

RESOLUTION NO. 2011-136

Adopted by the Sacramento City Council

March 8, 2011

APPROVAL OF LOAN DOCUMENTS FOR THE BROADWAY/MARTIN LUTHER KING, JUNIOR BOULEVARD PROJECT WITH OAK PARK SENIOR HOUSING PARTNERS, L.P. (DEVELOPER)

BACKGROUND

- A. The project located at the intersection of Broadway and Martin Luther King, Junior Boulevard (Project) will provide 55 units of affordable senior housing, one manager's unit, and approximately 3,000 square feet of retail space in Oak Park Redevelopment Project Area.
- B. On November 9, 2010, the City Council approved a loan commitment of Five Million Three Hundred Twenty Five Thousand Dollars (\$5,325,000) consisting of One Million Five Hundred Eighty Thousand Dollars (\$1,580,000) in City Home Investment Partnership Program (HOME) funds, Eight Hundred Forty Three Thousand Dollars (\$843,000) in Aggregated Low/Moderate Tax Increment (Low/Mod TI), Five Hundred Twenty Five Thousand Dollars (\$525,000) in Oak Park Redevelopment Project Area Tax Increment (Oak Park TI), and Two Million Three Hundred Seventy Six Thousand Eight Hundred Dollars (\$2,376,800) in 2005 Oak Park Taxable Bonds (TARB) to assist in funding the construction and permanent financing of the Project.
- C. Oak Park Senior Housing Partners, L.P. (Developer) intends to submit an application for 9% Low Income Housing Tax Credits by March 23, 2011.
- D. The Project was analyzed by the City of Sacramento in accordance with the California Environmental Quality Act (CEQA), and a Categorical Exemption was prepared pursuant to CEQA Guidelines Section 15332. The Notice of Exemption was adopted and the Project was approved by City Planning Commission on September 23, 2010. The proposed actions delegating authority to enter into loan agreements with and transfer the property to the project applicant do not constitute a new project or substantive changes or modifications to the project as previously analyzed. Because there is neither any new information of substantial importance nor any substantial changes with respect to the circumstances under which the project will be undertaken that would require preparation of supplemental environmental documentation, the recommended actions do not require further environmental review pursuant to CEQA Guidelines Section 15162 or 15163.
- E. Environmental review for the Broadway/MLK Development project pursuant to the National Environmental Policy Act (NEPA) is currently underway. The availability of federal funds for use in the Project is contingent upon the Federal Department of Housing and Urban Development's consent to the Agency's request for release of funds.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The proposed action is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15332.
- Section 2. The Construction and Permanent Loan Agreement incorporated in this resolution by this reference is approved.
- Section 3. The Redevelopment Agency of the City of Sacramento (“Agency”) is authorized to execute the Construction and Permanent Loan Agreement, Deed of Trust, Promissory Note, and Regulatory Agreement for the Project (collectively, “Loan Documents”), incorporated in this resolution by this reference, and to enter into other agreements, execute other documents, and perform other actions necessary in relation to the Loan Documents to provide said funding assistance to the Project, consistent with the Loan Documents and as may be necessary to ensure proper repayment of Agency funds in accordance with the Loan Documents, all as approved by Agency Counsel.
- Section 4. The Agency is authorized to make technical amendments to said agreements and documents with approval of Agency Counsel, which amendments are in accordance with the Loan Documents and related documents, with Agency policy, with this resolution, and with good legal practices for making of such a loan.

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Exhibit A: Construction and Permanent Loan Agreement

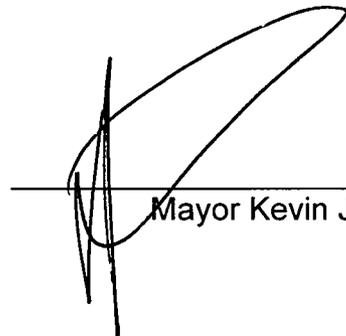
Adopted by the City of Sacramento City Council on March 8, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

**CONSTRUCTION AND PERMANENT LOAN AGREEMENT
BROADWAY AND MARTIN LUTHER KING BOULEVARD**

IN CONSIDERATION of their mutual promises, the parties agree as follows:

1. **LOAN.** The Lender is making the Loan pursuant to the terms and conditions of this Loan Agreement. Lender and Borrower have entered this Loan Agreement as of the Effective Date.

2. **DEFINITIONS TABLES.** The capitalized terms in this Loan Agreement shall have the meanings assigned in the following Definitions Tables and in Section 3 Definitions. Terms being defined are indicated by quotation marks. If an item in this Article 1 table is marked "None", "Not Applicable", "N/A" or equivalent or is left blank, that defined term is not applicable to this Loan or the referenced item is not required or is not included in this Loan as the context may indicate.

A. "LOAN INFORMATION" The general loan provisions of the Loan:		
"EFFECTIVE DATE"	***Date***	Being the date as of which this Loan Agreement shall be effective.
"LENDER"	The following public agency that is making the Loan, and whose legal status and address are:	
Name	Redevelopment Agency of the City of Sacramento	
Legal Status	A public body, corporate and politic	
Principal Address	801 12 th Street, Sacramento CA 95814	
"BORROWER"	The borrower of the Loan funds whose name, legal status and address are:	
Name	Oak Park Senior Housing, L.P.	
Legal Status	A California limited partnership	
Principal Address	18201 Von Karman Avenue, Suite 900, Irvine, CA 92612	
"LOAN"	The Loan made by this Loan Agreement.	
"LOAN COMMITMENT"	Lender's loan commitment, made by letter dated as of	October 20, 2010
"LOAN PROGRAM"	Lender's Loan Program, commonly known as	Project Area Tax Increment Tax Increment Housing Set-Aside Fund HOME Investment Partnership Program
"LOAN AMOUNT"	Five Million Three Hundred Twenty-Five Thousand Dollars and No Cents (\$5,325,000.00)	
"INTEREST RATE"	The interest rate is 1.05% per year, simple interest.	
"PAYMENT START DATE"	The first day of the 217 th calendar month following the Closing Date.	
"MATURITY DATE"	The first day of the 684 th calendar month following the Closing Date.	

<p>“PAYMENT SCHEDULE”</p>	<p>Payable monthly, in monthly installments as indicated in the Note, commencing on the Payment Start Date and continuing on the first day of each calendar month thereafter, through and including the Maturity Date.</p> <p>At completion of construction, Borrower shall submit to Lender a cost certification prepared by a qualified, independent auditor acceptable to Lender, which cost certification shall indicate the amounts actually spent for each item in the cost breakdown. If there is an aggregate savings in the total of all such cost breakdown items from the cost breakdown items in the original Budget approved by the Lender, the Lender shall withhold for itself as Loan repayment, one-half of such savings from the amount of retention then held by the Lender, and the Loan balance shall be reduced by the amount so withheld. The Lender, in its sole discretion, shall determine any reduction and/or repayment of the Loan based upon this cost certification and the original approved Budget for the Project.</p>	
<p>“BORROWER EQUITY”</p>	<p>Seven Million Five Hundred Thousand and No Cents (\$7,500,000.00)</p>	<p>Which is the minimum amount of cash or cash equivalent (excluding land equity or other non-cash investment in the Project) that Borrower is investing in the Project.</p>
<p>“SPECIAL TERMS”</p>	<p>Zero Dollars and No Cents (\$0.00)</p>	<p>Which is Borrower’s non-cash contribution to the Project (such as deferred Developer fees).</p> <p>1. If Borrower is unable to make payments to the Lender for three consecutive years, the Lender in its sole discretion may allow deferment of loan payments for up to five consecutive years. At the end of the five year period, the Borrower will resume the regular loan repayments and the accrued interest will be due on the loan maturity date.</p> <p>2. The Lender, by its execution of this Agreement, pledges the Loan Program funds (including a pledge of tax increment funds in accordance with Health and Safety Code, Section 33671.5) to secure to the Borrower the funding of the Loan; such pledge being subordinate to any pledge previously made by Lender to secure repayment of any existing Lender bonds, or the pledge to secure any bond refunding or defeasing repayment of any existing Lender bonds, or the pledge of Loan Program funds to satisfy any other prior obligation of the Lender. The obligations of Lender under this Agreement constitute an indebtedness of Lender for the purposes of carrying out the redevelopment plan for the Oak Park Redevelopment Project Area, which indebtedness is payable only out of Loan Program funds. The Lender’s obligations under this Section 2. of “Special Terms” are prior and senior to any Lender bonded indebtedness or other indebtedness or form of obligation incurred after the Effective Date of this Agreement (other than any indebtedness incurred to refund or defease any existing Lender bonds); provided, however, that Lender’s obligations under this Agreement may, with the written consent of the Borrower, be subordinated to future Lender bonded indebtedness. This provision is subject to the provisions of this Loan Agreement, including without limitation, conditions precedent to funding the Loan or making disbursements of the Loan proceeds.</p>

"PROJECT"	Which is the Project to be developed on the Property with the Loan funds, described as:	New construction of 55 units of senior affordable apartments, one manager's unit, and a minimum of 3,000 square feet of commercial space at the intersection of Broadway and Martin Luther King Boulevard in the Oak Park Redevelopment Project Area
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B. "COLLATERAL" The Collateral securing repayment of the Loan, which Collateral consists of the following:

"PROPERTY"	Property means the following described real property, which is security for the Loan, together with all "Personalty", which means all of Borrower's interest in all accounts, contract rights, and general intangibles (specifically including any insurance proceeds and condemnation awards) arising out of the ownership, development, or operation of the Property, and all furniture, furnishings, equipment, machinery, construction materials and supplies, leasehold interests in personal property, together with all present and future replacements, substitutions, and additions, and the cash and noncash proceeds of the Property.	
Address	Broadway and Martin Luther King Boulevard	
Assessor's Parcel Number	014-0171-001, 014-0171-017, 014-0171-018, 014-0171-019, 014-0171-020, 014-0171-025	
"Legal Description"	The Property is situated in the State of California, County of Sacramento, and is more particularly described in Exhibit 1: Legal Description attached and incorporated by reference.	
Borrower's Title Interest	Borrower has fee interest in the Property or, if the Additional Escrow Instructions so indicate, Borrower will acquire fee interest in the Property at Close of Escrow.	

C. "ESCROW INFORMATION":

"Title Company" and "Escrow Agent"	Old Republic Title Company	Which is the title company that will issue the Title Policy and that will act as Escrow Agent for the Escrow
"Escrow"	The escrow with Escrow Agent	
"Closing Date"	Closing Date	Which is the date for close of the Escrow, as it may be extended

D. "LIST OF EXHIBITS" (The following are attached to this Loan Agreement):

EXHIBIT	DEFINED TERM
<u>Exhibit 1: Legal Description</u>	"Legal Description"
<u>Exhibit 2: Scope of Development</u>	"Scope of Development"
<u>Exhibit 3: Note Form</u>	"Note"
<u>Exhibit 4: Trust Deed Form</u>	"Trust Deed"
<u>Exhibit 5: Regulatory Agreement</u>	"Regulatory Agreement"
<u>Exhibit 6: Escrow Instructions</u>	"Escrow Instructions"
<u>Exhibit 7: Federal Requirements</u>	"Federal Requirements"

E. "APPROVAL DOCUMENTS" Borrower shall submit the following documents for Lender approval:

Construction Agreements for the Project
Borrower's organizational documents, such as partnership agreements or corporate articles and by-laws
"Budget" for the Project
Evidence of financing as described in Section 10 of this Loan Agreement
Plans and Specifications as defined in Section 3 of this Loan Agreement

F. "ASSIGNED DOCUMENTS" Borrower shall assign the following documents to Lender:

Construction Contract

G. "CONSTRUCTION INFORMATION":

"Completion Date"	As set forth in the DDA	Which is the date on or before which the Completion of the Project must occur.	
"General Contractor"	To be determined	Which is the general contractor for construction of the Project	
"Retention"	The following percentage of each disbursement made for construction work, in aggregate not to exceed the following percentage of the Loan Amount, which shall be retained by Lender for disbursement with the final disbursement of the Loan:	Percentage of disbursement:	Ten Percent (10%)
		Percentage of Loan:	Ten Percent (10%)

H. "SPECIAL PROVISIONS" The following special provisions shall be in addition to the provisions of this Loan Agreement:

1. Loan funds shall be used solely for actual costs of Project construction. No Loan funds shall be used for predevelopment costs, except as provided in an approved Lender budget. Unless otherwise noted in said budget, predevelopment costs are not subject to the withholding as Retention.
2. Lender acknowledges and consents to Borrower's admission of a tax credit investor limited partner, in Borrower's discretion, as "Tax Credit Limited Partner" of Borrower. Said limited partner may transfer its interests to any other third party, so long as such change does not affect the identity, powers or duties of the Borrower's general partners or the ability of the limited partners to change the general partner or its powers.
3. Lender shall give copies of notices required to be delivered to Borrower to Tax Credit Limited Partner at its address provided by Borrower; provided, however that Borrower acknowledges that such notice is an accommodation and the failure of the Lender to properly deliver any such notice shall not give rise to any claims or defenses of Borrower or any third party.
4. The Lender has approved Related Management Companies as the qualified property management company for the Project.
5. This Loan is made pursuant to the Disposition and Development Agreement between the Parties, made concurrently with this Loan Agreement ("DDA"). This Loan Agreement is subject to the DDA including without limitation, conditions precedent to funding the Loan or making disbursements of the Loan proceeds.
6. The entire Agency loan shall be allocated solely and exclusively to eligible project costs directly attributable to the affordable housing units within the Project and not to the commercial portion of the overall Project. Lender and Borrower agree that the eligible project costs allocable to the

affordable housing units exceed the amount of the Loan, and upon the Agency's written request delivered to Borrower at any time no later than one (1) year after Completion of the Project, Borrower shall provide to Lender written proof that such is the case.
7. Lender hereby acknowledges and consents to Borrower's future engagement of the General Contractor for construction of the Project. The Borrower shall select the General Contractor for construction of the Project, subject to the Lender's review and approval of the professional qualifications of the proposed General Contractor to construct the Project, which approval shall not be withheld, delayed or conditioned unreasonably.

