agreements that are inconsistent with the terms of this Regulatory Agreement without the express approval by the City in writing.

6.16 Successors and Assigns. This Regulatory Agreement shall be binding upon and inure to the benefit of the respective parties hereto and to their respective heirs, transferees, successors, assignee, partners, and legal representatives.

6.17 Integration. This Regulatory Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

6.18 Authority to Execute. The person or persons executing this Regulatory Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Regulatory Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.



6.19 Counterparts. This Regulatory Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the City and the Developer have for themselves and their successors and assigns executed this Regulatory Agreement by their duly authorized representatives which shall become effective the date in which the last of the parties, whether City or Developer, executes this document.

**THE CITY OF MERCED,**  
A California Charter Municipal  
Corporation  
("City")

By: 

City Manager James G. Marshall

ATTEST:  
JAMES G. MARSHALL, CITY CLERK

By: 

Deputy City Clerk

APPROVED AS TO FORM:

By: 

City Attorney

250831

ACCOUNT DATA:

BY: 

Verified by Finance Officer

No funds required.

Note: Approved by City Council Resolution \_\_\_\_\_

By: Western Community Housing, Inc,  
California Nonprofit Corporation,  
its General Partner

E-MAIL: graham@wchousing.org

**(seal)**

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA )

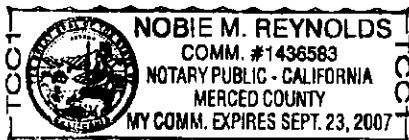
COUNTY OF MERCED )

On JANUARY 10, 2006, before me, Nobie M. Reynolds,  
Notary Public, personally appeared JAMES G. MARSHALL

☒ personally known to me -OR-

☐ proved to me on the basis of satisfactory evidence to be the person(s)  
whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies) and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf  
of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Nobie M. Reynolds  
SIGNATURE OF NOTARY

---

**EXHIBIT A**

**LEGAL DESCRIPTION**

Parcel 2, of Parcel Map titled City of Merced Lot Split #03-06, recorded on October 29, 2003 in Book 94 of Parcel Maps, at Pages 33 & 34, as Document No. 2003070795 in the Merced County Recorder's Office, State of California.

Assessors Parcel No: 035-010-062

**M. STEPHEN JONES**

County Recorder

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CM City of Merced

G

Doc#: 2006-045789

Titles: 1 Pages: 7



Fees	0.00
Taxes	0.00
Other	0.00
PAID	\$0.00

THE CITY OF MERCED  
A California Charter Municipal Corporation  
678 West 18<sup>th</sup> Street  
Merced, California 95340  
Attention: City Clerk

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE  
No recording fee required; this document exempt from fee pursuant to  
Section 27383 of the California Government Code

## AMENDMENT TO REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS AMENDMENT TO REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "**Regulatory Agreement**") is made and entered into as of this 1<sup>st</sup> day of May, 2006 by and between the CITY OF MERCED, a California Charter Municipal Corporation (the "City") and SUNNY VIEW OF MERCED, L.P., a California limited partnership (the "Developer"). This Amendment hereby modifies, as follows, that certain Regulatory Agreement and Declaration of Restrictive Covenants (hereinafter known as "Regulatory Agreement") recorded on January 1, 2006 as Document number 2006-006144 of the Official Records of the County Recorder's Office of the County of Merced. The parties desire to amend the Regulatory Agreement and correct certain provisions and more clearly set forth certain terms. The amendment to the regulatory agreement is needed in order to include a definition for "Low Income Households." Except as modified herein, the terms of the Regulatory Agreement remain unchanged and are in full force and affect.

1. Recital A is modified to read as follows: "A. The City and the Developer have entered into that certain Affordable Housing Loan Agreement, dated as of December 15, 2005 (the "**Agreement**"). A copy of the Agreement is on file with the City Clerk and incorporated herein by this reference."
2. Recital B is modified to read as follows: "B. Pursuant to the terms of the Agreement, the City will provide partial resources to the Developer for development of a 113-unit low-income and very low-income affordable housing project ("Project" herein) located at 1102-1194 D Street in the City of Merced, said real property more specifically described in the Legal Description attached herein as Exhibit "A." In particular, City has agreed to provide the Developer with certain Low and Very Low-income Housing HOME funds in support of the Project to cover the difference between the

budgeted cost of constructing the Project and the anticipated proceeds of the Senior Construction Financing and Borrower's equity, subject to certain conditions, hereinafter referred to as the "City Loan."

3. Recital C is modified to read as follows: "C. In consideration for the City Loan, the Developer has agreed to maintain one hundred and thirteen (113) of the rental dwelling units in the Project as available at "affordable rent" to low-income and very low income households and two (2) manager's unit to a low-income household as these terms are defined in the Agreement for the term of this Regulatory Agreement and to further agree to observe all the terms and conditions set forth below."
4. Paragraph 1.1 O is added to read as follows: "O. Low Income Households shall mean households with Adjusted Income that do not exceed the maximum level of income for low income households under HUD regulations for Merced County, California, adjusted for household size."
5. Paragraph 1.1 K is modified to read as follows: "K. Restricted Units" shall mean the eighty (80) Housing Units which are affordable Rent to Very Low Income Households and thirty three (33) Housing Units which are affordable to Low Income Households - restricted pursuant to this Regulatory Agreement."
6. Paragraph 1.1 is modified to read as follows: "N. "Housing Units" shall mean the eighty (80) Very Low-Income Households, thirty one (31) Low Income Households and two (2) Low-Income Household management rental dwelling unit to be constructed on the Site."
7. Paragraph 2.1 is modified to read as follows: "2.1. Occupancy Requirement. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest, that during the forty (40) years following issuance by City of a Certificate of Completion for the Housing Units on the Site, not less than eighty (80) of the Units shall be rented or occupied by, or if vacant, available for rental and occupancy exclusively by Very Low Income Households, thirty one (31) of the Units (collectively the "Restricted Units") and two (2) manager's unit shall be rented or occupied by, or if vacant, available for rental and occupancy by a Low Income Households as defined in Health and Safety Code Section 50105 and in the Agreement. The Developer acknowledges that City has made no commitment to provide financial rental assistance to the Low Income households or Very Low income households, or to persons and families of low or moderate income."
8. Paragraph 3.1 is modified to read as follows: "3.1. Use as Rental Housing. The Project shall be operated only as rental housing for Low Income and Very Low-Income Households, including not more than) two (2)

of the Housing Units, which may be used and occupied by on-site resident manager(s) employed by the Developer and/or the Management Agent."

9. Paragraph 4.1 is modified to read as follows: "4.1. Income Certification. The Developer shall obtain and complete prior to initial occupancy and thereafter maintain on file income certifications from each tenant household renting any of the Restricted Units. The Developer shall make a good faith effort to verify that the income provided by an applicant or occupying Low Income and Very Low-Income Households in an income certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain an income tax return for the most recent tax year; (2) conduct a credit agency or similar search; (3) obtain an income verification form from the applicant's current employer; (4) obtain an income verification form from the United States Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (5) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. On the anniversary of the occupancy of such Restricted Unit the Developer shall rectify the household income of the Low Income and Very low-Income Household occupying the Restricted Unit. Copies of tenant income certification shall be available to the City upon request."
10. Paragraph 4.2 is modified to read as follows: "Annual Restricted Unit Rental Affordability Report to City. Commencing on the 30th day of September following the Certificate of the Occupancy Date, and on or before each September 30th thereafter throughout the Term of this Regulatory Agreement, the Developer shall submit an annual compliance report to the City, in a form approved by the City. The annual compliance report shall include for each Restricted Unit covered by this Regulatory Agreement, the Rent and the income and family size of the Low Income and Very Low-Income Households occupying the Restricted Unit. The report shall also state the date the tenancy commenced for each Restricted Unit and such other information as the City may be required by law to obtain; provided, however, that the City shall take reasonable steps to maintain the confidential nature of the information contained therein relating to any Restricted Unit."

All other terms and conditions shall remain as set forth in the original Regulatory Agreement referenced above.