3. **DEFINITIONS. Terms not defined in this Loan Agreement shall have the definitions assigned in the Trust Deed. If a definition in this Loan Agreement refers to an Exhibit that is an attached document form, the attached document is a true and correct copy of the document referenced. As used in this Loan Agreement, the following terms shall have the following meanings:**

- (a) "Budget" is the budget approved by Lender for the development of the Project.
- (b) "Change" means any extra work or installation of materials not included in the Plans and Specifications or any change in or deviation from the Plans and Specifications.
- (c) "Close of Escrow" means the fulfillment of the Escrow terms and conclusion of the Escrow, including, without limitation, the execution of unexecuted documents, the recordation of documents specified for recording, the issuance of title insurance policies, the payment of fees and the delivery of funds and documents as directed in the escrow instructions for the Escrow. The Close of Escrow shall occur on the Closing Date.
- (d) "Completion of the Project" means that, in Lender's sole judgment the Project has been constructed, rehabilitated, completed, equipped, and furnished in a good and proper manner in accordance with the Plans and Specifications, the Scope of Development and the Budget as approved by Lender; all notices of completion with respect to the Project have been filed and all statutory lien periods have expired; all costs of constructing the Project have been paid, including, without limitation, interest on the Note which may be due prior to the Completion Date; all necessary certificates of occupancy have been issued; and all of the conditions to final disbursement of the Loan have been satisfied.
- (e) "Escrow" is the escrow with Title Company for the closing of the Loan.
- (f) "Escrow Instructions" means the Escrow Instructions for the Escrow signed by each of the parties to this Loan Agreement.
- (g) "Event of Default" is breach of or default in a party's obligations under this Loan Agreement, the Trust Deed, the Note and any other instrument which is incorporated in this Loan Agreement or which otherwise secures the repayment of the Loan.
- (h) "Financial Statements" means the financial statements of Borrower (and any other persons on whose financial capacity the Lender has relied in making this Loan) as may be

required by Lender from time to time, including operating statements, balance sheets, and any other financial reports and information that Lender may require.

(i) “Fixtures” means all fixtures located on or within the Project or now or later installed in or used in connection with any of the Project, including, as applicable and without limitation, all partitions, screens, awnings, motors, engines, boilers, furnaces, pipes, plumbing, elevators, cleaning and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, heating, ventilating, air conditioning and air cooling equipment, built-in refrigerators, and gas and electric machinery, appurtenances, and equipment, whether or not permanently affixed to the Project.

(j) “General Contractor” means the general contractor named by Borrower in his application or supporting documents as the general contractor to do the Project, or any other general contractor so designated by Borrower and approved in writing in advance by Lender.

(k) “Governmental Authority” means the United States of America, the State of California, the County of Sacramento, the City of Sacramento or any other political subdivision, agency, department, commission, board, bureau, or instrumentality of any of them.

(l) “Governmental Requirement” means any law, ordinance, order, rule, regulation, plan, ruling, determination or requirement of a Governmental Authority.

(m) “Loan” is the loan from Lender to Borrower made pursuant to this Loan Agreement.

(n) “Loan Agreement” means this Construction and Permanent Loan Agreement, all Exhibits attached to this Loan Agreement (which are incorporated in this Loan Agreement by this reference) and the Loan Documents which are not otherwise included in this definition.

(o) “Loan Documents” means the Note, this Loan Agreement, the Security Documents, and all other documents (including guaranties) evidencing, securing, or relating to the Loan.

(p) “Loan Maturity Date” means the date on which the entire unpaid balance of the Loan, including principal and interest, is due and payable.

(q) “Loan Proceeds” means funds disbursed by Lender on account of the Loan and pursuant to this Loan Agreement.

(r) “Other Lender Draw” means all of a draw request or other request for disbursement, including without limitation all attachments and supporting evidence, made to any other lender, investor (during the construction phase only) or other funding source for the Project (during the construction phase only).

(s) "Plans and Specifications" means the final set of architectural, structural, mechanical, electrical, grading, sewer, water, street, and utility plans and specifications for the Project, including all supplements, amendments, and modifications.

(t) "Potential Default" means an event that would constitute an Event of Default but for any requirement of notice to be given or period of grace or time to elapse.

(u) "Project" means the development of the Property in accordance with the Plans and Specifications including, without limitation, all existing buildings, improvements, and appurtenances on the Property, all work of demolition and rehabilitation to be conducted on the Property, and all improvements, additions, and replacements constructed or placed at any time on the Property.

(v) "Security Documents" means the Trust Deed, together with all other documents entered into between Borrower and Lender or by Borrower in favor of, or for the benefit of, Lender that recite that they are to secure the Loan.

(w) "Title Policy" means the title insurance policies to be issued in connection with this Loan, as further defined in the Escrow Instructions.

4. **BORROWER'S REPRESENTATIONS AND WARRANTIES.** As a material inducement to Lender to enter into this Loan Agreement and to make the Loan to Borrower, Borrower unconditionally, and each signatory who signs on its behalf, to the extent of their actual knowledge, represents and warrants to Lender, as of the Close of Escrow, as follows:

(a) **LEGAL ORGANIZATION.** Borrower is duly formed and validly exists in the form stated in Section 2, is qualified to do business in California, and has full power to consummate the transactions contemplated.

(b) **BORROWER'S POWERS.** Borrower has full authority to execute this Loan Agreement, the Note, the Trust Deed, and all of the other Loan Documents, to undertake and consummate the contemplated transactions, and to pay, perform, and observe all of the conditions, covenants, agreements, and obligations.

(c) **BINDING OBLIGATION.** This Loan Agreement, the Note, the Trust Deed, and each of the other Loan Documents constitute a legal and binding obligation of, and are valid and enforceable against, each party other than Lender, in accordance with the terms of each.

(d) **LITIGATION.** There are no actions, suits, or proceedings pending or, to the best knowledge of Borrower, threatened against or affecting Borrower, the Property, or any part of it, or involving the validity or enforceability of the Trust Deed, the priority of the lien, or the validity or enforceability of any of the other Loan Documents, at law or in equity, or before or by any Governmental Authority. Borrower is not in default with respect to any order, writ, injunction, decree, or demand of any court or other Governmental Authority.

(e) **NO OTHER BREACH.** The consummation of the transactions covered by this Loan Agreement and the payment and performance of all of the obligations in the Loan Documents, will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, contract, loan or credit agreement, corporate charter, bylaws, partnership agreement, trust agreement, or other instrument to which the Borrower or any of its general partners is a party or by which it or they or the Property may be bound or affected.

(f) **NO DEFAULT.** There is no Event of Default or Potential Default on the part of Borrower.

(g) **TITLE TO PROPERTY.** Borrower is the sole legal and beneficial owner of the Property, which is free of all claims, liens, and encumbrances other than those shown in the Title Policy.

(h) **NO UNAPPROVED LOANS.** Borrower has not received financing for either the acquisition of the Property, the construction of the Project or the permanent financing of the Project except as has been specifically disclosed to and approved by Lender in writing.

(i) **TITLE OF PERSONALTY.** All Personalty is vested solely in Borrower, free of all claims, liens, and encumbrances, and the security interest of Lender in the Personalty is a first lien.

(j) **USE OF PROCEEDS.** All Loan Proceeds will be disbursed as provided in this Loan Agreement and used only for payment of the costs of construction of the Project in accordance with the Plans and Specifications and for other purposes specified in the Loan.

(k) **TAXES PAID.** Borrower has filed all required Federal, State, County, and City tax returns and has paid all taxes due and owing. Borrower knows of no basis for additional assessments with respect to any taxes, other than the lien of taxes not yet due.

(l) **PLANS AND SPECIFICATIONS.** The Plans and Specifications are satisfactory to Borrower and the General Contractor and have been approved by the Lender and all other construction lenders. There are no structural defects in the Project as shown in the Plans and Specifications that are known to or reasonably should have been known to Borrower or its agents and employees, and to the best of Borrower's knowledge, no violation of any Governmental Requirement exists.

(m) **ACCURACY.** All applications, financial statements, reports, documents, instruments, information, and forms of evidence delivered to Lender by Borrower concerning the Loan or required by this Loan Agreement or any of the other Loan Documents are, to the best of Borrower's knowledge, accurate, correct, and sufficiently complete to give Lender true and accurate knowledge of their subject matter, and do not contain any untrue statement of a material fact or omit any material fact necessary to make them not misleading.

5. **LOAN.** Lender agrees to lend to Borrower, and Borrower agrees to borrow from Lender, an amount not to exceed the Loan Amount, to finance the development of the Project

and for other purposes as specified in the Scope of Development, subject to the terms, conditions, representations, warranties, and covenants in this Loan Agreement.

(a) **PRINCIPAL AMOUNT.** The principal amount of the Loan shall be the actual disbursements of the Lender on account of the Project, not to exceed the amounts stated in the Budget (as the Budget may be adjusted by written approval of Lender). In any event, the principal amount of the Loan shall not exceed the Loan Amount.

(b) **USE OF LOAN FUNDS.** Loan funds shall be used solely for actual costs of the Project as stated in the Budget. No Loan funds shall be used for any costs, except as provided in the Budget. Unless otherwise noted in the Budget, allowed predevelopment costs, if any, are not subject to the withholding as Retention.

(c) **LOAN TERMS.** The Loan is made pursuant to the Loan Program and is subject to the laws, rules and regulations of the Loan Program. Lender agrees to disburse the Loan Proceeds in the manner and subject to the limitations stated in this Loan Agreement. Interest, at the Interest Rate, shall accrue on each disbursement of Loan Proceeds commencing on the date on which each such disbursement is made. Repayment of the loan shall be made, in payments of principal and interest, in lawful tender of the United States, in accordance with the Payment Schedule.

(d) **CLOSING IN ADVANCE OF SENIOR LOAN.** Lender will subordinate this Loan to the senior loan, provided that the senior loan does not require modification of this Loan Agreement or Lender's entering into any agreements containing new or modified Loan terms.

(e) **NOTE AND SECURITY DOCUMENTS.** The Loan is to be evidenced by the Note executed by Borrower in favor of Lender and delivered to Lender upon Close of Escrow. Repayment of the Note is to be secured by the Trust Deed covering the Property and the Project. Borrower shall execute the Trust Deed in favor of the Title Company as Trustor in trust for the benefit of Lender and deliver it to Escrow for recordation. The Loan is also secured by the Additional Collateral, if any, as evidenced by the applicable Security Documents.

(f) **REGULATORY AGREEMENT.** The Regulatory Agreement imposing covenants, conditions and restrictions running with the land is a material consideration for the making of the Loan. Borrower shall execute the Regulatory Agreement prior to Close of Escrow and deliver it to Escrow for recordation.

(g) **ESCROW.** The parties shall open the Escrow upon mutual consent after the Effective Date. Escrow shall close as provided in the Escrow Instructions on or before the Closing Date.

(h) **COMMISSIONS.** Lender is not responsible, by this Loan Agreement or otherwise, to pay commissions in relation to this transaction.

6. **PERFORMANCE CONDITIONS.** The following are conditions precedent to performance under this Loan Agreement:

(a) **CONDITION OF TITLE.** Lender shall cause Escrow Agent to issue to Borrower (with a copy to Lender) the Preliminary Report, together with copies of all documents relating to title exceptions referred to in the Preliminary Report. At Close of Escrow, Lender's Trust Deed shall be a valid lien against the Property securing the Loan and subject to no exceptions to title (of record or off record) other than the exceptions listed in the "Conditions of Title" in the Escrow Instructions.

(b) **CONDITIONS TO LENDER'S PERFORMANCE.** Lender's obligation to perform under this Loan Agreement is subject to all of the following conditions: (a) Borrower has performed all of its obligations then to be performed pursuant to this Loan Agreement; (b) the closing conditions as defined in the Escrow Instructions have been fulfilled as of Close of Escrow; (c) Borrower's representations and warranties in this Loan Agreement are true and correct as of the Close of Escrow; (d) the Agreement continues to be in full force and effect, no default on the part of Borrower has occurred under the Loan Agreement, and no event has occurred that, with the giving of notice or the passage of time, will constitute a default by Borrower under the Loan Agreement; and (e) Lender has approved the Approval Documents.

(c) **CONDITIONS TO BORROWER'S PERFORMANCE.** Borrower's obligation to perform under this Loan Agreement is subject to satisfaction of all of the following conditions: (a) Lender has performed all of its obligations then to be performed pursuant to this Loan Agreement; (b) the closing conditions as defined in the Escrow Instructions have been fulfilled as of Close of Escrow; (c) Borrower has met the Conditions to Close of Escrow; (d) Lender's representations and warranties in this Loan Agreement are correct as of the date of this Loan Agreement and as of the Close of Escrow; and (e) the Loan Agreement continues to be in full force and effect, no default on the part of Lender has occurred under the Loan Agreement, and no event has occurred that, with the giving of notice or the passage of time, will constitute a default by Lender under the Loan Agreement.

7. **RELOCATION.** Lender is required by law to provide relocation services and make relocation payments to eligible tenants that are displaced as a result of the Project. Borrower shall comply fully with all relocation laws that are the obligation of Lender or are otherwise applicable to the Project. Borrower's compliance with the relocation requirements as stated in this Section 7 is a material element of this Loan. Borrower's failure to comply with the relocation requirements as stated in this Section 7 is an Event of Default, subject to Borrower's opportunity to cure in accordance with applicable law.

(a) **RELOCATION COSTS.** Unless otherwise stated in this Agreement, any amounts paid by Lender for relocation costs and services shall be considered advances under the Loan.

(b) **COOPERATION AND ACCESS.** Borrower shall cooperate fully with Lender in complying with such relocation laws, including without limitation, providing Lender access to all tenants of the Property, to all books and records related to the tenants of the Property and to all properties offered for temporary or permanent relocation. Prior to taking any action with respect to relocation of tenants, Borrower shall meet with Lender to establish reasonable protections for tenants and related reporting requirements for Borrower.

(c) **BORROWER AS RELOCATION AGENT.** With the approval of Lender, Borrower may act as Lender's agent in accomplishing such relocation. Lender and Borrower by memorandum in writing shall establish their respective duties related to such relocation. If Lender and Borrower agree that Borrower will act as Lender's agent for purposes of this Loan, Borrower may enter into agreements for the provision of relocation services, or Borrower may perform such services directly. Borrower shall, by provisions in its agreements or by direction to its staff, assure that the entity performing the relocation services (a) shall comply with all applicable law, (b) shall fully inform Lender of all relocation activities, (c) shall make all requests for direction or clarification to Lender, (d) and shall respond to and follow the Lender's instruction and direction.