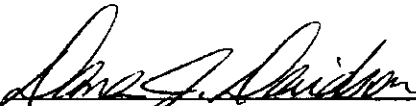
IN WITNESS WHEREOF, the City and the Developer have for themselves and their successors and assigns executed this Amendment to Regulatory Agreement by their duly authorized representatives which shall become effective the date in which the last of the parties, whether City or Developer, executes this document.

THE CITY OF MERCED,  
A California Charter Municipal  
Corporation  
("City")

By:   
City Manager James G. Marshall

Date: 6/6/08

ATTEST:  
JAMES G. MARSHALL, CITY CLERK

By:   
Deputy City Clerk

APPROVED AS TO FORM:

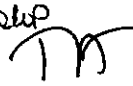
By:   
City Attorney

5/31/08

850831  
ACCOUNT DATA:

BY:   
Verified by Finance Officer

no funds required 5/31/08 plus



\*  
ME/9019



**SUNNY VIEW OF MERCED, L.P.**  
**a California limited partnership**  
**("Developer")**

By: **Western Community Housing, Inc.**  
a California nonprofit public benefit  
corporation,  
Its General Partner

By:

  
\_\_\_\_\_  
Graham Espley-Jones,  
President

Taxpayer I.D. No. 95-4751332

ADDRESS: 151 Kalmus Drive, Suite J-5  
Costa Mesa, CA 92626

TELEPHONE: (714) 549-4100

FAX: (714) 549-4600

E-MAIL: graham @wchousing.org

Date: May 23, 2006

[ALL OFFICER/PRINCIPAL SIGNATURES TO BE NOTARIZED]

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Merced )

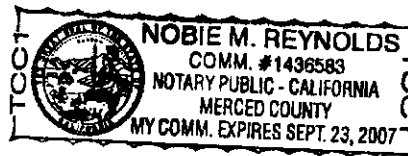
On June 6, 2006 before me, Nobie M. Reynolds, <sup>vNotary Public,</sup> personally appeared  
James G. Marshall

James G. Marshall personally known to  
me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the parson(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature (Seal)

Nobie M. Reynolds  
Nobie M. Reynolds  
Notary



STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

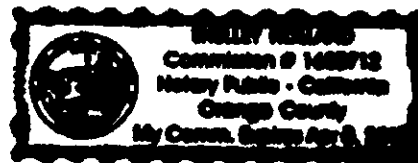
On MAY 23rd 2006 before me, SHELLEY HOLLAND, <sup>vNotary Public,</sup> personally appeared  
GRAHAM ESPLEY - JONES

Graham Espley - Jones personally known to  
me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the parson(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature (Seal)

Shelley Holland  
SHELLEY HOLLAND



GOVERNMENT CODE 27361.7

I CERTIFY UNDER PENALTY OF PERJURY THAT THE  
NOTARY SEAL ON THE DOCUMENT TO WHICH THIS  
STATEMENT IS ATTACHED READ AS FOLLOWS:

NAME OF NOTARY: Shelley Holland

DATE COMMISSION EXPIRES: April 8, 2010

COMMISSION NUMBER: 1650712

PLACE OF EXECUTION: County of Orange

EXECUTION DATE: May 23, 2006

SIGNATURE: Araceli Gomez

FIRM NAME (IF APPLICABLE): City of Merced

---



## ADMINISTRATIVE REPORT

AGENDA

ITEM: \_\_\_\_\_

MTG

DATE: \_\_\_\_\_

**TO:** James G. Marshall, City Manager

**FROM:** Masoud Niroumand, Housing Program Coordinator

**DATE:** June 5, 2006

**SUBJECT:** Amendment to "Sunny View" City Loan and Regulatory Agreements

---

### RECOMMENDATION:

Adopt a motion:

1. Approving the amendment to Sunny view City Loan and Regulatory Agreements between the City of Merced, Sunny View of Merced, L.P.
2. Authorizing the City Manager to execute all necessary documents.

### POSSIBLE CITY COUNCIL ACTIONS:

1. Approve as recommended;
2. Modify the action; or
3. Deny the recommendation.

### AUTHORITY:

Merced City Charter, Section 200 and City of Merced HUD Annual Plan FY 2006.

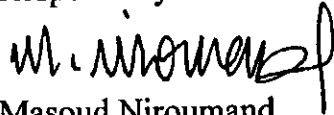
### DISCUSSION:

In December 2005, the City Council adopted a resolution authorizing the execution of the City Loan and Regulatory Agreements, for Sunny View, a 113-unit multi family affordable housing development in South Merced on the northeast corner of "D" Street and Childs Avenue. Staff has received a request from the developer that it is necessary to amend the City Loan and the Regulatory Agreement to make the aforementioned documents consistent with the state regulatory agreement.

**CONCLUSION:**

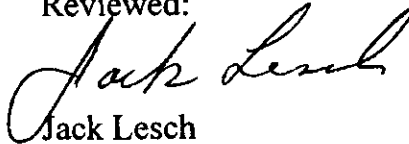
The amendment will not give any benefit to the developer and the original agreement will remain the same and in full effect. Staff is recommending the approval of this amendment.

Respectfully Submitted:



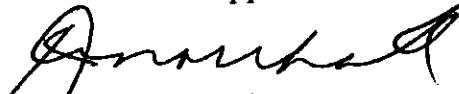
Masoud Niroumand  
Housing Program Coordinator

Reviewed:



Jack Lesch  
Director of Development Services

Reviewed and Approved:



James G. Marshall  
City Manager

Attachments:

- 1) Amendment to City Loan Agreement
- 2) Amendment to Regulatory Agreement and Declaration of Restrictive Covenants

**PROMISSORY NOTE  
SECURED BY DEED OF TRUST**

\$1,761,000.00

12/5, 2005  
Merced, California

1. FOR VALUE RECEIVED, the undersigned SUNNY VIEW OF MERCED, L.P., a California limited partnership ("**Maker**") promises to pay to the City of Merced, a California Charter Municipal Corporation, or order ("**Holder**") at 678 West 18<sup>th</sup> Street, Merced, California 95340, or at such other place as the Holder of this Promissory Note ("**Note**") may designate in writing, the sum of One Million Seven Hundred Sixty-one Thousand Dollars (\$1,761,000.00) or so much thereof as is disbursed to Maker, together with interest on unpaid principal until paid at the rate of two percent (2%) per annum on the first day of the month in which the Loan funds, with interest compounded annually.

2. This Note is secured by that certain Deed of Trust ("**Deed of Trust**") of even date herewith given by the Maker, as Trustor, to a title company approved by Lender as Trustee, for the benefit of Holder, as the Beneficiary, which Deed of Trust is to be recorded against that certain property in the City of Merced, County of Merced, State of California and more particularly described in Exhibit "A" to the Deed of Trust (the "**Property**").

3. The following terms as used in this Note shall have the meanings given herein unless expressly provided to the contrary:

"**City Loan**" means the Loan made by the City of Merced, a California Charter Municipal Corporation, to Maker evidenced by this Note.

"**City Loan Documents**" means that certain City Loan Agreement of even date herewith ("**City Loan Agreement**") by and between Maker and Holder, this Note, the Deed of Trust and all other documents and instruments evidencing, securing or relating to the indebtedness evidenced by this Note and the obligations of Maker.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended.

"**Construction Loan**" means any Loan or Loans obtained by Maker from an institutional lender making such loans in the ordinary course of its business, and secured by a first lien on the Project, the majority of the proceeds of which Loan are used to finance the construction of the Project.

"**Debt Service**" means the debt service on the Senior Mortgage Financing.

**“Developer Agreement”** means that certain Developer Agreement entered into by and between the Maker and Simpson Housing Solutions, LLC with respect to the Project.

**“Gross Income”** means all revenues or income collected by the Maker, or its successors or assigns from the Project. Gross Income shall be determined on a cash basis during any pertinent or applicable period, but shall not include security deposits (unless and until such security deposits have been forfeited by tenants), or insurance or condemnation proceeds (except as paid to Maker for loss of rents), or the proceeds from any sale or refinancing of the Project or any part thereof, or amounts expended from any reserves for the Project.