8. **ADDITIONAL SECURITY INSTRUMENTS.** Upon request by Lender, Borrower shall execute and deliver to Lender a security instrument in favor of Lender naming as secured property all contracts related to the Project and all other property of any kind owned by Borrower and used primarily in connection with the Property. Lender may, at any time and from time to time may reasonably require additions of new contracts and other property. Borrower irrevocably assigns to Lender, effective upon Lender's written demand, as security for the due performance of this Loan Agreement all of its right, title, and interest in the Assigned Documents.

9. **CONSTRUCTION.** As a condition of the Loan, Borrower will diligently proceed with construction in accordance with the Scope of Development as approved by Lender. Borrower shall complete such work on or before the Completion Date, subject to "Unavoidable Delay", which means a delay in the performance by a party of any obligation that is unforeseeable and beyond the control of such party and without its fault or negligence. Unavoidable Delay shall include acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, a general moratorium on financing for projects of the same type, and unusually severe weather (as for example, floods, tornadoes, or hurricanes) or delays of subcontractors due to such causes. In the event of Unavoidable Delay, the time or times for performance of the construction obligations of the parties shall be extended for the period of the enforced delay, as determined by the Lender, provided that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the delayed party has or should have knowledge of any such enforced delay, have first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the enforced delay.

(a) **CHANGES.** In order to assure sufficient funding for the Project, Borrower shall not authorize any Change without the prior written consent of Lender. If in the judgment of Lender, a Change, together with all other Changes contemplated or previously approved by Lender, will cause an increase in the cost of the Project in excess of the contingency reserve identified in the Budget, then Borrower will, as a condition precedent to Lender's consent, provide Lender with proof that the contingency reserve has been increased as necessary to pay for all such Changes. Borrower will submit any such Change to Lender for approval on a form acceptable to Lender, together with approvals by the Project Architect, if any, and the General Contractor. Borrower shall maintain funds available in the contingency reserve that are in substantially the same percentage of the original contingency reserve as the percentage of the

Project then remaining to be completed. If Lender does not approve or deny any request for changes under this Section (a) within ten (10) business days after actual delivery of the notice to Lender at Lender's Address marked "URGENT-TIME SENSITIVE NOTICE (10 Day Response): For Portfolio Management; Re: [Project Name]", such draw will be deemed approved by Lender.

(b) **CONTRACTORS AND CONTRACTS.** Upon Lender's request, Borrower will furnish to Lender correct lists of all contractors, subcontractors and material suppliers employed in connection with the Project, specifying their addresses, their respective portion of the Project and their respective Project cost. Lender may contact directly each contractor, subcontractor, and material supplier to verify the facts disclosed by the list or for any other purpose related to the Loan. All contracts let by Borrower or its contractors relating to the Project will require them to disclose to Lender information sufficient to make such verification.

(c) **INSPECTION.** After Close of Escrow, during the period of construction and upon reasonable notice to Borrower, Borrower shall permit Lender representatives access, without charge, to the entire Project at any reasonable time during normal construction hours and for any reasonable purpose which Lender reasonably considers necessary to carry out its obligations and protect its interests under this Agreement. Purposes for Lender entry may include, without limitation, inspection of all work being performed in connection with the construction of the Project. Such representatives of Lender shall be those who are so identified in writing by the Lender. Each such representative of Lender shall identify himself or herself at the job site office upon his or her entrance to the Project, and shall provide Borrower, or the construction superintendent or similar person in charge on the Project, a reasonable opportunity to have a representative accompany him or her during the inspection. Lender shall bear its costs of inspection. If however, Lender's inspection discovers issues of a nature that require further third-party review or investigation, Borrower shall bear the costs of such third party review.

(d) **PROTECTION AGAINST LIEN CLAIMS.** Borrower shall promptly and fully discharge all claims for labor, materials and services in connection with the Project. Borrower shall promptly file a valid Notice of Completion on completion of the Project. Borrower shall promptly file a Notice of Cessation in the event of a cessation of labor on the Project for a continuous Period of (30) days or more. Borrower shall take all other reasonable steps to protect against the assertion of lien claims against the Property. Within thirty (30) days after the filing of any claim of lien against the Property, Borrower shall record a surety bond in the office of the Recorder of the County where the Property is located in an amount sufficient to release the claim of lien or deliver to Lender any other assurance as may be acceptable to Lender as evidenced by Lender's written acceptance of such assurance.

(i) Lender, at any time, may require Borrower to obtain a lien waiver with respect to each payment to the General Contractor and each payment by the General Contractor or Borrower to each of the various subcontractors and material suppliers, Lender, at any time, may require Borrower to make any payments for the Project by joint check made payable to the General Contractor and subcontractor for whose account the payment is to be made, as joint payees.

(ii) In any event, Borrower is not required to pay, prior to adjudication, any claims for labor, materials, or services that Borrower, in good faith, reasonably disputes, and that Borrower, at its own expense, is currently and diligently contesting in the proper forum, provided that Borrower has filed the surety bond or given Lender such other assurance as Lender accepts in writing.

(e) **SECURITY INSTRUMENTS.** Upon request by Lender, and subject to the security interests of lender whose loan is secured by the Property and senior to Lender's security interest in the Property, Borrower shall execute and deliver to Lender a security instrument in favor of Lender naming as secured property all contracts related to the Project and all other property of any kind owned by Borrower and used primarily in connection with the Property. Lender may require such instrument at any time, and from time to time may require additions of new contracts and other property. Borrower irrevocably assigns to Lender, effective upon Lender's written demand, as security for the due performance of this Loan Agreement all of its right, title, and interest in the Assigned Documents.

(f) **ACKNOWLEDGMENT OF RELIANCE.** Borrower acknowledges that Lender is making Loan disbursements in advance of disbursements of other lenders in reliance upon Borrowers compliance with this provision.

(i) **LIQUIDATED DAMAGES.** IF BORROWER FAILS TO PROVIDE TO LENDER ANY OTHER LENDER DRAW AS AND WHEN REQUIRED UNDER THIS LOAN AGREEMENT, LENDER SHALL BE IRREPARABLY HARMED IN THAT BORROWER'S ABILITY TO REPAY THE LOAN AND LENDER'S SECURITY FOR THE LOAN SHALL BE IMPAIRED TO AN UNKNOWN EXTENT. BORROWER AND LENDER AGREE THAT IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL RESULTING DAMAGES IN SUCH EVENT. BORROWER AND LENDER, THEREFORE, AGREE THAT AN AMOUNT EQUAL TO TWO PERCENT (2%) OF THE LOAN AMOUNT SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO LENDER ON ACCOUNT OF SUCH EVENT, RECEIPT OF WHICH SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF LENDER FOR SUCH EVENT, AND ONLY FOR SUCH EVENT. PAYMENT OF SAID AMOUNT TO LENDER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO LENDER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. SAID AMOUNT SHALL BE IMMEDIATELY DUE AND PAYABLE AS OF THE DATE ON WHICH BORROWER DELIVERED SUCH OTHER LENDER DRAW TO THE OTHER LENDER. LENDER SHALL HAVE THIRTY (30) DAYS AFTER RECEIVING ACTUAL NOTICE OF SUCH EVENT TO NOTIFY BORROWER IN WRITING THAT LIQUIDATED DAMAGES UNDER THIS SECTION ARE DUE. BORROWER SHALL HAVE FIFTEEN (15) DAYS AFTER SUCH WRITTEN NOTIFICATION TO CURE THE DEFAULT BY WITHDRAWING THE OTHER LENDER DRAW AND RETURNING ANY DISBURSEMENT ON ACCOUNT OF SUCH OTHER LENDER DRAW. IF BORROWER FAILS TO PAY LIQUIDATED DAMAGES WHEN DUE UNDER THIS SECTION, THE LOAN SHALL BE ALL DUE AND PAYABLE AT THE ELECTION OF LENDER.

Lender's Initials

Borrower's initials

(g) **NO PRIOR LIENS.** Borrower shall not allow the Project construction to begin or materials to be delivered to the Project until after Close of Escrow.

(h) **PROJECT SIGN.** If Borrower places a sign on the Property during construction stating the names of the Project participants, it shall also name the Lender as a participant in the Project. Lender's name on the sign shall be in letters not less than size of letters used to name any of the other participants.

(i) **PREVAILING WAGES.** In accordance with Labor Code Section 1720(c)(6)(E), so long as the public subsidy for the Project consists of below market rate loans, and the Project restricts occupancy on at least 40% of the units for at least 20 years to individuals or families earning no more than 80% of the area median income, the Project is not subject to prevailing wages. Lender hereby acknowledges, agrees and represents that the Loan is a below-market interest rate loan for purposes of Labor Code Section 1720(c)(6)(E), and that the Loan, in and of itself, shall not trigger prevailing wage. Based on the fact that the only anticipated sources of financing for the construction and operation of the Project are (i) the senior lender's construction and permanent loan, (ii) the Agency Funding (as defined in the DDA), and (iii) low income housing tax credits, Borrower represents to Lender that Borrower has obtained no public subsidy for the Project that does not meet such criteria. If Borrower takes any actions which would otherwise require the payment of prevailing wages, Borrower shall pay prevailing wages for the Project. Therefore, Borrower indemnifies, holds harmless and defends the Lender from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from the improper application of California prevailing wage laws to the Project by Borrower or General Contractor or both of them. If more than eleven (11) units are assisted with the HOME funds under this Loan, Borrower shall comply with Davis-Bacon prevailing wage requirements as described in the Federal Requirements.

10. **LOAN DISBURSEMENT PROCEDURES.**

(a) **CONDITIONS PRECEDENT TO EACH LOAN DISBURSEMENT.** The obligation of Lender to make any disbursements under this Loan Agreement shall be subject to the following conditions precedent:

(i) No Event of Default or Potential Default of Borrower has occurred and is continuing.

(ii) If requested by Lender, Borrower has furnished to Lender, as a Project cost, an endorsement to the Title Policy showing no intervening liens or encumbrances on the Property and insuring the full disbursement, together with a satisfactory report under the California Uniform Commercial Code showing no liens or interests other than those of Lender.

(iii) Lender is satisfied that all completed work has been done using sound, new materials and fixtures, in a good and proper manner, and all materials, fixtures, and furnishings installed on or acquired for the Property will be owned by Borrower free of any liens, encumbrance, or other interests of any kind other than Lender's lien or security interest.

(iv) The representations and warranties in the Loan Documents are correct as of the date of the requested disbursement.

(v) Borrower has paid Lender all commitment, loan, and other fees then due, and Borrower has submitted to Lender all documents, records, statements, certificates, reports, and other materials and information then required to be submitted to Lender for approval under this Loan Agreement.

(vi) Borrower has delivered to Lender all funds, documents, instruments, policies, evidence of satisfaction of conditions, and other materials then due or otherwise requested by Lender under the Loan Documents.

(b) **CONDITIONS PRECEDENT TO FIRST DISBURSEMENT.** Borrower's request for the first Loan disbursement is a representation and warranty by Borrower that there has been no material adverse change in Borrower's financial capacity or in any representation made to Lender in Borrower's application for the Loan or Borrower's supporting documentation. Lender shall make the first loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section (a) have been met:

(i) There is no legal action threatened in writing or pending against Borrower or affecting the Property

(ii) All conditions to Close of Escrow have been satisfied in accordance with the Loan Agreement

(iii) Borrower has obtained and Lender has approved a loan approval from a financial institution (or other lender approved by Lender in its sole discretion) to make the permanent financing obtained by Borrower which repays after completion of the Project all construction and other loans secured by the Project and which is secured by a senior lien against the Property. Such permanent financing approval must provide (a) that it is subject only to those conditions that are usual and customary in the industry and that can be satisfied by the proposed closing date of the permanent financing; (b) that it is in full force with no default by any party; and (c) that Lender will have notice of, and a reasonable opportunity to cure, any Borrower defaults.

(iv) Borrower has provided proof of all insurance required by the Loan Documents.

(v) The construction lender's commitment to make a construction loan is in full force, has not been modified and no event has occurred that with notice or the passage of time or both could result in the termination of it. Nothing in the permanent loan commitment, or submissions and approvals made under it, conflicts with this Loan Agreement. Borrower has done all things necessary to keep unimpaired its rights under the loan commitment for the construction lender's construction loan.

(vi) Borrower has filed all tax returns required to be filed and paid all taxes due, which, if unfiled or unpaid, might adversely affect Lender's security under the Security Documents.

(c) **CONDITIONS PRECEDENT TO FINAL DISBURSEMENT.** Lender shall make the final loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section (a) have been met:

(i) As applicable, the Project Architect and the Lender's designated agent will have certified to Lender, on AIA Form G704 and in a manner satisfactory to Lender:

(A) That the Project has been duly completed in a good and proper manner using sound, new materials;

(B) That the Project complies with the Plans and Specifications, the requirements of all Governmental

(C) Authorities and any other party having enforceable rights regarding the construction of the Project; and

(D) That the Project is structurally sound.

(ii) Borrower has provided to Lender a true, accurate and complete copy of the final draw request to all other lenders for the Project.

(iii) Borrower has filed all tax returns required to be filed and paid all taxes due, which, if unfiled or unpaid, might adversely affect Lender's security under the Security Documents.

(iv) Title policy endorsements in form and amount satisfactory to Lender (including an endorsement insuring lien-free completion of the Project) have been furnished to Lender.

(v) Borrower has furnished evidence, in form and substance satisfactory to Lender, that:

(A) The General Contractor and subcontractors and material suppliers and their subcontractors and material suppliers have been paid in full;

(B) Borrower has obtained final certificates of occupancy for all of the Project;

(C) All other permits and approvals necessary for the construction, equipping, management, operation, use, or ownership of the Project have been obtained, subject only to those conditions approved by Lender, and

(D) The completed Project complies with all applicable zoning regulations, subdivision map acts, building code provisions, and similar governmental laws and

regulations, and has all utilities and adequate ingress and egress from public streets, that evidence to be in the form of a certificate executed by Borrower in favor of Lender.

(vi) That Borrower has provided to Lender an inventory showing make, model, value, cost, and location of all furniture, fixtures, and equipment and other personal property of a value in excess of \$1,000 and used in the management, maintenance, and operation of the Project, that are included in the collateral for the Loan.

(vii) Borrower has filed a notice of completion of the Project necessary to establish the commencement of the shortest statutory period for filing of mechanics' and materialmen's liens.

(viii) Lender has received written approval from the surety on any bond required by Lender.

(ix) Borrower has submitted to Lender a final cost certification prepared by a CPA.