**“Lender”** means any lender under, or holder of, any Loan.

**“Lien”** means any mortgage, deed of trust or other security instrument encumbering the Project or any part thereof as security for any Loan.

**“Loan”** or **“Loans”** means any loan made by the Mortgagee to Maker which is secured by a Lien.

**“Mortgagee”** means a mortgagee of a mortgage or a beneficiary under a deed of trust encumbering title to the Project, or any part thereof.

**“Net Cash Flow”** means for any period the amount of Gross Income for such period less Operating Expenses and Debt Service for such period.

**“Net Proceeds”** means the proceeds of any Loan secured by the Project, less the repayment of any Loan made prior in time to said Loan and less any fees or charges paid out of the gross proceeds related to such Loan, including without limitation broker’s commissions and fees, Loan commitment fees or other charges assessed by the Lender for making the Loan, normal closing costs, title insurance premiums, and attorney’s fees.

**“Operating Expenses”** means for any period the sum of the following expenses incurred and paid during such period: (i) all expenses incurred by Maker in owning, operating, maintaining, repairing, and replacing the Project (excluding payment from insurance proceeds and any costs or expenses paid or reimbursed by third parties), including without limitation taxes, assessments and bonds, insurance, and maintenance expenses for the Project, accounting and legal fees, leasing commissions, advertising expenses, property management fees (not to exceed 6% of Gross Income) and expenses of on-site employees, supplies, license and permit fees, capital expenditures (to the extent such expenses exceed reserves), any and all developer fees and payments on the Developer Note (as defined in the Maker’s partnership agreement), if any, partnership management fees and asset management fees and utility charges, and (ii) such reasonable reserves as the Maker or any Mortgagee may require to be set aside for the Project (but excluding the expenditure of funds from the reserve once set aside) not exceeding Three Hundred Dollars (\$300.00) per apartment unit per year. Maker shall be deemed to be required to pay Operating Expenses for materials and services upon receipt thereof, and to the extent services are not billed on a monthly basis, the bill for such

services shall be prorated over the period during which such services were received. Real estate taxes, assessments, bonds, and insurance premiums shall be prorated on a monthly basis based on the latest information available. If the actual cost of real estate taxes, assessments, bonds, or insurance premiums are different from the information used to make such prorations, then an adjustment in the next month's Operating Expenses shall be made based upon the correct information. Operating Expenses shall not include: (i) payments made from insurance proceeds for any loss or damage to the Project, or (ii) depreciation of buildings or improvements or similar non-cash items of deduction or expense, or (iii) funds expended from reserves. Maker shall count an Operating Expense only one time in one category and under no circumstances shall an Operating Expense be counted more than once.

**"Partnership Agreement of Maker"** means the Agreement of Limited Partnership of Sunny View of Merced, L.P.

**"Permanent Loan"** means any Loan, secured by a first lien on the Project, the Net Proceeds of which are used to pay any Construction Loan or any previous Permanent Loan.

**"Project"** means the Property and the proposed development of the Property with a 113-unit low income affordable housing residential apartment project.

**"Property"** means the subject real property located in the City of Merced, County of Merced, State of California, and more particularly described in Exhibit "A" to the Deed of Trust securing this Note.

**"Senior Mortgage Financing"** means any of the following: (i) the Construction Loan; (ii) the Permanent Loan; or (iii) any Loan refinancing any Permanent Loan.

**"Tax Credits"** means low-income housing tax credits allowable to the Maker with respect to the Project under Section 42 of the Internal Revenue Code of 1986, as amended.

**"Tax Credit Sale Proceeds"** means the total net proceeds to be obtained by Maker from the sale of limited partnership interests in Maker to persons who will qualify as limited partners of Maker for purposes of receiving Tax Credits, less the cost of said sales, including without limitation syndication costs and syndication fees, attorney fees and accountant fees, filing fees with governmental agencies having jurisdiction over the syndication, brokerage or finder's fees, and consulting fees.

**"Debt Service", "Gross Income", "Net Cash Flow", and "Operating Expenses"** all shall be determined on a cash basis.

4. RESERVED.



5. Commencing on the first day of the first calendar month in which there is Net Cash Flow after payment of Debt Service, and continuing on the first day of each and every calendar month thereafter for the remaining term of this Note, there shall be due and payable to Holder an amount equal to twenty-five percent (25%) of the Net Cash Flow of the Project. The payments made pursuant to this Paragraph 5 shall first be applied to accrued interest and the remainder to principal.

6. If not sooner paid, the unpaid principal balance of this Note plus any unpaid interest thereon shall be all due and payable to Holder thirty-five years (35) from the date of execution of this Note.

7. The principal of this Note and any unpaid interest accrued thereon may be prepaid in whole or in part at any time without premium or penalty.

8. In the event of default in payment of principal hereunder or interest accrued thereon occurring for more than ten (10) days, or upon maturity of this Note (whether by acceleration or otherwise), interest shall thereafter accrue on said unpaid principal until said default is cured at the rate of twelve percent (12%) per annum, compounded annually, or the maximum amount allowed by applicable usury law if less than said rate, which interest shall be immediately due and payable as accrued to the Holder of this Note.

9. In the event of any default of Maker in payment hereof or under any terms, covenants or conditions contained herein, or in the City Loan Documents, the Deed of Trust or in any other instrument securing this Note, or under any modification, extension or renewal hereof or thereof, then the entire principal sum of this Note and all interest accrued thereon shall become immediately due and payable at the option of the Holder of this Note. Failure to exercise such option shall not constitute a waiver of the right to exercise such option in the event of any further or subsequent default.

10. Principal, interest and all other sums due hereunder shall be payable in lawful money of the United States of America. Maker agrees to pay all costs and expenses of collection of this Note, including, but not limited to, reasonable attorneys' fees whether collected by suit or otherwise. Neither the failure to accelerate the indebtedness hereof by reason of any default or under any provision hereof nor the acceptance of any past-due payment shall constitute a waiver of the right of the Holder of this Note thereafter to enforce strict compliance of the terms, covenants and conditions hereof. This Note may be extended or renewed in whole or in part by the Holder hereof and any related right or security therefor may be waived, exchanged, surrendered or otherwise dealt with, all without affecting the liability of Maker. Maker hereby waives presentment for payment, demand, protest, notice of protest, and notice of dishonor. Time is of the essence herein.

11. In the event any term, covenant, condition or other provision contained in this Note or in any instrument securing this Note is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect, alter, modify or impair in any manner whatsoever any other term, covenant, condition or other provision contained in this Note

or in any instrument securing this Note, the provisions of which shall continue to apply as if such invalid, illegal or unenforceable provision was not contained herein or therein.

12. Holder's recovery against any partner of Maker under this Note and the City Loan Documents shall be limited solely to the collateral given to Holder as security for Maker's performance under this Note and the City Loan Documents and to the general assets of Maker itself. Such recovery shall not be a lien, or the basis of a claim of lien or levy of execution, against the general assets of any general or limited partner of Maker. Notwithstanding the foregoing, Maker, any general partner of Maker and the general assets of any general partner of Maker shall be fully liable to Holder to the same extent that Maker would be liable absent the foregoing limitation of this Paragraph for: (a) fraud or willful misrepresentation on the part of Maker or such partners; (b) waste; (c) failure of such partner to pay any income or other taxes, assessments or other charges attributable to such partner which can create liens on any portion of the Project (to the full extent of any such taxes, assessments or other charges); (d) the amount of any money or value of any property received by such partner as a distribution of earnings or income from the Project if such distribution was prohibited under the terms of the City Loan Agreement (to the full extent of such distribution); (e) any breach by Maker of any covenant under Article 7 of the City Loan Agreement, entitled Hazardous Materials, any representation or warranty of Maker under such Article proving to have been untrue when made, or the presence of any significant Hazardous Materials in, on or about the Project which are discovered subsequent to the Effective Date; or (f) any obligation arising from the indemnity set forth in Section 11.10 of the City Loan Agreement (except for payment of principal and interest on this Note which shall remain non-recourse). In addition, the limitations hereof shall not be deemed to limit: (i) any right Holder might otherwise have to obtain injunctive relief against Maker, any partner of Maker or any other person or entity; (ii) any suit, action or proceeding (including without limitation exercise of the power of sale under or the filing of an action for judicial foreclosure of the Deed of Trust), in connection with the preservation, enforcement or foreclosure of the liens, mortgages, assignments and security interests now or at any time hereafter securing the payment and performance of all obligations under any of the City Loan Documents; or (iii) the collection of amounts which may become owing or payable under or on account of insurance, condemnation awards or damages for other public actions or surety bonds maintained or provided by Maker: provided, however, that the assertion by Holder of any such right, suit, action or collection of amounts shall not result in a momentary claim upon the general assets of any general or limited partner of Maker except as otherwise provided herein.

13. Whenever reference is made herein to "Maker" or "Holder", such reference shall be deemed to refer to and include the heirs, executors, legal representatives, successors and assigns thereof, it being expressly agreed that the rights and obligations of all parties named herein or liable hereunder shall inure to the benefit of and be binding upon such parties and their respective heirs, executors, legal representatives, successors and assigns. This Note and all provisions hereof shall be governed by and construed in accordance with the laws of the State of California, and any action brought relating to this Note shall be held exclusively in a state court in the County of Merced.

14. For the purpose of assuring compliance with the payment of this Note, representatives of the Holder shall have a right of access to the Project and the books and records of Maker pertaining to the Project, during normal business hours, upon at least twenty four (24) hours prior notice to Maker, including but not limited to the inspection of the books and records for determining the Net Cash Flow after Debt Service.

15. Prior to the recordation by Holder of a Certificate of Completion upon completion of the Project, the Maker shall not transfer, convey, assign, or lease the whole or any part of the Property or the Improvements thereon without the prior written approval of the Holder. Subsequent to the recordation of a Notice of Completion for the Project, maker may sell, transfer, assign, convey or encumber, mortgage or hypothecate the Property or the Project or any part thereof or any interest therein, and any of the general or limited partnership interests of the Maker in any manner; rent the apartment units to tenants in the ordinary course of business and in a manner otherwise meeting the requirements of the City Loan Documents and any other covenants, conditions or restrictions applicable to the Project (including the Construction Loan Documents and the Regulatory Agreement) - none of the foregoing shall require the consent of Holder.

16. Interest on the debt evidenced by this Note shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under applicable law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

17. The indebtedness evidenced by this Note is and shall be subordinate to the liens, terms, covenants and conditions of any construction and permanent loan made to the Maker in the original principal amount not to exceed Two Million One Hundred Thousand Dollars (\$2,100,000.00) and any and all loans refinancing such loan (collectively the "Senior Loan") and all documents, agreements, and instruments executed in connection with or securing the Senior Loan (the "Senior Loan Documents"), provided that the priority of Holder's security in the Property shall remain at no less than second position. The rights and remedies of the Payee and each subsequent holder of this Note are subject to these restrictions and limitations. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions of this Paragraph. The provisions of this Paragraph do not subordinate Payee's right to receive payments of the sums due hereunder except during the period of any uncured event of default under the Senior Loan Documents, and Payee shall pay to the holder of the Senior Loan any funds received by Payee during the period of any uncured event of default not later than 10 days after receipt by it of written demand from holder of the Senior Loan.

18. The person or persons executing this Note warrants and represents that he/she/they has/have the authority to execute this Note on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the undersigned Maker has caused this Note to be executed on the day, month and year first written above.

MAKER:

SUNNY VIEW OF MERCED, L.P.,  
a California Limited Partnership

By: Western Community Housing, Inc,  
California Nonprofit Corporation,  
its General Partner

By:   
Name: Graham Espley-Jones  
Title: President


Address: ~~151 Kalmus Drive Suite J-5~~  
Costa Mesa, CA 92626

IN WITNESS WHEREOF, the undersigned Maker has caused this Note to be executed on the day, month and year first written above.

MAKER:

SUNNY VIEW OF MERCED, L.P.,  
a California Limited Partnership

By: Western Community Housing, Inc,  
California Nonprofit Corporation,  
its General Partner

By:   
Name: Graham Espley-Jones  
Title: President

Address: 151 Kalmus Drive, Suite J-5  
Costa Mesa, CA 92626

Recorded In Official Records, Merced County

**M. STEPHEN JONES**  
County Recorder1/26/2006  
8:37 AM  
R04**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Merced, a California Charter Municipal Corp  
678 West 18<sup>th</sup> Street  
Merced, California 95340  
Attention: City Clerk

CM City of Merced

G

Doc#: 2006-006143



Titles: 3 Pages: 29

Fees	0.00
Taxes	0.00
Other	0.00
PAID	\$0.00

**DEED OF TRUST WITH  
ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(CITY TRUST DEED)**

The parties to this Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing ("**Deed of Trust**"), made as of 12<sup>15</sup>, 2005, are SUNNY VIEW OF MERCED, L.P., a California limited partnership ("**Trustor**"), FIRST AMERICAN TITLE COMPANY ("**Trustee**"), and THE CITY OF MERCED, a California Charter Municipal Corporation ("**Beneficiary**").

**ARTICLE 1. GRANT IN TRUST**

1.1 **Grant.** For the purpose of securing the payment and performance of the Secured Obligations defined and described in Section 2.1, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of the Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to all that certain real property located in the City of Merced, County of Merced, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein (the "**Land**"),

TOGETHER with all buildings and improvements now or hereafter located thereon and all materials intended for construction, reconstruction, alteration and repair of such buildings and improvements (collectively, "**Improvements**");

TOGETHER with all existing and future easements, rights, rights of way, franchises, tenements, hereditaments and appurtenances of the Land, and all development rights and credits, air rights, water, water rights, water stock related to the Land and all minerals, oil, gas and other hydrocarbon substances in, on or under the Land and any land lying in the streets, roads or highways, open or proposed, in front of or adjoining the Land and Improvements (collectively, "**Appurtenances**");

TOGETHER with all goods, materials, supplies, equipment, appliances, machinery, fixtures, furniture, furnishings and other articles and types of tangible personal property and any additions to,

substitutions for, changes in or replacements of the whole or any part thereof now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Land, Improvements and Appurtenances or any portion thereof, including all building materials and equipment now or hereafter delivered to the Land, Improvements and Appurtenances and intended to be installed in or about the same;

TOGETHER with all inventory, accounts, deposit accounts, accounts receivable, contract rights, development and use rights, permits, licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary) arising from or relating to the Land, Improvements and Appurtenances and any business conducted thereon by Trustor and any other intangible personal property and rights relating to the Land, Improvements and Appurtenances or any part thereof or to the operation thereof or used in connection therewith, including goodwill, trademarks and tradenames;

TOGETHER with all rents, issues, revenues, income, royalties and profits and all leases, rental agreements and other contracts and agreements relating to the use or possession of or otherwise derived from any of the Land, Improvements, Appurtenances or any of the other property described above, together with all guarantees thereof and all deposits (to the full extent permitted by law) and other security therefor;

TOGETHER with all proceeds of, additions and accretions to, substitutions and replacements of any of the foregoing (including, but not limited to, all claims to or demands thereto) from the voluntary or involuntary conversion of the Land, Improvements, Appurtenances or any of the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments in lieu thereof made by any public body or decree by court of competent jurisdiction for taking or for degradation of the value in any condemnation or eminent domain proceeding, and all causes of action and the proceeds thereof of all types for any damage or injury to the Land, Improvements, Appurtenances or any of the other property described above or any part thereof, including causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact (collectively "**Proceeds**"); together with all books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory.

All property, both real and personal, described above and conveyed to Trustee under this Deed of Trust shall hereinafter be collectively referred to as the "**Property**." The listing of specific rights or property shall not be interpreted as a limit of general terms.

1.2 **Address.** The address of the real property described herein is the 1102-1194 D Street, Merced, CA 95340. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Property as described on Exhibit A. Trustor is the owner of the real property described

in Exhibit A attached hereto and Beneficiary is the lender making the loan secured by this Deed of Trust.