(d) **MAKING DISBURSEMENT.** Lender shall pay each disbursement request within ten (10) business days after the disbursement request is submitted to Lender, subject to fulfillment of the conditions precedent as stated in Section (a). Lender shall disburse the actual cost of the work represented in the disbursement request by Borrower, reduced by the cost of work included in the request and not satisfactorily completed and by the amount of the Retention to be withheld.

(e) **DISBURSEMENT OF LESS THAN FULL REQUEST.** If Lender makes a disbursement which is less than the full amount of the disbursement requested, Lender shall inform Borrower of the items disallowed for disbursement and the reason for disallowing them. Lender shall disburse the Loan in the following order of priority, except as expressly provided and unless paid by Borrower from other funds: (a) first, to pay Lender's Loan fees and expenses due; (b) second, to pay Lender the interest due on the Loan; (c) third, at Lender's option to pay all impositions due (but not prior to the outside due date for such impositions); (d) fourth, at Lender's option, to make any other payments that Lender may in its reasonable discretion deem necessary or advisable to protect Lender's security under the Loan Documents; and (e) fifth, to make the disbursement of funds then due in response to Borrower's current request for disbursement. For purposes of this section, impositions means all real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other charges of a Governmental Authority and any interest or costs or penalties with respect to them, ground rent and charges for any easement or agreement maintained for the benefit of the Property, of every nature and any kind that at any time may be assessed, levied, imposed, or become a lien on the Property, Fixtures or income received from the Property or Fixtures, or any use or occupancy of the Property; and any charges, expenses, payments, or assessments of any nature that are or may become a lien on the Property or the income received from it.

(f) **NO WAIVER BY DISBURSEMENT.** Regardless of the failure of any condition precedent to Lender's obligation to make disbursements to the Construction Account, Lender

may make a disbursement if Lender, in its sole discretion, determines it to be advisable. The making of any disbursement shall not be deemed to constitute an approval or acceptance by Lender of the work completed or a waiver of the condition with respect to a subsequent disbursement.

(g) **APPROVAL OF OTHER LENDER DRAW AND DISBURSEMENTS.** Borrower shall concurrently submit to the Lender each Other Lender Draw. Delivery of such Other Lender Draw shall be made in the same manner as any other Notice, except that it shall also be marked "OTHER LENDER DRAW REQUEST" and delivered to the person named in writing by the Lender as the recipient of such requests or, in the absence thereof, to the Lender's Portfolio Management office. Lender shall have the right to reject an Other Lender Draw, for failing to comply with the Loan, for changing the Project in any material way, or for impairing the ability of Lender to enjoy the practical realization of its rights under the Loan and its related instruments. If Lender rejects an Other Lender Draw, Borrower shall withdraw the Other Lender Draw and shall not accept and shall return any disbursement on account of such Other Lender Draw. Borrower may respond to a rejection of an Other Lender Draw, with a new Other Lender Draw addressing the matters cited by Lender in its rejection of the previous Other Lender Draw. Lender shall have five (5) business days from actual receipt of such disbursement request to approve or deny such request, in whole or in part. Lender's approval of such disbursements shall be a condition precedent to such other lender's disbursement of funds pursuant to such disbursement request. If disbursement requests are personally delivered to the person named in writing by the Lender as the recipient of such requests or, in the absence thereof, to the Lender's Portfolio Management office, and no action is taken by the Lender in five (5) business days, the disbursement request is deemed approved.

Borrower shall provide Lender with true, accurate and correct copies of each Other Lender Draw, including without limitation all supporting information, documents, and other required submittals. If Lender does not approve or deny the Other Lender Draw within five (5) business days after actual delivery of the notice to Lender at Lender's Address marked: For Portfolio Management; Re: Broadway/MLK Construction and Permanent Loan", such draw will be deemed approved by Lender.

(i) Borrower warrants and covenants to the Lender that the foregoing Lender review and approval process shall be acknowledged and accepted in all other loans and funding agreements for the Project.

(ii) Prior to the Completion Date, Lender may deny all or any part of such disbursement request if it fails to provide line-item specification of each of the items for which the disbursement is sought and if such line-item specification fails to match like items in the Budget for the Project.

(iii) The disbursement of funds made pursuant to such other disbursement request which has not been reviewed and approved by Lender is a material breach of this Loan.

(h) **COMPLIANCE.** To the best of Borrower's knowledge, the construction, use, and occupancy of the Property and Project comply in full with, or if built according to the Plans and

Specifications, will comply in full with, all Governmental Requirements. No right to construct or use the Project is to any extent dependent on any real property other than the Property. All approvals, licenses, permits, certifications, filings, and other actions normally accepted as proof of compliance with all Governmental Requirements by prudent lending institutions that make investments secured by real property in the general area of the Property, to the extent available as of the date of this Loan Agreement, have been given or taken, or Borrower is entitled to have them given or taken as the ministerial act of the applicable Governmental Authority.

11. **RESIDENTIAL OPERATIONS.**

(a) **PROPERTY MANAGEMENT COMPANY.** For the life of the Loan, Borrower shall obtain and maintain a property management agreement with a top quality and duly accredited real estate property management company for the management of the Property, and shall assure the compliance of the property management with such agreement. Lender shall not disburse any funds under this Loan Agreement unless and until it has reviewed and approved the agreement as adequate and the property management company as top quality and duly accredited. Lender shall have the right to review and approve any proposed changes to scope of said agreement and to changes in the real estate property management company, prior to Borrower's making such changes. Any such changes made without Lender approval shall be a default of the loan.

(b) **REPLACEMENT RESERVES.** Borrower shall maintain reserves for replacement and repairs required to be made to the Property, fixtures on the Property or personal property used on the Property, or otherwise as approved by Lender, in an amount, at all times, not less than Two Hundred Fifty Dollars (\$250) for each residential unit in the Project

(c) **VERIFICATION OF NET INCOME.** When requested by Lender, Borrower shall provide certified financial statements and such other evidence as the Lender may deem necessary to verify the Project net income, including without limitation copies of certified rent rolls, bank statements, billing statements and invoices.

12. **DEFAULT**

(a) **EVENTS OF DEFAULT.** At the option of Lender, each of the following events will constitute an Event of Default, subject to applicable cure rights, if any:

(i) The occurrence of an Event of Default under the Trust Deed, subject to any applicable notice and cure period.

(ii) Subject to Borrower's legal rights to contest a Governmental Requirement, Borrower's failure to comply with any Governmental Requirements, unless within ten (10) days after notice of such failure by Lender or the respective governmental entity or after any action has been commenced to enforce such requirement, Borrower has cured such failure.

(iii) Borrower's failure to keep in full force any permit, license, consent, or approval with respect to the construction, occupancy, or use of the Project, unless within ten (10)

days after notice by the issuing entity or Lender of such failure, Borrower has promptly cured such failure.

(iv) Any material deviation from the Plans and Specifications in the construction of the Project, or the appearance or use of defective workmanship or materials in the construction of the Project, if Borrower fails to remedy them or to diligently proceed to remedy them to Lender's satisfaction within ten (10) days after Lender's written demand to do so.

(v) Borrower's failure to complete the construction of the Project by the Completion Date, subject to Unavoidable Delay.

(vi) The filing of any lien against the Property or Project or the service on Lender of any bonded stop notice related to the Loan, if the claim of lien or bonded stop notice continues for thirty (30) days without discharge, satisfaction, or the making of provision for payment (including bonding) to the satisfaction of Lender.

(vii) The attachment, levy, execution, or other judicial seizure of any portion of the Property or Project, or any substantial portion of the other assets of Borrower, that is not released, expunged, bonded, discharged, or dismissed within thirty (30) days after the attachment, levy, execution, or seizure.

(viii) Making of any unauthorized payment from Loan Proceeds or other funds of Lender.

(b) In the event an Event of Default hereunder is non-monetary, prior to exercising any remedies hereunder, Lender shall give Borrower and its limited partner simultaneous written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Borrower shall have such period to effect a cure prior to exercise of remedies by Lender hereunder, or such longer period of time as may be specified hereunder. If the default is such that it is not reasonably capable of being cured within thirty (30) days or such longer period if so specified, and if Borrower (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Lender. If Borrower fails to take corrective action or to cure the default within a reasonable time, Lender shall give Borrower and its limited partner written notice thereof, whereupon the limited partner, with Lender approval, may remove and replace the general partner with a substitute general partner who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. In no event shall Lender be precluded from exercising remedies by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default is given, or such longer period of time as may be specified in hereunder.

13. REMEDIES

(a) **OPTION TO ACT.** On the occurrence of any Event of Default, in addition to its other rights in this Loan Agreement or in any of the other Loan Documents, at law, or in equity,

Lender may, without prior demand, exercise any one or more of the following rights and remedies:

- (i) Terminate its obligation to make disbursements.
- (ii) Declare the Note and all other sums owing to Lender with respect to the other Loan Documents immediately due.
- (iii) Make any disbursements after the happening of any one or more of the Events of Default, without waiving its right to demand payment of the Note and all other sums owing to Lender with respect to the other Loan Documents or any other rights or remedies and without liability to make any other or further disbursements, regardless of Lender's previous exercise of any rights and remedies.
- (iv) Proceed as authorized at law or in equity with respect to the Event of Default, and in connection with that, remain entitled to exercise all other rights and remedies described in this Loan Agreement or the Trust Deed.
- (v) Recover its funds expended in exercising or enforcing any of its rights or remedies under any of the Loan Documents, together with interest at the maximum amount allowed by law from the date the funds were spent until repaid which amounts will be deemed secured by the Trust Deed.

(b) **RIGHTS CUMULATIVE, NO WAIVER.** All of Lender's rights and remedies provided in this Loan Agreement or in any of the other Loan Documents are cumulative and may be exercised by Lender at any time. Lender's exercise of any right or remedy will not constitute a cure of any Event of Default unless all sums then due to Lender under the Loan Documents are repaid and Borrower has cured all other Events of Default. No waiver will be implied from Lender's failure to take, or delay in taking, any action concerning any Event of Default or from any previous waiver of any similar or unrelated Event of Default. Any waiver under any of the Loan Documents must be in writing and will be limited to its specific terms.

(c) **DISCLAIMER.** Whether Lender elects to employ any of the remedies available to it in connection with an Event of Default, Lender will not be liable to construct, complete, or protect the Project; to pay any expense in connection with the exercise of any remedy; or to perform any other obligation of Borrower.

(d) **GRANT OF POWER FOR PROJECT COMPLETION.** Subject to the prior rights of lenders whose loans are secured by the Property and senior to the rights of Lender, Borrower irrevocably appoints Lender as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable on the occurrence of an Event of Default, subject any applicable cure period, in completion of the Project development, subject any applicable cure period, to act for Borrower in its name, place, and stead as provided in this Loan Agreement to take possession of the Property and Project, remove all employees, contractors, and agents of Borrower, to complete or attempt to complete the work of construction, and to market, sell, or lease the Property and Project; to make any additions, changes, and corrections in the Plans as

may be necessary or desirable, in Lender's sole discretion, or as it deems proper to complete the Project; to employ any contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers, and other agents that Lender, in its sole discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Property or Personalty, or for the protection of Lender's interests, to employ security guards to protect the Property and Project from injury or damage; to pay, settle, or compromise all bills and claims then existing or later arising against Borrower that Lender, in its sole discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Property, or for the protection of Lender's interests; to prosecute and defend all actions and proceedings in connection with the Property or Project; and to execute, acknowledge, and deliver all other instruments and documents in the name of Borrower that are necessary or desirable, to exercise Borrower's rights under all contracts concerning the Property or Project, and to do all other acts with respect to the Property or Project that Borrower might do on its own behalf, in each case as Lender in its reasonable discretion deems proper.

14. **LIABILITY INSURANCE.** With regard to this Loan Agreement, the Borrower shall obtain and maintain for the life of the Regulatory Agreements, and require the Contractor and subcontractors for the Project to obtain and maintain for the term of the development of the Project, such insurance as will protect them, respectively, from the following claims which may result from the operations of the Borrower, Contractor, subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation benefit acts; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of his employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees; (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Borrower, or (2) by any other person; claims for damages, other than to the construction itself, because of injury to or destruction of tangible property, including resulting loss of use; (e) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and (f) claims for contractual liability arising from the Borrower's obligations under this Loan Agreement.

(a) **LIABILITY INSURANCE POLICY LIMITS.** Borrower shall obtain all insurance under this Section 14 written with a deductible of not more than ONE HUNDRED THOUSAND DOLLARS (\$100,000) or an amount approved by Lender, and for limits of liability which shall not be less than the following:

(b) **WORKER'S COMPENSATION.** Borrower shall obtain and maintain worker's compensation coverage that shall be written for the statutory limits as required by Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the California Labor Code (as it may, from time to time, be amended) and having an employer's liability of not less than \$1,000,000.

(c) **COMMERCIAL GENERAL LIABILITY.** Borrower shall obtain and maintain Commercial General Liability insurance in Insurance Services Office ("ISO") policy form CG 00 01 Commercial General Liability (Occurrence) or better. Such insurance shall have limits of

liability, which are not less than \$1,000,000, per occurrence limit; \$5,000,000 general aggregate limit, and \$5,000,000 products and completed operations aggregate limit, all per location of the Project.

(d) **COMPREHENSIVE AUTOMOBILE LIABILITY.** Borrower shall obtain and maintain comprehensive automobile liability coverage for any vehicle used for, or in connection with, the Project (owned, nonowned, hired, leased) having a combined single limit of not less than \$1,000,000.

(e) **PROPERTY INSURANCE.** For the duration of the Regulatory Agreements, Borrower shall obtain and maintain property insurance in ISO policy form CP 10 30 - Building and Personal Property Coverage - Causes of Loss - Special Form, to the full insurable value of the Property with no coinsurance penalty (and with endorsements of Builder's Risk until completion of construction of the Project), Boiler and Machine to the extent necessary to obtain full insurance coverage, and with such other endorsements and in such amounts as the Lender may reasonably require to protect the Project and the Property. In the event of damage to the Project and subject to the requirements of Lender, Borrower shall use the proceeds of such insurance to reconstruct the Project and the public improvements.