## ARTICLE 2. OBLIGATIONS SECURED

2.1 **Obligations Secured.** Trustor makes this grant and assignment for the purpose of securing the following obligations (“**Secured Obligations**”):

(a) Payment to Beneficiary of all sums at any time owing under that certain Promissory Note Secured By Deed of Trust (“**Note**”) of even date herewith, in the principal amount of One Million Seven Hundred Sixty-one Thousand Dollars (\$1,761,000.00) executed by Trustor and payable to the order of Beneficiary; and

(b) Payment and performance of all covenants and obligations on the part of Trustor under this Deed of Trust; and

(c) Payment and performance of all covenants and obligations on the part of Trustor under that certain City Loan Agreement (“**Loan Agreement**”) of even date herewith by and between Trustor as borrower and Beneficiary, as lender and the payment and performance of all other obligations referred to in the Loan Agreement which would constitute a default thereunder if not performed as required; and

(d) Payment and performance of all covenants and obligations on the part of Trustor under all Loan Documents as defined in the Loan Agreement; and

(e) Payment and performance of all covenants and obligations on the part of Trustor if any, which any rider attached as an Exhibit to this Deed of Trust recites are secured hereby; and

(f) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

(g) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 **Obligations.** The term “**obligations**” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges,



prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.3 **Incorporation**. All terms of the Secured Obligations, Loan Documents and any other documents evidencing the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time. Any capitalized terms used herein and not otherwise defined herein have the meanings ascribed to them under the Loan Agreement.

### ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

3.1 **Assignment**. Subject to any prior assignment to the Senior Lender pursuant to the Senior Loan Documents, Trustor hereby irrevocably assigns to Beneficiary (a) all of Trustor's right, title and interest in, to and under all leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether now existing or entered into after the date hereof ("**Leases**"); and (b) all rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases ("**Rents**"). The term "**Leases**" shall also include all security deposits, guarantees and other security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Rents is not contingent upon possession of the Property, and may be exercised without possession of the Property.

3.2 **Grant of License**. Subject to any prior rights of the Senior Lender pursuant to the Senior Loan Documents, Beneficiary confers upon Trustor a license ("**License**") to collect and retain the Rents as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Rents pursuant to Section 6.5 without notice and without taking possession of the Property. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary. Subject to the License granted to Trustor hereunder, Trustor irrevocably appoints Beneficiary as its true and lawful attorney-in-fact, at the option of Beneficiary, to demand, receive and enforce all Leases and Rents, to give receipts, releases and satisfactions and to sue, in the

name of Trustor or Beneficiary, in order to enforce all such Leases and apply all litigation proceeds to the Secured Obligations.

3.3 **Effect of Assignment.** The foregoing irrevocable Assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Lessee, licensee, employee, invitee or other person. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

3.4 **Representations and Warranties.** Trustor represents and warrants that as of the date hereof, no Leases have been entered into.

3.5 **Covenants.** Trustor covenants and agrees at Trustor's sole cost and expense after completion of the Improvements on the Property to: (a) exercise Trustor's best efforts to keep all portions of the Property leased at all times at rental amounts permitted under the Loan Agreement and the Regulatory Agreement for the Tax Credits; (b) deliver to Beneficiary fully executed, counterpart original(s) or copies of each and every Lease, if requested to do so, and within twenty (20) days after the end of each calendar month, a certified rent roll for the prior month containing the names of all lessees of the Property, the date and term of their respective Leases, the apartment units occupied, the rent payable thereunder and the security deposit held; (c) execute and record such additional assignments of any Lease or specific subordinations of any Lease to the Deed of Trust, in form and substance acceptable to Beneficiary, as Beneficiary may request; (d) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (e) give Beneficiary prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the lessee or of the lessor; and (f) exercise Trustor's best efforts to avoid, prevent, and promptly remedy any and all code enforcement problems on the Land under the Merced Municipal Code, as said Code is amended from time to time. Trustor shall not, without Beneficiary's prior written consent or as otherwise permitted by any provision of the Loan Agreement: (i) execute any other assignment relating to any of the Leases except as required by the Senior Loan Documents; (ii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rent two (2) months in advance of the time when it becomes due (exclusive of security deposits); (iii) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder; (iv) consent to any assignment or subletting by any lessee; or (v) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance except for the Senior Loan Documents and Permitted Exceptions. Any such

attempted action in violation of the provisions of this Section 3.5 shall be null and void. Without in any way limiting the requirement of Beneficiary's consent hereunder, any sums received by Trustor in consideration of any termination (or the release or discharge of any lessee), modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Trustor shall be held in trust by Trustor for such purpose.

3.6 **Estoppel Certificates.** Within twenty (20) days after request by Beneficiary, Trustor shall deliver to Beneficiary and to any party designated by Beneficiary estoppel certificates executed by Trustor and, if available, by each of the lessees, in recordable form, certifying (if such be the case): (i) that the foregoing assignment and the Leases are in full force and effect; (ii) the date of each lessee's most recent payment of rent; (iii) that there are no defenses or offsets outstanding, or stating those claimed by Trustor or lessees under the foregoing assignment or the Leases, as the case may be; and (iv) any other information reasonably requested by Beneficiary.

#### **ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING**

##### **4.1 Security Interest.**

(a) Subject to the prior interests, if any, of the Senior Lender under the Senior Loan Documents, Trustor hereby grants and assigns to Beneficiary a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Trustor now or at any time hereafter has any interest (collectively, the "**Collateral**"):

i. All right, title and interest of Trustor in and with respect to all reservations and allocations for low income housing tax credits ("**Tax Credits**") available under Section 42 of the Internal Revenue Code of 1986, as amended, now or hereafter issued or awarded by the California Tax Credit Allocation Committee or other governmental agency having jurisdiction for a residential apartment project now or hereafter to be constructed on the Land, including without limitation, all applications and fees for such Tax Credits.

ii. All personal property, including, without limitation, all goods, materials, supplies, equipment, appliances, furniture, furnishings, fixtures, machinery, inventory and construction materials which Trustor now or hereafter owns or in which Trustor now or hereafter acquires an interest or right, including, without limitation, those which are now or hereafter located on or affixed to any of the Land or used or useful in the operation, use or occupancy thereof or the construction of any improvements thereon, including, without limitation, any interest of Trustor in and to personal property which is leased or subject to any superior security interest, or which is being manufactured or assembled for later installation into the improvements to be located or constructed on the Land, wherever located, and all books, records, leases and other documents, of whatever kind or character, relating to any of the Property.

iii. All fees, income, rents, issues, profits, earnings, receipts, royalties and revenues may accrue from said goods, fixtures, furnishings, equipment and building materials or any part thereof or from the Land, Improvements or Appurtenances or any part thereof, or which may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, or subleasing thereof;

iv. All of Trustor's present and future rights to receive payments of money, services or property including, without limitation, rights to all deposits from tenants of the, accounts receivable, deposit accounts, chattel paper, notes, drafts, letters of credit, contract rights (including, without limitation, all rights under any interest rate hedging or similar agreement), instruments, general intangibles and principal, interest and payments due on account of goods sold, services rendered, loans made or credit extended, together with title or interest in all documents evidencing or securing the same;

v. All other intangible property, permits, consents, approvals, licenses authorizations and other rights relating to the Land, Improvements or Appurtenances or the use thereof, or used in connection therewith, including but not limited to all governmental permits relating to construction or other activities on the Land, all names under or by which the project located on the Land may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to any of the Land, Improvements or Appurtenances, good will in any way relating to the Land, Improvements or Appurtenances, and all licenses and permits relating in any way to, or to the operation of, the project located on the Land;

vi. All contracts for and all proceeds from the sale or disposition of the Land, Improvements or Appurtenances or the sale or disposition of the aforesaid collateral;

vii. All right, title and interest of Trustor under all insurance policies covering any loss or damage to all or any part of the Property or any of the aforesaid collateral from any cause whatsoever, regardless of whether such insurance coverage is required by Beneficiary, and all proceeds, loss payments and premium refunds payable in connection with such insurance;

viii. All reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind relating to the Property, and all loan funds held by Beneficiary for the account of Trustor whether or not disbursed;

ix. All water stock relating to the Land or any portion of thereof;

x. All causes of action, claims, compensation and recoveries for any damage to or condemnation or taking of the Land, Improvements or Appurtenances or the aforesaid collateral, or for any conveyance in lieu thereof, whether direct or consequential, or

for any damage or injury to the Property or the aforesaid collateral, or for any loss or diminution in value of the Property or the aforesaid collateral;

xi. All architectural, structural, mechanical and engineering plans and specifications prepared for construction of improvements on or extraction of minerals from the Land, Improvements or Appurtenances and all studies, data and drawings related thereto; and also all contracts and agreements of the Trustor relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings or to the construction of improvements on or extraction of minerals or gravel from the Land.

xii. All replacements and proceeds of, and all additions and accessions to, any of the foregoing collateral, together with all books, records and files relating to any of the foregoing.