(f) **INSURANCE PROVISIONS.** Each policy of insurance required under this Loan Agreement shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating of B++ VII, which rating has been substantially the same or increasing for the last five (5) years, or such other equivalent rating, as may reasonably be approved by Lender's legal counsel. Each policy shall contain the following provisions as applicable, unless otherwise approved by Lender's legal counsel in writing in advance:

(i) **ADDITIONAL INSURED.** Borrower shall obtain a policy in ISO form CG 20 33 or better, naming Lender as additional insured under the Commercial General Liability Policy.

(ii) **SINGLE PROJECT INSURANCE.** It is the intent of the parties that the Project have available all the specified insurance coverages. Borrower shall not provide insurance coverages that are considered in aggregate with other Projects which Borrower or its Contractor might have concurrently under construction. The Lender may at its discretion permit an aggregate policy if and only if Borrower or the respective Contractor or subcontractor has fully disclosed to Lender other projects which will or may be considered in aggregate with the Project, and thereafter, Borrower shall immediately inform Lender of the change in or addition to any such projects. Nevertheless, Lender may, at any time require that the insurance coverage be provided solely for the Project.

(iii) **CERTIFIED POLICY COPY.** Borrower shall provide Lender with a certified copy of each required policy of insurance. Pending delivery of the certified policy, Borrower shall provide Lender with a Certificate of Insurance of Insurance for each policy on the applicable ACCORD form. The ACCORD form shall not substitute for the policy. ACCORD 25-S "Certificate of Liability Insurance shall be used for liability insurance deleting the sentence in the top right-hand block immediately below the title (commencing "This certificate is issued

as a matter of information . . .) and in the bottom right-hand box above the authorized representative signature, deleting the words “endeavor to” and “but failure to do so shall impose not obligation or liability of any kind upon the insurer, its agents or representatives.”

(iv) **CANCELLATION.** Each policy shall bear an endorsement precluding cancellation or termination of the policy or reduction in coverage unless the Lender has been given written notice of such intended action at least thirty (30) days prior to its effective date.

(g) **FAILURE TO MAINTAIN.** If Borrower fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this Loan Agreement, the Lender shall have the right to purchase the insurance on Borrower’s behalf, and Borrower shall promptly reimburse the full cost of such insurance to the Lender. If Borrower fails to reimburse the Lender for insurance, the amount of unpaid reimbursement shall bear interest, at the maximum rate permissible under the law, until paid.

(h) **BLANKET COVERAGE.** Borrower’s obligation to carry insurance as required under this Section 14 may be satisfied by coverage under a “blanket” policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the Lender shall nevertheless be named as an additional insured under such blanket policy or policies to the extent required by this Section, the coverage afforded the Lender will not be reduced or diminished thereby, and all of the other requirements of this Section 14 with respect to such insurance shall otherwise be satisfied by such blanket policy.

15. GENERAL LOAN PROVISIONS

(a) **NONRECOURSE.** Notwithstanding any provision of this Loan Agreement or any document evidencing or securing this Loan, Borrower, and Borrower’s principals, partners, members, agents, officers, and successors in interest shall not be personally liable for the payment of the Loan or any obligation of the Loan.

(b) **SUBORDINATION.** Provided that the senior loan for the Project indicated in the Budget meets all requirements of this Loan Agreement. Lender will subordinate this Loan to the senior loan, provided that the senior loan does not require modification of this Loan Agreement, Lender’s execution of any agreements containing new or modified Loan terms or Lender’s execution of any agreement creating a contractual relationship between Lender and the senior lender including obligations or liabilities between Lender and the senior lender.

(c) **PREPAYMENT.** Borrower may prepay the Loan only on and subject to the terms and conditions in the Note. Borrower shall have no rights to receive, and under no circumstances will Borrower receive repayment of any fees previously paid to Lender.

(d) **FEDERAL REQUIREMENTS.** If any Loan Program is federally funded, Borrower shall comply with all laws, rules, regulations and funding requirements that govern the use of such funds, which are attached as Exhibit 7 and incorporated by this reference. Lender shall fully cooperate with, and assist, Borrower in fulfillment of such obligations.

(e) **NATURE OF REPRESENTATIONS AND WARRANTIES.** Borrower certifies to Lender that all representations and warranties made in this Loan Agreement and all other Loan Documents are true and correct in all material respects and do not contain any untrue statement of a material fact or omit any material fact necessary to make the representations and warranties not misleading. All representations and warranties will remain true and correct in all material respects and will survive so long as any of Borrower's obligations have not been satisfied or the Loan or any part of it remains outstanding, and for any applicable statute of limitations period. Each request by Borrower for a disbursement will constitute an affirmation that all representations and warranties remain true and correct as of the date of that request. Each representation and warranty made in this Loan Agreement, in any other Loan Documents, and in any other document delivered to Lender by Borrower, will be deemed to have been relied on by Lender, regardless of any investigation, inspection, or inquiry made by Lender or any related disbursement made by Lender. The representations and warranties that are made to the best knowledge of Borrower have been made after diligent inquiry calculated to ascertain the truth and accuracy of the subject matter of each representation and warranty.

(f) **FINANCIAL STATEMENTS.** Borrower shall provide Financial Statements when requested by Lender, but in any event not more often than quarterly during construction of the Project or annually, thereafter. Borrower shall assure that Financial Statements are prepared in accordance with generally accepted accounting principles. If requested by Lender as reasonably necessary to assure the security of its Loan, Borrower shall provide Financial Statements prepared or reviewed by a licensed Certified Public Accountant or Public Accountant and fully reflecting the assets and liabilities of the party concerning whom they were prepared.

(g) **BORROWER'S RESPONSIBILITIES.** To prevent and avoid construction defects, Borrower shall inspect, review, supervise, and assure the high quality, adequacy, and suitability of: (i) the Plans and Specifications and all changes and amendments; and (ii) architects, contractors, subcontractors, and material suppliers employed or used in the Project, and the workmanship of and the materials used by all of them; and (iii) the progress and course of construction and its conformance with the Plans and Specifications and any amendments, alterations, and changes that may be approved by Lender. Borrower will, at Borrower's expense, defend, indemnify, save, and hold Lender harmless against all claims, demands, losses, expenses, damages (general, punitive, or otherwise), and causes of action (whether legal or equitable) asserted by any Person arising out of the use of the proceeds of the Loan. Borrower will pay Lender on demand all claims, judgments, damages, losses, or expenses (including attorney fees and expenses) incurred by Lender as a result of any legal action arising out of the use of the proceeds of the Loan. The provisions of this Section will survive the termination of this Loan Agreement and the repayment of the Loan.

(h) **LOAN EXPENSES.** In making the first disbursement, Lender may, at its option and subject to the disclosures made by Lender to Borrower regarding the available proceeds of the Loan, deduct from the proceeds of that disbursement a sum equal to the aggregate of all third-party expenses specifically incurred in connection with the Loan or the preparation, execution, and delivery of the Loan Documents, including, but not limited to, recording costs and expenses, transfer and other taxes (if any), surveys, appraisal fees, title and hazard insurance premiums, recording, notary, and escrow charges, and all other similar, usual, or customary loan closing

charges and expenses; and any other budgeted expenses that have been approved by Lender in writing; and Lender will, for the benefit of Borrower, pay those amounts over to the respective parties on whose behalf the demands will have been received by Lender. Borrower will pay directly any expenses in connection with the Loan not so paid by Lender and will hold Lender free from any cost, liability, or obligation in connection with it, including reasonable attorney fees incurred by Lender. Borrower further agrees to pay on demand all third-party costs and expenses reasonably incurred by Lender including, without limitation, the fees and disbursements of Lender's outside counsel, in connection with: (i) the administration of the Loan, and (ii) the enforcement of any rights or remedies under the Loan Documents, whether any action or proceeding is commenced, or the protection of the security, or interests of Lender under the Loan Documents. All costs and expenses so advanced by Lender, together with interest at Loan rate, will form a part of the indebtedness and will be secured by the Security Documents.

16. GENERAL PROVISIONS

(a) **NO WAIVER.** No failure or delay on the part of Lender in exercising any right or remedy under the Loan Documents will operate as a waiver nor will Lender be estopped to exercise any right or remedy at any future time because of any such failure or delay. No express waiver will affect any matter other than the matter expressly waived and that waiver will be operative only for the time and to the extent stated. Waivers of any covenant, term, or condition in this Loan Agreement will not be construed to waive any subsequent breach of the same covenant, term, or condition.

(b) **NO THIRD PARTIES BENEFITED.** This Loan Agreement is made and entered into for the sole protection and benefit of the parties and their permitted successors and assigns, and no other person will have any right of action for or any rights to Loan proceeds or for any other claim against Lender on account of the Loan or Loan Documents.

(c) **NOTICES.** All notices to be given under this Loan Agreement shall be in writing and sent to the addresses stated above by one or more of the following methods. All notices shall be marked with the Project Name and "URGENT-TIME SENSITIVE NOTICE" For notices requesting approval or denial the following shall be added to said markings: "Response required in [*insert number*] days", inserting the number of days for response in place of [*insert number*]. **Notices for action that must be performed within a time period of ten (10 business days or less shall not be deemed delivered until actual delivery with proof of delivery required**

(i) Certified mail, return receipt requested, in which case notice shall be deemed delivered (3) business days after deposit, postage prepaid in the United States Mail;

(ii) A nationally recognized overnight courier, by priority overnight service, in which case notice shall be deemed delivered one (1) business day after deposit with that courier;

(iii) Hand delivery with signed receipt for delivery from a person at the place of business of the receiving party and authorized to accept delivery for the receiving party, in which case notice shall be deemed delivered upon receipt, or

(iv) Telecopy, if a copy of the notice is also sent the same day by United States Certified Mail, in which case notice shall be deemed delivered one (1) business day after transmittal by telecopier, provided that a transmission report is automatically generated by the telecopier reflecting the accurate transmission of the notices to receiving party at the "Fax Number" given in the Escrow Attachment or to such other address as Borrower or Lender may respectively designate by written notice to the other.

(d) **LENDER NOTICES ON BEHALF OF BORROWER.** Borrower irrevocably appoints Lender as its agent (the agency being coupled with an interest) to file for record any notices of completion, cessation of labor, or any other notice that Lender deems necessary or desirable to protect its interests under this Loan Agreement or under the Loan Documents.

(e) **ACTIONS.** Lender will have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties, or the disbursement of any funds under this Loan Agreement. In connection with that, Lender may incur and pay costs and expenses, including, without limitation, reasonable attorney fees. Borrower agrees to pay to Lender on demand all these expenses, and Lender is authorized to disburse funds from the Construction Account for that purpose. This Section does not apply to actions or proceedings between the parties.

(f) **CURE BY PRINCIPALS,** Any partner or principal of Borrower can act on behalf of Borrower in the exercise of the rights of Borrower under this Loan Agreement and related agreements to cure a default; however, such right to cure does not extend or expand the cure rights of Borrower.

(g) **SIGNS.** Borrower agrees that on the request of Lender, Borrower will erect and place on or in the immediate vicinity of the Property a sign indicating that Lender has provided construction financing for the Project. The sign will remain the property of Lender and will be required to be removed only after construction has been completed. Lender may also arrange for publicity of the Loan in its sole discretion.

(h) **ASSIGNMENT.** This Loan Agreement will be binding on and inure to the benefit of successors and assigns of the parties. In any event, Borrower shall not assign this Loan Agreement or any interest it may have in the Loan or Loan proceeds or convey or encumber the Property without the prior written consent of Lender, except as may otherwise be provided in the Loan Documents. If there is an assignment, conveyance, or encumbrance, Lender may nevertheless at its option continue to make disbursements under this Loan Agreement to Borrower or to those who succeed to Borrower's title, and all sums so disbursed will be deemed to be disbursements under this Loan Agreement and not modifications, and will be secured by the Trust Deed. Lender may at any time assign the Loan Documents to any affiliate of Lender or to a national bank or other lender having experience with construction lending, and the assignee will assume the obligations of Lender, and Lender will have no further obligation of any nature. In that case, the provisions of this Loan Agreement will continue to apply to the Loan, and Lender's assignee will be substituted in the place and stead of Lender, with all rights,

obligations, and remedies of Lender, including, without limitation, the right to further assign the Loan Documents.

(i) **ACCELERATION ON TRANSFER OR REFINANCING OF THE PROPERTY; ASSUMPTION.** Except as otherwise provided in the Loan Agreement, if all or any part of the Property or an interest in the Property is sold, transferred or conveyed to any person, or refinanced by Borrower such that additional debt is added to the property or the cash flows change without Lender's prior written consent, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the refinancing, sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the loan may be assumed. If Lender has waived the option to accelerate provided in this Section and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Deed of Trust and the Note.

(j) **NO JOINT VENTURE, PARTNERSHIP, OR OTHER RELATIONSHIP.** Nothing contained in this Agreement or in any other document executed in connection with this Agreement shall be construed as creating a joint venture or partnership between Lender and Developer. Each Party is acting as an independent entity and not as an agent of the other in any respect. No relationship exists as between Lender and Developer other than that of a governmental entity regulating the development of private property as Lender, and the owner of such private property as Borrower.

(k) **NONLIABILITY FOR NEGLIGENCE, LOSS, OR DAMAGE.** Borrower acknowledges, understands, and agrees as follows:

(i) The relationship between Borrower and Lender is, and will at all times remain, solely that of borrower and lender, and Lender neither undertakes nor assumes any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform Borrower of the quality, adequacy, or suitability of the Project work, except as to matters which are within the intent and purpose for which Lender has made the Loan.

(ii) Lender owes no duty of care to protect Borrower against negligent, faulty, inadequate, or defective building or construction.

(iii) Lender will not be responsible or liable to Borrower for any loss or damage of any kind to person or property whether suffered by Borrower or any other Person or group of Persons or for negligent, faulty, inadequate, or defective building or construction, and Borrower will hold Lender harmless from any liability, loss, or damage for these things.

(l) **CONTROLLING LAW; VENUE.** The Loan Documents will be governed by and construed in accordance with California law. The venue for any legal action or proceeding will be in the County of Sacramento, California

(m) **CONSENTS AND APPROVALS.** All consents and approvals by Lender required or permitted by any provision of this Loan Agreement will be in writing. Lender's consent to or approval of any act by Borrower requiring further consent or approval will not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

(n) **SURVIVAL OF WARRANTIES AND COVENANTS.** The warranties, representations, conditions, covenants, and agreements in this Loan Agreement and in the other Loan Documents will survive the making of the Loan and the execution and delivery of the Note and will continue in full force until the Indebtedness has been paid in full. Nothing in this Section is intended to limit any other provision of the Loan Documents that by their stated terms survive the repayment of the Indebtedness or the termination of any Loan Document.

(o) **RECORDING AND FILING.** Borrower, at its expense, will cause the Security Documents and all supplements to be recorded and filed and re-recorded and re-filed in any manner and in any places as Lender will reasonably request, and will pay all recording, filing, re-recording, and re-filing taxes, fees, and other charges.

(p) **NO REPRESENTATIONS BY LENDER.** By accepting or approving anything required to be observed, performed, or fulfilled, or to be given to Lender pursuant to this Loan Agreement or pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of income and expense, or other Financial Statement, survey, appraisal, or insurance policy, Lender will not be deemed to have warranted or represented the sufficiency, legality, effectiveness, or legal effect of it or of any particular term, provision, or condition of it, and any acceptance or approval will not be or constitute any warranty or representation by Lender.

(q) **AMENDMENT.** The Loan Documents and the terms of each of them may not be modified, waived, discharged, or terminated except by a written instrument signed by the party against whom enforcement of the modification, waiver, discharge, or termination is asserted.

(r) **TERMINATION.** Except as otherwise provided in the Loan Documents, all rights and obligations under this Loan Agreement will terminate except as to any accrued obligations effective on the payment of all Indebtedness owing by Borrower to Lender.

(s) **COUNTERPARTS.** The Loan Documents may be executed in any number of counterparts and by different parties in separate counterparts, each of which when executed and delivered will be deemed an original and all of which counterparts taken together will constitute one and the same instrument.

(t) **SEVERABILITY.** If any term, provision, covenant, or condition or any application is held by a court of competent jurisdiction to be invalid, void, or unenforceable, all terms, provisions, covenants, and conditions and all applications not held invalid, void, or unenforceable will continue in full force and will in no way be affected, impaired, or invalidated.

(u) **CAPTIONS.** All Article and Section headings in the Loan Documents are inserted for convenience of reference only and do not constitute a part of the Loan Documents for any other purpose.

(v) **INDEMNITY.** Borrower agrees to defend, indemnify, and hold Lender harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorney fees that Lender may reasonably incur as a direct or indirect consequence of the making of the Loan, Borrower's failure to perform any obligations as and when required by this Loan Agreement or any of the other Loan Documents, the failure at any time of any of Borrower's representations or warranties to be true and correct, or any act or omission by Borrower, any contractor, subcontractor, engineer, architect, or other Person with respect to the Property, the Project, or any portion of them. Borrower will pay immediately on Lender's demand any amounts owing under this indemnity, together with interest at the maximum rate permitted by law from the date Lender makes a payment or incurs a loss. Borrower's duty to indemnify Lender will survive the release and cancellation of the Note and the reconveyance or partial reconveyance of the Trust Deed.

(w) **FURTHER ASSURANCES.** At Lender's request and at Borrower's expense, Borrower will execute, acknowledge, and deliver all other instruments and perform all other acts necessary, desirable, or proper to carry out the purposes of the Loan Documents or to perfect and preserve any liens created by the Loan Documents.

(x) **DISCLOSURE OF INFORMATION.** If Lender elects to sell the Loan, Lender may forward to the buyer of the Loan all documents and information related to the Loan in Lender's possession, including without limitation all Financial Statements, whether furnished by Borrower or otherwise.

(y) **LENDER'S AGENTS.** Lender may designate agents or independent contractors to exercise any of Lender's rights under the Loan Documents. Any reference to Lender in any of the Loan Documents will include Lender's employees, agents, and independent contractors.

(z) **INTEGRATION AND INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement between Lender and Borrower with respect to the covered matters and supersede all prior negotiations. Any reference to the Property or Project in any of the Loan Documents will include all or any portion of them. Any reference to the Loan Documents themselves in any of the Loan Documents will include all amendments, renewals, or extensions approved by Lender.

(aa) **NUMBER, IDENTITY AND GENDER.** When the context and construction so require, all words used in the singular will be deemed to have been used in the plural and vice versa. Person means any natural person, corporation, firm, partnership, association, trust, government, governmental agency, or any other entity, whether acting in an individual, fiduciary, or other capacity. When the context and construction so require, all words which indicate a gender will be deemed to have been used to indicate the gender as indicated by the context.

THE PARTIES HAVE EXECUTED THIS LOAN AGREEMENT in Sacramento, California as of the Effective Date.

BORROWER :

OAK PARK SENIOR HOUSING PARTNERS, L.P.,
A CALIFORNIA LIMITED PARTNERSHIP

By: Related/Oak Park Senior Development
Co., LLC,
a California limited liability company
its Administrative General Partner

By: _____
Frank Cardone, Vice President

By: Oak Park Senior Housing Partners MGP,
LLC,
a California limited liability company
its Managing General Partner

By: Affordable Housing Access, Inc.
a California nonprofit public benefit
corporation,
its sole member and manager

By: _____
Jonathan B. Webb, President

LENDER:

REDEVELOPMENT AGENCY OF THE CITY OF
SACRAMENTO

By: _____
LaShelle Dozier, Executive Director

Approved as to form:

Lender Counsel

EXHIBIT 1
LEGAL DESCRIPTION

The land referred to is situated in the County of Sacramento, City of Sacramento, State of California, and is described as follows:

PARCEL ONE:

Lot 75, and a portion of Lot 76, as said lots are shown and designated on the Map of the "H. J. Goethe Company's Addition F to Sacramento", filed in Book 5 of Maps, Map No. 36, which portion of Lot 76 is more particularly described as being all that portion lying North of a line drawn parallel to and 40 feet South of the North of said lot (said 40 feet being measured along the Easterly line of Lot 76, being also the center line of a 20 foot alley).

APN: 014-0171-001

PARCEL TWO:

Portions of Lots 76 and 77, as said lots are shown and designated on the Map of the "H. J. Goethe Company's Addition F to Sacramento", filed in Book 5 of Maps, Map No. 36, which portions are more particularly described as follows:

Commencing at a point in the center of an alley (being the East line of said Lot 77) located thereon Northerly 40 feet from the Southeasterly corner of said Lot 77, being also the Northeasterly corner of a tract of land conveyed to Mary Fosha by Deed dated September 19, 1925, and recorded in Book 713 of Deeds, Page 624, Sacramento County Records; thence running Northeasterly, along the center line of said alley 40 feet to a point on the East line of said Lot 76, distant 40 feet Southerly from the Northeasterly corner of said Lot 76 (being the Southeasterly corner of the tract of land conveyed to Amanda Gallaway by Deed dated February 4, 1931, and recorded in Book 331 of Official Records, Page 353); thence Westerly parallel with the Southerly line of said Lot 77 a distance of 165.908 feet, more or less, to a point on the East line of Sacramento Boulevard, being the Southwesterly corner of the tract of land conveyed to Gallaway; thence Southerly along the East line of Sacramento Boulevard (the West line of said Lots 76 and 77) a distance of 40.542 feet, more or less, to the point of intersection of a line drawn Westerly and parallel with the Southerly line of said Lot 77 from the point of commencement (the Northwesterly corner of Fosha); thence Easterly along said line so drawn, 157.1714 feet, more or less, to the point of commencement.

APN: 014-0171-020

PARCEL THREE:

A portion of Lot 77, as said lot is shown and designated on the Map of the "H. J. Goethe Company's Addition F to Sacramento", filed in Book 5 of Maps, Map No. 36, which portion is more particularly described as all that portion lying South of a line drawn parallel to and 40 feet Northerly of a line constructed at a right angle to the Southerly line of said Lot 77.

APN: 014-0171-019

PARCEL FOUR:

Lot 282, as said lot is shown and designated on the Map of "South Oak Park", filed in Book 6 of Maps, Map No. 9, together with that portion of the easterly one-half of adjoining alley, title to which would pass by a conveyance describing said lot.

APN: 014-0171-018

PARCEL FIVE:

The North 40 feet of Lot 72, and all of Lots 73 and 74 as said lots are shown and designated on the Map of the "H. J. Goethe Company's Addition F to Sacramento", filed in Book 5 of Maps, Map No. 36. EXCEPTING THEREFROM said North 40 feet of Lot 72 the East ninety-nine feet thereof (as measured along the North line of said lot from the West line of 39th Street), being the land conveyed to Bart Christensen, et ux., by Deed dated November 20, 1984, and recorded December 17, 1984, in Official Records under Recorder's Serial Number 216187, in Book 841217 Page 1089.

NOTE: Said land being the same real property designated and described as "Parcel A' in that certain Certificate of Compliance recorded November 8, 1984, in Official Records under Recorder's Serial Number 194623, in Book 8411008 Page 861.

APN: 014-0171-025

PARCEL SIX:

Lot 283, as shown on the "Plat of South Oak Park", recorded in Book 6 of Maps, Map No. 9, records of said County, together with that portion of the easterly one-half of adjoining alley, title to which would pass by a conveyance describing said lot.

APN: 014-0171-017

EXHIBIT 2

SCOPE OF DEVELOPMENT

The project will be a three-story tall, elevator-serviced building at the intersection of Broadway and Martin Luther King, Junior Boulevard in the Oak Park Redevelopment Project Area in Sacramento. The residences will consist of 55 one-bedroom apartment units totaling approximately 580 square feet each and one two-bedroom manager's unit measuring approximately 800 square feet. All units except for the manager's unit will be affordable to very low-income and extremely low-income seniors. A total of 6 units will be affordable to residents at 30% Area Median Income (AMI), 33 units will be affordable to 45% AMI, and 16 units will be affordable to 50% AMI.

The ground floor will contain community space for residents and no less than 3,000 square feet in commercial/retail space. The community space will include a multipurpose room, a lounge, a kitchen, a computer center, a fitness center, and laundry facilities.

Subject to the City of Sacramento Design Review Commission and Planning Commission approvals, the building will feature thin brick veneer, smooth finished cement plaster, fiber cement horizontal lap siding, aluminum storefront, vinyl windows (or equivalent), sunshades, and metal balcony rails. Aluminum storefront will only be utilized at the commercial/retail and common areas, and vinyl windows (or equivalent) will be provided at the residential units. The main entry and commercial/retail loggia will feature brown colored, salt finished concrete with diagonal deep trowel pattern. Additionally, the building's elevation along Broadway shall feature parapets at interim locations of varying heights and finishes.

Subject to the City of Sacramento Design Review Commission and Planning Commission approvals, the site will feature a separated sidewalk and street planters to replace the existing sidewalks. The site will have additional landscaping along the Broadway elevation at the main pedestrian entry. Two driveways will be provided along Martin Luther King Jr. Boulevard with a separation median so that right in and right out only maneuvers may be made. These two driveways will serve a minimum of 42 parking spaces inclusive of the number of accessible parking spaces sufficient to meet Uniform Federal Accessibility Standards (UFAS).

**EXHIBIT 3
NOTE FORM**

**PROMISSORY NOTE
FOR BROADWAY/MLK
CONSTRUCTION AND PERMANENT LOAN AGREEMENT**

BORROWER HAS MADE THIS PROMISSORY NOTE (“NOTE”) AS OF THE EFFECTIVE DATE. The Lender is making the Loan pursuant to the terms and conditions of the Loan Agreement and this Note. This Note includes all attachments and Exhibits listed below, which are attached to and incorporated in this Note by this reference. The capitalized terms in this Note shall have the meanings assigned in the following table of definitions and as defined in the body of the Note. (Terms being defined are indicated by quotation marks. If an item in the table is marked “None, Not Applicable, N/A or equivalent or is left blank, that defined term is not applicable to this Note or the referenced item is not required or is not included in this Note as the context may indicate.) The Lender is making the Loan to Borrower in consideration of Borrower making this Note and delivering it to Lender.

For purposes of this Note, the following terms shall have the following meanings:

DEFINED TERM:	DEFINITION:	
“Effective Date”		
“Lender”	Redevelopment Agency of the City of Sacramento	
“Borrower”	Oak Park Senior Housing, L.P.	
“Borrower Legal Status”	A California limited partnership	
“Loan Agreement”	The Construction and Permanent Loan Agreement between the Borrower and Lender as of the Effective Date for making of the loan (“Loan”) evidenced by this Note.	
“Close of Escrow”	The fulfillment of the escrow terms and conclusion of the escrow for the funding of the loan pursuant to the Loan Agreement.	
“Principal Amount”	Five Million Three Hundred Twenty-Five Thousand Dollars and No Cents (\$5,325,000.00)	
“Interest Rate”	The interest rate is 1.05% per year, simple interest.	
“Accrual Date”	Interest shall accrue starting on the following “Accrual Date”:	Close of Escrow
“Special Terms”	N/A	
PAYMENT SCHEDULE. Repayment of this Note shall be made the following amounts:		
“Maturity Date”	The first day of the 684 th calendar month following the Closing Date.	
“Payment Start Date”	The first day of the 205 th calendar month following the Closing Date.	

"Payment Amount(s)"	Year	Months	Monthly Pmt
	18	205-216	\$ 3,154
	19	217-228	3,318
	20	229-240	3,487
	21	241-252	3,661
	22	253-264	3,840
	23	265-276	4,025
	24	277-288	4,216
	25	289-300	4,412
	26	301-312	4,615
	27	313-324	4,824
	28	325-336	5,039
	29	337-348	5,261
	30	349-360	5,490
	31	361-372	5,725
	32	373-384	5,969
	33	385-396	6,219
	34	397-408	6,477
	35	409-420	6,744
	36	421-432	7,018
	37	433-444	7,301
	38	445-456	7,592
	39	457-468	7,893
	40	469-480	8,202
	41	481-492	8,522
	42	493-504	8,851
	43	505-516	9,190
	44	517-528	9,539
	45	529-540	9,900
	46	541-552	10,271
	47	553-564	10,654
	48	565-576	11,048
	49	577-588	11,455
	50	589-600	11,874
	51	601-612	12,305
	52	613-624	12,750
	53	625-636	13,209
	54	637-648	13,682
	55	649-660	14,169
	56	661-672	14,671
	57	673-683	15,189
	57	684	remaining balance due

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FOR VALUE RECEIVED, THE UNDERSIGNED, JOINTLY AND SEVERALLY, PROMISES TO PAY to Lender, or its successors or assigns, the Principal Amount or such lesser amount as may be endorsed on this Note on behalf of Lender. The Loan shall bear interest on the outstanding principal balance, computed from the Accrual Date at the Interest Rate.