(b) As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a security agreement and a fixture filing under Sections 9334 and 9502 of the California Uniform Commercial Code ("UCC"), as amended or recodified from time to time, and is acknowledged and agreed to be a "construction mortgage" under such Sections. For purposes of subdivision (h) of Section 9334 of the UCC, "completion" of construction, work or Improvements shall not be deemed to occur prior to completion of all work, and installation or incorporation into the Improvements of all materials, for which sums secured hereby are disbursed by Beneficiary.

(c) Beneficiary shall have no duty or obligation to make or give any presentments, demands for performance, notices of non-performance, notices of protest or notices of dishonor in connection with any of the Collateral. Beneficiary has no responsibility for, and does not assume any of, Trustor's obligations or duties under any agreement or obligation which is part of the Collateral or any obligation relating to the acquisition, preparation, custody, use, enforcement or operation of any of the Collateral.

**4.2 Representations and Warranties.** Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity, except in favor of the Senior Lender; and (c) Trustor's principal place of business is located at the address shown in Section 7.15.

**4.3 Rights of Beneficiary.** In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding any other provision contained herein, in no event shall Beneficiary be deemed to have accepted any property

other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC §9621, or other applicable law.

**4.4 Rights of Beneficiary on Default.** Upon the occurrence of a Default (hereinafter defined) under this Deed of Trust, then subject to the rights of the Senior Lender under the Senior Loan Documents, in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:

(a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become purchaser at any such sales; and

(b) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral.

(c) It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9 of the UCC, Beneficiary, upon Default, may proceed under the UCC or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect to real property, as specifically permitted under Section 9604 of the UCC and treat both real and personal property interests as one parcel or package or security.

**4.5 Power of Attorney.** Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

#### **4.6 Possession and Use of Collateral.**

(a) Except as otherwise provided in this Section or the other Loan Documents (as defined in the Loan Agreement), so long as no Default exists under this Deed of Trust or any of the Loan Documents, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Loan Agreement.

(b) Trustor shall not permit any of the Collateral to be removed from the Improvements without the prior written consent of Beneficiary unless (i) the replacements of Collateral are of equivalent value and quality and (ii) Trustor has good and clear title to such replacements free and clear of any and all liens, encumbrances, security interests, ownership interests, claims of title (contingent or otherwise) or charges of any kind or the rights of any such conditional sellers, vendors or any other third parties have been expressly subordinated, at no cost to Beneficiary, to the lien and security interest granted hereby in a manner satisfactory to Beneficiary.

(c) It is understood and agreed that, in order to protect Beneficiary from the effect of Section 9334 of the UCC, in the event that (i) Trustor intends to purchase any goods which may become fixtures attached to the Property, or any part thereof, and (ii) such goods will be subject to a purchase money security interest held by a seller or any other party, Trustor shall, before executing any security agreement or other document evidencing such security interest, obtain the prior written approval of Beneficiary, and all requests for such written approval shall be in writing and contain the following information: a description of the fixtures to be replaced, added to, installed or substituted; the address at which the fixtures will be replaced, added to, installed or substituted, and the name and address of the proposed holder and proposed amount of the security interest. Any failure of Trustor to obtain such approval shall be a material breach of Trustor's covenants under this Deed of Trust, and shall, at the option of Beneficiary, entitle Beneficiary to all rights and remedies provided for herein upon default. No consent by Beneficiary pursuant to this section shall be deemed to constitute an agreement to subordinate any right of Beneficiary in fixtures or other property covered by this Deed of Trust.

### **ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES**

5.1 **Title.** Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty, Trustor lawfully holds and possesses fee simple title to the Property without limitation on the right to encumber the same, and that this Deed of Trust is a valid lien on the Property subject to no prior lien other than the lien of the Senior Loan Documents, taxes and assessments which are a lien not yet due and payable and the Permitted Exceptions.

## 5.2 **Taxes and Assessments.**

(a) Subject to Trustor's rights to contest payment of taxes as may be provided in the Loan Agreement, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company, including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property or upon any person, property, equipment or other facility used in the operation or maintenance thereof (collectively, "**Impositions**") which are or which may become a lien upon or cause a loss in value of the Property or any interest therein. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income. Upon request by Beneficiary, Trustor shall deliver to Beneficiary, within thirty (30) days after the date upon which any such Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof.

(b) If requested by Beneficiary, Trustor shall cause to be furnished to Beneficiary a tax reporting service covering the Property of the type, duration and with a company satisfactory to Beneficiary.

5.3 **Insurance.** Subject to the provisions of the Loan Agreement, Trustor covenants to insure the Property at Trustor's expense against such risks as Beneficiary may require under the Loan Agreement and, at Beneficiary's request, to provide evidence of such insurance and payment of all premiums to Beneficiary, and to comply with the requirements of any insurance companies insuring the Property. All insurance policies shall contain a provision that, notwithstanding any contrary agreement between Trustor and insurance company, such policies will not be canceled, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to Beneficiary. In the event Trustor fails to provide, maintain, keep in force or deliver to Beneficiary the policies of insurance required by this Deed of Trust, Beneficiary may (but shall have no obligation to) procure such insurance, and Trustor will pay all premiums thereon promptly upon demand by Beneficiary and until such payment is made by Trustor, the amount of all such premiums shall bear interest at the rate applicable to the principal balance outstanding under the Note.

5.4 **Tax and Insurance Impounds.** If the Senior Lender is not then requiring escrowing or impounding of taxes and insurance premiums, then at Beneficiary's option and upon its demand, Trustor, shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (i) all taxes, assessments and levies imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Property and will become due for the tax year



during which such payment is so directed; and (ii) premiums for fire, other hazard and mortgage insurance next due. If Beneficiary determines that any amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Beneficiary shall notify Trustor of the increased amounts required to pay all amounts due, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Trustor is otherwise in Default hereunder or under any Secured Obligation, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Trustor hereunder or under any Secured Obligation, Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee whereupon Beneficiary and its Trustee shall be released from all liability with respect thereto. Within ninety-five (95) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor and no other party shall have any right or claim thereto.

**5.5 Performance of Secured Obligations.** Trustor shall promptly pay and perform each Secured Obligation when due. All sums payable by Trustor pursuant to this Deed of Trust, shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Land or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferent, diminution or reduction of any sum secured hereby and payable by Trustor.

5.6 **Liens, Encumbrances and Charges.** Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust (excepting the lien of the Senior Loan Documents). Subject to the provisions of the Loan Agreement regarding mechanics' liens, Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto.

5.7 **Damages; Insurance and Condemnation Proceeds.**

(a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary but, subject to the prior rights, if any, of the Senior Lender under the Senior Loan Documents, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies, whether or not required by the Beneficiary, payable by reason of any loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.8(a)(iv), Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim, and may apply the balance to the Secured Obligations in any order, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure. Trustor hereby authorizes and directs any affected insurance company to make payment of all proceeds directly to Beneficiary. If Trustor receives any such proceeds of insurance resulting from any casualty, Trustor shall promptly pay over such proceeds to Beneficiary.

(b) At its sole option, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work, the income from the Property will be sufficient to pay all expenses and debt service for

the Property; (bb) of the continuation of Leases acceptable to and required by Beneficiary; (cc) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable.