1. This Note evidences the obligation of Borrower to Lender for repayment of funds loaned to Borrower under a loan agreement between Borrower and Lender dated as of the Loan Date ("Loan Agreement"). The terms and covenants of the Loan Agreement are incorporated in this Note by reference. The Loan Agreement provides for and incorporates the Disposition and Development Agreement ("DDA"), the making of which is further consideration for this Note.

On the Maturity Date, the unpaid balance of said principal sum, together with all unpaid interest, fees and charges due, if any, shall become due and payable. All payments on this Note shall be applied first to fees and charges due under the Loan Agreement, if any, then interest and then to the principal due on this Note. Borrower shall make the payments to the Lender at 801 12th Street, Sacramento, CA 95814, or to such other person or organization as may be designated by Lender to Borrower and noticed as provided in the Loan Agreement.

2. If any installment under this Note is not received by Lender within fifteen (15) calendar days after the installment is due, Borrower shall pay to Lender a late charge of five percent (5%) of such installment. Such late charge shall be immediately due and payable without demand by Lender.

3. This Note is secured by a Deed of Trust with Assignment of Rents against the real property described in the Loan Agreement ("Property"), recorded in the office of the County Recorder of Sacramento County ("Trust Deed"). The Trust Deed securing this Note provides that Lender may at its option, declare all funds secured by the Trust Deed immediately due and payable, if any interest in the real property is sold, transferred or conveyed to any person, whether voluntarily or involuntarily. The Trust Deed further provides that if Borrower does not comply with the requirements of the DDA Agreement and fails to come into compliance with the DDA within thirty (30) days after Lender's written notice to Borrower of such failure, Lender may at its option, declare all funds secured by the Trust Deed immediately due and payable.

4. Lender and Borrower shall comply with and fulfill the Special Terms.

5. Upon occurrence of any one or more of the following, Lender may, at its sole discretion, declare all unpaid principal immediately due and payable, together with all unpaid interest at the stated rate from the date of the advancement of the Loan's proceeds, subject to applicable cure periods, if any:

- a. Borrower defaults in the payment of any principal or interest when due.
- b. Lender discovers that Borrower, in any application to Lender in connection with the Loan, had failed to disclose or misrepresented any fact that would have prevented Borrower from being eligible for the Loan.
- c. Lender discovers that Borrower has made any misrepresentations or has intentionally withheld any fact in the making of this Loan, the knowledge of which could have affected the decision of Lender to make the Loan.

d. Borrower defaults or breaches any of the terms of Loan Agreement, the Trust Deed, the Regulatory Agreement or this Note and Borrower fails to cure within 30 days after receipt of notice, or in the event the default cannot reasonably be cured within 30 days, Borrower fails to commence the cure within 30 days and diligently pursue the cure to completion. The limited partner of Borrower is entitled to cure any defaults on behalf of the Borrower within the same specified time periods, said cure periods shall not extend statutory periods and times for notice and commencement of foreclosure.

e. Borrower fails to perform, after the expiration of applicable cure periods, any covenant, term or condition in any instrument creating a lien upon the Property which is the security under the Trust Deed, or any part thereof, which lien shall have priority over the lien of the Trust Deed securing this Note.

f. The sale, transfer of title, conveyance or further encumbrance of the Property, whether by sale, exchange, gift, inheritance or other means, without prior written consent of Lender.

g. The occurrence of any of the following:

1) Borrower becoming insolvent or bankrupt or being unable or admitting, in writing, Borrower's inability to pay debts as they mature or making a general assignment of or entering into any restructure payment arrangement with creditors.

2) Proceedings for the appointment of a receiver, trustee or liquidator of the assets of Borrower or a substantial part of such assets, being authorized or instituted by or against the Borrower which are not stayed within 90 days.

3) Proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction being authorized or instituted against Borrower which are not stayed within 90 days.

6. No waiver of any default or breach by Borrower under this Note shall be implied from any omission by Lender to take action on account of such default, and no express waiver shall affect any default, other than the default specified in the waiver. Such waiver shall be in writing and shall be operative only for the time and to the extent therein stated.

7. Borrower may prepay this Note in full or in part at any time, without any prepayment penalty being charged by Lender.

8. During the existence of default or delinquency under the terms of this Note or the Trust Deed, the Lender is expressly authorized to apply all payments made on this Note to the payment of all or part of the delinquency, as it may elect.

9. This Loan is a nonrecourse loan, and notwithstanding any provision of this Note or any document evidencing or securing this Loan, Borrower, and Borrower's principals, members, partners, agents, officers, and successors in interest shall not be personally liable for the payment of the Loan or any obligation of the Loan.

10. Borrower shall pay to Lender all costs of enforcement of all or any portion of this Note and the Trust Deed, including attorney's fees, witness fees, investigator fees and court costs, incurred by Lender, whether or not litigation is commenced.

IN WITNESS WHEREOF, Borrower has executed this Note as of the Loan Date.

BORROWER :

OAK PARK SENIOR HOUSING PARTNERS, L.P.,
A CALIFORNIA LIMITED PARTNERSHIP

By: Related/Oak Park Senior Development Co., LLC,
a California limited liability company
its Administrative General Partner

By: _____
Frank Cardone, Vice President

By: Oak Park Senior Housing Partners MGP, LLC,
a California limited liability company
its Managing General Partner

By: Affordable Housing Access, Inc.
a California nonprofit public benefit
corporation,
its sole member and manager

By: _____
Jonathan B. Webb, President

**EXHIBIT 4
TRUST DEED FORM**

**DEED OF TRUST AND ASSIGNMENT OF RENTS
BROADWAY/MLK**

For purposes of this Deed of Trust the following capitalized terms shall have the meanings ascribed in the space adjacent to them:

TERM	DEFINITION	
“Effective Date”		
“Trustor” and “Borrower”	Oak Park Senior Housing, L.P. A California limited partnership	
“Borrower Address”	18201 Von Karman Avenue, Suite 900, Irvine, CA 92612	
“Trustee”	Old Republic Title Company	
“Beneficiary” and “Lender”	Redevelopment Agency of the City of Sacramento A public body, corporate and politic	
“Lender Address”	801 12 th Street, Sacramento, California 95814	
“Property”	Which is real property located in the County of Sacramento and the State of California as more particularly described in the Legal Description.	
	Address	Broadway and Martin Luther King Boulevard
	Assessor’s Parcel Number	014-0171-001, 014-0171-017, 014-0171-018, 014-0171-019, 014-0171-020, 014-0171-025
“Legal Description”	The Legal Description of the Property which is more particularly described in the attached Exhibit 1 Legal Description , which is incorporated in and an integral part of this Deed of Trust	
“Loan”	Which is Lender’s loan to Borrower evidenced by the Note and which is secured by this Deed of Trust.	
“Loan Agreement”	Which is the Construction and Permanent Loan Agreement between Lender and Borrower stating the terms and conditions of the Loan.	
	Which is dated:	***Date***
“DDA”	Which is the Disposition and Development Agreement between Lender and Borrower stating the terms and conditions of the transfer and development of the Property.	
	Which is dated:	***Date***
“Additional Notices”	Lender shall give copies of notices required to be delivered to Borrower to the following parties at the following addresses; provided, however that Borrower acknowledges that such notice is an accommodation and the failure of the Lender to properly deliver any such notice shall not give rise to any claims or defenses of Borrower or any third party:	

"Note"	Which is Borrower's note made in accordance with the Loan Agreement securing the following principal sum or such lesser amount as shall equal the aggregate amount disbursed to Borrower by Lender, with interest.	
	Which has a principal sum of	Five Million Three Hundred Twenty-Five Thousand Dollars and No Cents (\$5,325,000.00)

THIS DEED OF TRUST is made as of the Effective Date between the Trustor also referenced as the Borrower, the Trustee, and the Beneficiary also referenced as Lender.

Borrower, in consideration of the indebtedness described below and the trust created by this Deed of Trust, irrevocably grants and conveys the Property to Trustee, in trust with power of sale.

Together with all the improvements now or subsequently erected on the property, and all easements, rights, appurtenances, rents (subject, however, to the rights and authorities given to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating equipment, cabinets, mantels, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, furniture, shades, awnings, screens, venetian blinds and other furnishings, now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are referred to as the "Property";

To secure to Lender: (a) the repayment of the Loan; and (b) the performance of the covenants and agreements of Borrower contained in this Deed of Trust, the DDA, the Note, or the Loan Agreement.

Borrower covenants that Borrower is lawfully seised of the estate conveyed by this Deed of Trust and has the right to grant and convey the Property, and that Borrower will warrant and defend generally the title of the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest, if any, on the indebtedness evidenced by the Note. All payments received by Lender under the Note shall be applied by Lender first to interest payable on the Note and thereafter to the unpaid principal of the Note.

2. Charges; Liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property and leasehold payments or ground rents, if any by Borrower making payment, when due, directly to the appropriate payee. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event that Borrower makes payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall pay when due any encumbrance, charge and lien, with interest in accordance with its terms, on the Property or any portion which is inferior or superior to this Deed of Trust. Provided, however, Borrower shall have the right to contest such amount in good faith provided that Borrower causes any such lien to be released from the Property by the posting of a bond or by other appropriate means.

3. Hazard Insurance. Borrower shall keep the improvements now existing or later erected on the Property insured against loss of fire or hazards under a policy approved by Lender consistent with the insurance requirements of the Loan Agreement. In addition, Borrower shall insure against loss of all furniture, equipment and other personal property owned by Borrower related to Borrower's operation of the Property. Lender shall have the right to hold the policies and policy renewals, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, as and to the extent provided in the Loan Agreement.

Unless Lender and Borrower otherwise agree in writing, any such application of insurance proceeds to principal shall not extend or postpone the due date of any Loan payment or change the amount of such payment. If the Property is acquired by Lender pursuant to this Deed of Trust, all right, title and interest of Borrower in and to any insurance policies and proceeds of such policies resulting from damage to the Property prior to the sale of acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

4. Liability Insurance. In addition to the casualty insurance required under the Loan Agreement during the course of construction, Borrower shall keep comprehensive general liability insurance for the Property in a form and coverage consistent with the provisions of the Loan Agreement and reasonably approved by Lender.

5. Preservation and Maintenance of Property. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment, demolition, or deterioration of the Property.

6. Protection of Lender's Security. Borrower shall appear and defend any action or proceeding purporting to affect the security under this Deed of Trust or the rights of the Lender. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, foreclosure, involuntary sale, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedant, then Lender may, upon notice

to Borrower, make such appearances, disburse such sums and take such actions as are necessary to protect Lender's interest, including, but not limited to, disbursement of judgments, costs or reasonable attorney's fees and entry upon the Property to make repairs.

Any amounts disbursed by Lender pursuant to this Section 6, with interest, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment, and shall bear interest from the date of disbursement at the highest rate permissible under applicable law. In any event, this Section shall be construed as a right and an option of Lender and shall not be construed to require Lender to incur any expense or take any action.

7. Inspection. Lender, by its designated representative, may make reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower and any occupant of the Property reasonable prior notice of any such inspection.

8. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of all or any part of the Property, or for conveyance in lieu of condemnation, shall be applied as provided in the Loan Agreement.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of any payment or change the amount of such payment.

9. Borrower Not Released. Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time payment by reason of any demand made by the original Borrower or Borrower's successors in interest.

10. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy under this Deed of Trust, or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

11. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust, the Note, the Loan Agreement or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. Successors and Assigns Bound; Joint and Several Liability Captions. The covenants and agreements contained in this Deed of Trust shall bind, and the rights under this Deed of Trust shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Section 15. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or to define its provisions.

13. Notice. Except for any notice required under applicable law to be given in another manner, any notice to be given under this Deed of Trust shall be given as provided for in the Loan Agreement. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated.

14. Governing Law; Severability. This Deed of Trust shall be governed by the law of the State of California. If any term or provision of this Deed of Trust shall, to any extent, be held invalid or unenforceable, the remainder of this Deed of Trust shall remain in full force and effect and the invalid or unenforceable provision shall be valid and enforceable as to any other person or circumstance.

15. Acceleration on Transfer or Refinancing of the Property; Assumption. Except as otherwise provided in the Loan Agreement, if all or any part of the Property or an interest in the Property is sold or transferred or refinanced by Borrower without Lender's prior written consent, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the refinancing, sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the loan may be assumed. If Lender has waived the option to accelerate provided in this Section and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Deed of Trust and the Note. Lender's prior approval is not required for (1) the sale or transfer of the limited partner's interest to one or more of the other partners that currently comprise the Borrower's entity, (2) the admission of a limited partner to the Borrower and the transfer of its interest to an affiliate thereof so long as the general partner of the transferor is the general partner of the transferee, or partner; however, Borrower is obligated to notify Lender within 30 days from the date of such sale or transfer, (3) the removal of the general partner of the Borrower by the limited partner for a default under Borrower's partnership agreement, provided that any replacement general partner is approved by Lender.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower, or any of its principals or anyone with a substantial legal interest in Borrower, may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by this Deed of Trust.

16. Acceleration on Breach; Remedies. Except as provided in Section 15, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, the Note, (including the

covenants to pay when due any sums secured by this Deed of Trust and restricting transfer of the Property) or Loan Agreement, Lender shall mail notice to Borrower specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, no less than 30 days from the date the notice is mailed to Borrower, by which breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. The limited partner of Borrower is entitled to cure any defaults on behalf of the Borrower within the same specified time periods; said cure periods shall not extend statutory periods and times for notice and commencement of foreclosure. Lender shall be entitled to collect from the Borrower, or sale proceeds, if any, all reasonable costs and expenses incurred in pursuing the remedies provided in this Section, including, but not limited to reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which any portion of the Property is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale, in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser a Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements it contains. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto as determined by Lender. In the event of a dispute regarding the excess funds, either Lender or Trustee may file an action in interpleader to determine who shall receive the funds and may then deposit the excess funds with the court.

17. Assignment of Rents; Appointment of Receiver; Lender in Possession. As additional security, Borrower assigns to Lender the rents of the Property, provided that Borrower shall, prior to an acceleration for breach as provided above or abandonment of the Property, have the right to collect such rents as they become due.

Upon acceleration for breach or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by

Lender, its agent, or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender, its agent and the receiver shall be liable to account only for those rents actually received.

18. Prior Lienholder. The provisions of this Deed of Trust shall operate subject to the claims of prior lienholders to the extent of such claims.