(c) Nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Property as provided in Section 5.8 hereof or restoring all damage or destruction to the Property, regardless of whether or not there are insurance proceeds available to Trustor or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure or waive any Default or notice of Default under this Deed of Trust or invalidate any act done pursuant to such notice.

**5.8 Maintenance and Preservation of the Property.** Subject to the provisions of the Loan Agreement, Trustor covenants: (i) to keep the Property in good condition and repair; (ii) not to remove or demolish the Property or any part thereof, not to alter, restore or add to the Property and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Property without Beneficiary's prior written consent or as provided in the Loan Agreement; (iii) to complete or restore promptly and in good and workmanlike manner the Property, or any part thereof which may be damaged or destroyed, without regard to whether Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations as provided herein; (iv) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (v) to comply with the requirements of Section 42 of the Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder and any other federal, state or local laws or regulations related thereto, including, without limitation, with respect to (x) Trustor's organization, business and operations, (y) the operation of the Property and (z) the maintenance of all Tax Credits heretofore or hereafter allocated to Trustor and/or the Property pursuant to said Section 42; (vi) not to commit or permit waste of the Property; (vii) to do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value; and (viii) not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects the Property or any part of it without Beneficiary's prior written consent.

**5.9 Defense and Notice of Losses, Claims and Actions.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee and shall pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of

the filing of any action or proceeding, of the occurrence of any casualty or damage to the Property, whether or not covered by insurance, and of any condemnation offer or action.

**5.10 Acceptance of Trust; Powers and Duties of Trustee.** Trustee accepts this trust when this Deed of Trust is recorded. From time to time upon written request of Beneficiary and presentation of this Deed of Trust or a certified copy thereof for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby, Trustee may, without liability therefor and without notice: (i) reconvey all or any part of the Property; (ii) consent to the making of any map or plat thereof; and (iii) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding, including, without limitation, actions in which Trustor, Beneficiary or Trustee shall be a party unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against loss, cost, liability or expense.

**5.11 Compensation; Exculpation; Indemnification.**

(a) Trustor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust, including attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limit any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property after a Default (hereinafter defined) or from any other act or omission of Beneficiary in managing the Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

(b) Notwithstanding any provision to the contrary, Trustor agrees to indemnify, protect, defend, and hold Trustee and Beneficiary harmless from all losses, damages, liabilities, injuries (including death of person or persons), claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other expenses which either may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the

execution of this Deed of Trust or performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Trustor to perform Trustor's obligations. The above obligation of Trustor to indemnify, protect, defend, and hold harmless Trustee and Beneficiary shall survive the release and cancellation of the Secured Obligations and the release and reconveyance or partial release and reconveyance of this Deed of Trust and shall apply to any damages or claims for damages whether or not insurance policies shall have been determined to apply. It is understood that the duty of Trustor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Trustee or Beneficiary of insurance certificates and endorsements does not relieve Trustor from liability under this indemnification and hold harmless clause.

(c) Trustor shall pay all amounts and indebtedness arising under this Section 5.11 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest of 12% per annum.

5.12 **Substitution of Trustees.** From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section 5.12 shall be conclusive proof of the proper substitution of such new Trustee.

5.13 **Due on Sale or Encumbrance.** Prior to the recordation by Lender of a Certificate of Completion upon completion of the Project, the Borrower shall not transfer, convey, assign, or lease the whole or any part of the Property or the Improvements thereon without the prior written approval of the Lender. This prohibition shall not apply subsequent to the recordation of the Certificate of Completion with respect to the Improvements upon the Property. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Project, or (i) prohibit the transfer of Borrower's limited partnership interests in any respect; (ii) prohibit the removal and replacement of the Borrower's general partner in accordance with the Borrower's partnership agreement; (iii) prohibit a transfer of the Property or the Improvements to the Borrower's general partner pursuant to the Borrower's partnership agreement as then in effect; or (iv) prohibit a transfer of the Property or the Improvements to any Affiliate of the Borrower's then general partner or the Borrower's then limited partner, so long as any and/or all of the foregoing transferees or assignees expressly and unconditionally assumes all of the duties and obligations of the Borrower and/or any subsequent transferee or assignee under this Agreement to the extent allocable to the portion transferred. Any sale, transfer, conveyance or assignment not made in strict compliance with the foregoing conditions shall constitute a default by the Borrower under this Agreement.

5.14 **Releases, Extensions, Modifications and Additional Security.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the

Property or in any manner obligated under the Secured Obligations (“Interested Parties”), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Property.

5.15 **Reconveyance.** Upon Beneficiary’s written request, and upon surrender to Trustee for cancellation of this Deed of Trust or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Trustee shall reconvey, without warranty, the Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as “the person or persons legally entitled thereto” and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.

5.16 **Subrogation.** Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.

5.17 **Right of Inspection.** Beneficiary, its agents and employees, may enter the Property at any reasonable time for the purpose of inspecting the Property and ascertaining Trustor’s compliance with the terms hereof.

## ARTICLE 6. DEFAULT PROVISIONS

6.1 **Default.** For all purposes hereof, the term “Default” shall mean (a) at Beneficiary’s option, the failure of Trustor to make any payment of principal or interest on the Note or to pay any other amount due hereunder or under the Note when the same is due and payable, whether at maturity, by acceleration or otherwise; (b) the failure of Trustor to perform any other obligation hereunder, or the failure to be true of any representation or warranty of Trustor contained herein and the continuance of such failure for any grace period, if any, allowed in the Loan Agreement for such failure, or (c) the existence of any Default as defined in the Loan Agreement or other Loan Documents.

6.2 **Rights and Remedies.** At any time after Default, Beneficiary and Trustee shall each have all the following rights and remedies:

(a) With or without notice, to declare all Secured Obligations immediately due and payable;

(b) With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons;

(c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subsection, Trustor waives the defense of laches and any applicable statute of limitations;

(d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;

(e) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, to enter upon, possess, manage and operate the Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Property, to make, terminate, enforce or modify Leases of the Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof;

(f) To execute a written notice of such Default and of its election to cause the Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the

Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary may purchase at the sale;

(g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine in their sole discretion;

(h) Upon sale of the Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Property.

**6.3 Remedies Not Exclusive.** Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any of the Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of



Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies.

6.4 **Application of Foreclosure Sale Proceeds.** After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (i) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest at 12% per annum; (ii) to payment of all other Secured Obligations; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

6.5 **Application of Other Sums.** All sums received by Beneficiary under Section 6.2 or Section 3.2, less all costs and expenses incurred by Beneficiary or any receiver under Section 6.2 or Section 3.2, including, without limitation, attorneys' fees, may be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.

6.6 **No Cure or Waiver.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.

6.7 **Payment of Costs, Expenses and Attorney's Fees.** Trustor agrees to pay to Beneficiary immediately and without demand all costs and expenses incurred by Trustee and Beneficiary pursuant to subsections (a) through (g) inclusive of Section 6.2 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the

date of expenditure until said sums have been paid at the rate of interest at 12% per annum then applicable to the principal balance of the Note as specified therein. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any attorneys' fees.

**6.8 Power to File Notices and Cure Defaults.** Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Leases and Rents in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.

**6.9 Limitation on Partners' Liability.** Beneficiary's recovery against any partner of Trustor under the Loan Documents shall be limited solely to the collateral given to Beneficiary as security for Trustor's performance under the Loan Documents and to the general assets of Trustor itself. Such recovery shall not be a lien, or the basis of a claim of lien or levy of execution, against the general assets of any general or limited partner of Trustor. Notwithstanding the foregoing, Trustor, any general partner of Trustor and the general assets of any general partner of Trustor shall be fully liable to Beneficiary to the same extent that Trustor would be liable absent the foregoing limitation of this Section for: (a) fraud or willful misrepresentation on the part of Trustor or such partner; (b) waste; (c) failure of such partner to pay any income or other taxes, assessments or other charges attributable to such partner which can create liens on any portion of the Property (to the full extent of any such taxes, assessments or other charges); (d) the amount of any money or value of any property received by such partner as a distribution of earnings or income from the Property if such distribution was prohibited under the terms of the Loan Agreement (to the full extent of such distribution); (e) any breach by Trustor of any covenant under Article 7, entitled Hazardous Materials of the Loan Agreement, any representation or warranty of Trustor under such Article proving to have been untrue when made, or the presence of any significant Hazardous Materials in, on or about the Property which are discovered subsequent to the Effective Date; or (f) any obligation arising from the indemnity set forth in Section 11.10 of the Loan Agreement (except for payment of principal and interest on the Note). In addition, the limitations hereof shall not be deemed to limit: (i) any right Beneficiary might otherwise have to obtain injunctive relief against Trustor, any general partner of Trustor or any other person or entity; (ii) any suit, action or proceeding (including without limitation exercise of the power of sale under or the filing of an action for judicial foreclosure of the Deed of

Trust), in connection with the preservation, enforcement or foreclosure of the liens, mortgages, assignments and security interests now or at any time hereafter securing the payment and performance of all obligations under the Loan Agreement or any of the Loan Documents; or (iii) the collection of amounts which may become owing or payable under or on account of insurance, condemnation awards or damages or other public actions or surety bonds maintained or provided by Trustor; provided, however, that the assertion by Beneficiary of any such right, suit, action or collection of amounts shall not result in a monetary claim upon the general assets of any general or limited partner of Trustor except as otherwise provided herein.

## ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 **Additional Provisions.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property and such further rights and agreements are incorporated herein by this reference.

7.2 **Financial Statements.** Trustor shall deliver to Beneficiary copies of such financial statements, balance sheets, profit and loss statements, operating statements, income and expense statements and other financial information in reasonable detail and at the times required by the Loan Agreement. All such statements shall be prepared in accordance with the requirements of the Loan Agreement and Beneficiary shall have the right to audit and inspect all books and records relating thereto.

7.3 **Trade Names.** At the request of Beneficiary, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names or fictitious business names under which Trustor intends to operate the Property or any business located thereon and representing and warranting that Trustor does business under no other trade names or fictitious business names with respect to the Property. Trustor shall immediately notify Beneficiary in writing of any change in said trade names or fictitious business names, and will, upon request of Beneficiary, execute any additional financing statements and other certificates necessary to reflect the change in trade names or fictitious business names.

7.4 **Merger.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Property unless Beneficiary consents to a merger in writing.

7.5 **Obligations of Trustor, Joint and Several.** If more than one person has executed this Deed of Trust as "Trustor", the obligations of all such persons hereunder shall be joint and several.

7.6 **Trustor Waiver of Rights.** Trustor waives to the extent permitted by law, (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment

before sale of any portion of the Property, and, (ii) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created, and (iii) all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties; provided, however, nothing contained herein shall be deemed to be a waiver of Trustor's rights under Section 2924c of the California Civil Code.

**7.7 Waiver of Marshalling Rights.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation ("**Other Property**") marshalled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.

**7.8 Statements by Trustor.** Trustor and Beneficiary shall, at any time and from time to time upon not less than twenty (20) days prior written notice from the other, execute, acknowledge and deliver to the requesting party a statement (i) stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest; (ii) certifying that this Deed of Trust and the other Secured Obligations are unmodified and in full force and effect or, if modified, stating the nature thereof and certifying that each Secured Obligation, as so modified, is in full force and effect and the date to which principal, interest and other sums secured hereby have been paid and (iii) acknowledging that there are no uncured Default under this Deed of Trust or any other Secured Obligation or specifying such Defaults, if any are claimed. Any such certificate may be conclusively relied upon by the party requesting it and any prospective purchaser or assignee of any Secured Obligation. Either party's failure to deliver such certificate within such time shall be conclusive upon such party that (i) the Secured Obligations are in full force and effect, without modification, and (ii) there are no uncured Defaults hereunder.

**7.9 Rules of Construction.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "**Property**" means all and any part of the Property and any interest in the Property.

**7.10 Further Assurances.** Trustor shall promptly make, execute, acknowledge and deliver, in form and substance reasonably satisfactory to Beneficiary, all such additional instruments, agreements and other documents, and Trustor shall do all other acts as may at any time hereafter be requested by Beneficiary, to effectuate and carry out the purposes of this Deed of Trust and each of the Secured Obligations.

7.11 **Successors in Interest.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 7.11 does not waive or modify the provisions of Section 5.13.

7.12 **Execution in Counterparts.** This Deed of Trust may be executed in any number of counterparts, each of which, when executed and delivered to Beneficiary, will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.

7.13 **Governing Law.** This Deed of Trust shall be construed in accordance with the laws of the State of California, except to the extent that Federal laws preempt the laws of the State of California, and any action brought relating to this Deed of Trust shall be held exclusively in a state court in the County of Merced.

7.14 **Incorporation.** All Exhibits attached hereto are incorporated into this Deed of Trust by this reference.

7.15 **Notices.** All notices or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class U.S. mail, postage prepaid, except that notice of a Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by commercial courier service, charges prepaid. Notices so sent shall be deemed given when actually received at the addresses set forth below, except that notices sent by mail shall be deemed received three (3) calendar days following the date of mailing. For purposes of notice, the addresses of the parties shall be:

Trustor:

SUNNY VIEW OF MERCED, L.P.  
320 Golden Shore Drive, Suite 200  
Long Beach, California 90802-4217  
Attn: Brian Gentner, Esq.  
Fax No. (562) 902-0918

With copy to (which shall not constitute notice to Trustor):

Multi-Housing Investments, LLC  
320 Golden Shore, Suite 200  
Long Beach, CA 90802  
Attn: Jeffrey Weiss  
Fax No.: (562) 256-2003

Beneficiary:

City of Merced, a California Charter Municipal Corporation  
678 West 18<sup>th</sup> Street  
Merced, California 95340

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Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Trustor shall forward to Beneficiary, without delay, any notices, letters or other communications delivered to the Property or to Trustor naming Beneficiary, "Lender" or the "Construction Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Trustor to perform its obligations to Beneficiary under the Note or the Loan Agreement.

7.16 **Authority to Execute.** The person or persons executing this Deed of Trust warrants and represents that he/she/they has/have the authority to execute this Deed of Trust on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

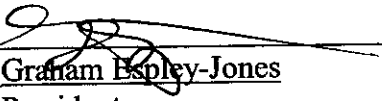
[SIGNATURE ON NEXT PAGE]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

“TRUSTOR”

SUNNY VIEW OF MERCED, L.P.,  
A California Limited Partnership

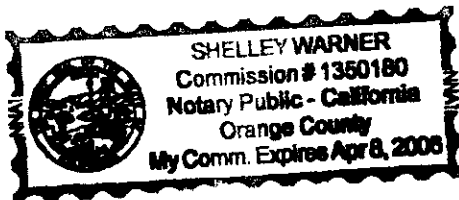
By: Western Community Housing, Inc,  
California Nonprofit Corporation,  
its General Partner

By:   
Name: Graham Espley-Jones  
Title: President

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF ORANGE                    )

On DEC. 14<sup>th</sup>, 2005, before me, SHELLEY WARNER, Notary Public, personally appeared GRAHAM ESLEY-JONES, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



  
NOTARY PUBLIC



GOVERNMENT CODE 27361.7

I CERTIFY UNDER PENALTY OF PERJURY THAT THE  
NOTARY SEAL ON THE DOCUMENT TO WHICH THIS  
STATEMENT IS ATTACHED READ AS FOLLOWS:

NAME OF NOTARY: Shelley Warner

DATE COMMISSION EXPIRES: 4-8-06

COMMISSION NUMBER: 1350180

PLACE OF EXECUTION: Orange County

EXECUTION DATE: 12-14-05

SIGNATURE: Arali Ganga

FIRM NAME (IF APPLICABLE): City of Merced

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## **EXHIBIT A**

### **LEGAL DESCRIPTION**

Parcel 2, of Parcel Map titled City of Merced Lot Split #03-06, recorded on October 29, 2003 in Book 94 of Parcel Maps, at Pages 33 & 34, as Document No. 2003070795 in the Merced County Recorder's Office, State of California.

Assessors Parcel No: 035-010-062