19. Nonrecourse. Notwithstanding any provision of this Deed of Trust or any document evidencing or securing this Loan, Borrower, and Borrower's principals, agents, officers, and successors in interest shall not be personally liable for the payment of the Loan or any obligation of the Loan and Lender's sole recourse is to the collateral secured by this Deed of Trust

20. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to such reconveyance. Such person or persons shall pay all costs of recordation, if any. The recitals in the reconveyance of any matters or facts shall be conclusive proof of their truthfulness.

21. Substitute Trustee. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed under this Deed of Trust. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee by this Deed of Trust and applicable law.

22. Request for Notice. Borrower and each party listed to receive Additional Notices request that copies of the notice of default and notice of sale be sent to their respective addresses.

23. Statement of Obligation. Lender may collect a reasonable fee for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California, as it may be amended from time to time.

24. Use of Property. Borrower shall not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

BORROWER :

OAK PARK SENIOR HOUSING PARTNERS, L.P.,
A CALIFORNIA LIMITED PARTNERSHIP

By: Related/Oak Park Senior Development Co., LLC,
a California limited liability company
its Administrative General Partner

By: _____
Frank Cardone, Vice President

By: Oak Park Senior Housing Partners MGP, LLC,
a California limited liability company
its Managing General Partner

By: Affordable Housing Access, Inc.
a California nonprofit public benefit
corporation,
its sole member and manager

By: _____
Jonathan B. Webb, President

**EXHIBIT 5
REGULATORY AGREEMENT**

**REGULATORY AGREEMENT FOR MIXED USE DEVELOPMENT
CONTAINING COVENANTS AFFECTING REAL PROPERTY**

PROJECT NAME:	Broadway/MLK
PROJECT ADDRESS:	Broadway and Martin Luther King Boulevard

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS ACKNOWLEDGED, AGENCY AND OWNER HAVE ENTERED THIS REGULATORY AGREEMENT AS OF THE EFFECTIVE DATE.

- 1. GENERAL.** This Regulatory Agreement, includes the Exhibits listed below which are attached to and incorporated in this Regulatory Agreement by this reference.
- 2. DEFINITIONS.** The capitalized terms in this Regulatory Agreement shall have the meanings assigned in the following table and in the body of the Regulatory Agreement as the context indicates. (Terms being defined are indicated by quotation marks.)

TERM	DEFINITION	
“Effective Date”	This Regulatory Agreement shall be effective as of the following date:	
“Agency”	Redevelopment Agency of the City of Sacramento A public body, corporate and politic	
“Owner”	Oak Park Senior Housing, L.P.	
“Agency Address”	Agency’s business address is 801 12 th Street, Sacramento, California 95814	
“Owner Address”	Owner’s business address is as follows:	18201 Von Karman Avenue, Suite 900, Irvine, CA 92612
“Jurisdiction”	City of Sacramento	
“Property”	That certain real property which is subject to this Regulatory Agreement as further described in the legal description, attached as Exhibit 1 – Legal Description of the Property and incorporated in this Regulatory Agreement by this reference	
“Funding Agreements”	The Funding Agreements between Agency and Owner as follows:	Titled: Construction and Permanent Loan Agreement
		Dated: ***Date***
		Titled: Acquisition Loan Agreement
		Dated: ***Date***
“Agency Funding”	The Agency Funding made by Agency to Owner under the Funding Agreement for development of the Property	
“Agency Funding Amount”	The amount of the Agency Funding, as follows:	\$5,325,000

“Proportionate Agency Assistance”	The percentage of the Project cost, including without limitation, land, predevelopment and development costs, that is attributable to the Agency Funding. For rehabilitation projects, the percentage that the Agency Funding bears to the total of the fair market value of the Property before rehabilitation and the total costs of rehabilitation.	38%
“Funding Requirements”	The legal restrictions on the use of the funds that Agency has used to provide the Agency Funding, as applicable to and restricting the Property. The Funding Requirements are set out in Exhibit 2 – Funding Requirements .	
“Approved Use”	Ground floor Agency-approved commercial or retail use, second and third floor residential units available for rent by the general public and containing not less than the following number of units: 56	
“Disapproved Use”	<p>Owner shall assure that the property is not used, in whole or in part, for any of the following Disapproved Uses:</p> <p>An establishment deriving more than 50% of its net income from liquor sales (except in connection with an Agency-approved restaurant or use); establishment deriving more than 5% of its net income from adult-oriented material, whether for sale, rent or on-site use or viewing; veterinary hospital or kennels or similar animal-related uses; establishment for sale or rent of funerary supplies, mortuary or related activities or services; an establishment deriving more than 50% of its income from check cashing services; tattoo parlor; pawn shop; gun shop; medical marijuana related business; video rental store; arcade exclusively for video games; bowling alley; manufacturing facility; facility for repair of any appliances, vehicles or other products, except as insubstantial and incidental to permitted activities; service station for the sale of gas, oil and related products; facility using, storing or treating hazardous materials; facility for rent or storage spaces or for warehousing; facility for the housing of passive components such as digital switching units; and establishments creating nuisances or other activities that unreasonably intrude upon the peaceful enjoyment of nearby tenants and property owners, including without limitation bad odors, loud noises, bright lights, substantial numbers of loiters, trash and garbage and unhealthful or dangerous situations</p>	

3. RESTRICTED PARCELS; APPROVAL OF LEASES. In order to assure that the proper number and types of units have been rented in accordance with this Regulatory Agreement, Owner is prohibited from leasing any Unit within the Project until either the parties have recorded against the Property a list of the Restricted Units or the Agency has approved the individual lease or lease form for the Restricted Units. The following numbers of Units are restricted for each respective funding source. The initial rents for the respective units shall be the following; provided, however, that upon the request of Owner, Owner and Agency may agree to a schedule for the Restricted Units that complies with the following affordability requirements as of the date when the Project is available for occupancy. In any event the rents for the respective units may be adjusted not more often than annually. The rents shall include allowance for utilities and costs reasonably related to the rental of the units, as may be required in determining the rents for the applicable funding sources. Only units indicated under Agency Funding Source are assisted

by the Agency. Nevertheless, Owner shall assure the affordability of all of the following units at the named affordability levels. HOME Units are fixed units if referenced by Apartment Number or equivalent; otherwise such units are "floating units" in which the number of units of an affordability level and bedroom type remains the same, but the actual designated unit may change from time to time.

Agency Funding Source:	Other Funding Source:	Affordability Level:	Number of Units:	Restricted Units:	Initial Rent per Unit per Month:
				Bedroom size	
Tax Increment		Very Low Income	-11-	One Bedroom	\$558
Tax Increment		Extremely Low Income	-2-	One Bedroom	\$353
HOME		Very Low Income	-6-	One Bedroom	\$626

4. **MANAGEMENT AGREEMENT.** Borrower shall obtain and maintain a property management agreement with a duly accredited real estate property management company for the management of the Property. Owner shall not change management company without the prior written approval of the Agency. If Agency has approved an initial property manager for the Project, the company shall be listed immediately below. The term of such agreement shall be the longer of the term of the Funding Agreement or the longest term of the Funding Restrictions.

Approved Management Company
Related Management Company

5. **SPECIAL PROVISIONS.** Owner shall also comply with the following special provisions.

Provision	Term
1. Developer will obtain ground-floor retail and commercial tenants that meet the reasonable approval of the Agency's Executive Director. Agency's intent in obtaining the covenant is to assure that the Project contains on the ground floor such uses that the Agency reasonably considers to have redevelopment and economic benefits for the Project Area.	55
2. For a period of ____ years, all tenants of the ground floor shall be subject to the Executive Director's reasonable approval, with the same requirements as the original approval in subsection 1 of these Special Provisions.	

6. **REPRESENTATIONS.** Agency has provided Agency Funding to Owner to develop the Property, subject to the terms of the Funding Agreements. This Regulatory Agreement is a substantial part of the consideration to Agency for making the Agency Funding. [For purposes of this Article II, "Property" shall mean Property or Restricted Unit as the

context may indicate.] The funds used by Agency under the Funding Agreement are funds from public funding sources administered by Agency and their use is subject to certain requirements some of which are embodied in this Regulatory Agreement. Further, Agency has made the Agency Funding in accordance with the laws, rules and regulations to which Agency is subject. Therefore, Agency has made the Agency Funding conditioned upon Owner's agreement, for itself and its successors and assigns, to comply with all provisions of this Regulatory Agreement, including without limitation, the Funding Agreement. Owner has had full opportunity to make itself independently familiar with such limitations and restrictions, and Owner accepts them and agrees to comply fully with them.

7. COVENANTS. Owner makes the following covenants. Unless Owner has received the prior written consent or Agency approval otherwise, Owner shall fully comply with each and every covenant. Except as otherwise stated in this Regulatory Agreement, the following covenants shall have a term that is the same as the longest term specified in the Funding Requirements.

- a. Owner shall use and permit others to use the Property only for the Approved Use.
- b. Owner shall not use and shall not permit others to use the Property for any of the Disapproved Uses.
- c. Owner shall ensure full compliance with the Special Provisions.
- d. Owner shall assure full compliance with the Funding Requirements.
- e. Owner shall not transfer or encumber any of the Property or permit the conveyance, transfer, or encumbrance of the Property unless such assignee, transferee or encumbrancer has agreed, in writing and in a form suitable for recordation, to be bound by the terms of this Regulatory Agreement.
- f. Owner shall not cause and shall not permit expansion, reconstruction, or demolition of any part of improvements on the Property, except as provided by the Funding Agreement.
- g. Owner shall maintain the Property and the building improvements, grounds and equipment of the Property in good repair and condition and in compliance with all applicable housing quality standards and local code requirements. Owner shall maintain the Property in good condition and shall keep the Property reasonably free from graffiti and unrepaired vandalism and from accumulation of abandoned property, inoperable vehicles, unenclosed storage, debris, and waste materials. In the event of a casualty loss, Owner shall cause the restoration or replacement of the Property, in a timely manner and provided that such restoration or replacement is then economically feasible.
- h. Owner shall not cause and shall not permit discrimination on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation in the sale, lease, or rental or in the use or occupancy of the Property. Owner covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons

claiming under or through them that there shall be no discrimination against or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. This covenant against discrimination shall continue in perpetuity.

i. Owner shall assure compliance with the obligations imposed by the federal Personal Responsibility and Work Opportunity Act (Public Law 104-193, commonly known as the Welfare Reform Act) as amended by California Welfare and Institutions Code Section 17851, which restrict the Agency funding of federal, state or local benefits to persons who are not citizens or qualified aliens as defined in such act.

8. NATURE OF COVENANTS. The provisions contained in this Regulatory Agreement are covenants which subject and burden the Property, as covenants running with the land. It is intended and agreed that the agreements and covenants provided in the Agreement shall be covenants running with the land and equitable servitudes on the land and that they shall, in any event, and without regard to technical classifications or designation, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Agency, the Agency's successors and assigns, any other governmental entity acting within its authority and any successor in interest to Agency's interest under this Regulatory Agreement against the Owner, its successors and assigns and every successor in interest to all or any part of the Property.

9. TERM. **The term of this Regulatory Agreement shall commence on the Effective Date and continue until the terms of all of the covenants, including without limitation, the terms stated in the Funding Requirements, have expired or otherwise been terminated. Notwithstanding the term in the Funding Requirements, the term of this Regulatory Agreement shall be fifty-five (55) years from the Effective Date.**

10. REVIVAL OF COVENANTS AFTER FORECLOSURE. The affordability restrictions shall be revived after foreclosure, or deed in lieu of foreclosure according to the original terms if, during the original term of this Regulatory Agreement, if the Owner, who was owner of record before the termination event, or a party related to the Owner obtains an ownership interest in the Property or Restricted Unit, as the case may be. For purposes of this provision, a related party is anyone with whom the Owner has or had family or business ties; provided that such interest would not be considered a "remote interest" in the usual and customary use of the term.

11. MULTIPLE FUNDING REQUIREMENTS. If more than one form of Funding Requirements is attached, each Restricted Unit shall be subject to the Funding Requirements for every Funding Source applied to the respective Restricted Unit. If the terms of the Funding Requirements shall conflict as to any Restricted Unit, the Funding Requirements shall be construed so as to meet all applicable requirements for the respective Restricted Unit, including without limitation the use of the most restrictive requirements and the use of the "Recapture" formula that results in the greatest repayment to the Agency.

12. RECORDKEEPING AND REPORTING. Upon request of Agency, Owner shall promptly provide any additional information or documentation requested in writing by the Agency to verify

Owner's compliance with the provisions of this Regulatory Agreement. At the written request of the Agency, Owner shall, within a reasonable time following receipt of such request, furnish reports and shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operations, and condition of the property and the status of the Deeds of Trust.

13. AUDIT AND INSPECTION. The Property and all related equipment, buildings, plans, offices, books, contracts, records, documents and other related papers shall at all times be maintained in reasonable condition for audit and shall be subject to examination by the Agency or its agents. The books and accounts of the operations of the Property and of the Property shall be kept in accordance with generally accepted accounting principles. Owner shall provide Agency access to the Property and its tenants during reasonable hours for the purpose of reviewing Owner's compliance with this Regulatory Agreement.

14. INDEMNITY FOR OWNER'S FAILURE TO MEET LEGAL REQUIREMENTS. Owner shall indemnify and hold Agency, its officers, directors, and employees harmless from any and all liability arising from Owner's failure to comply with the covenants, conditions and restrictions contained in this Regulatory Agreement or to comply with all other laws, rules, regulations and restrictions related to the use of Agency Funding. Without limitation, such indemnity shall include repayment to the appropriate parties of rents or sales proceeds in excess of amounts authorized to be charged and repayment to the Agency of the costs of funds and the value of lost opportunities resulting from the required repayment by Agency to the funding source of funds improperly used.

15. CHANGES WITHOUT CONSENT OF TENANTS, LESSEES, OR OTHERS. Only Agency and its successors and assigns, and Owner (subject to the reasonable approval of Owner's lender in accordance with its rights under its loan terms) shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or restrictions contained in this Agreement without the consent of any easement holder, licensee, other mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Site.

16. DEFAULT. Upon a breach of any of the provisions of this Regulatory Agreement by Owner, the Agency may give written notice of such breach to Owner by registered or certified mail. If such violation is not corrected to the satisfaction of Agency within sixty (60) days after the date such notice is mailed or within such further time as the Agency may reasonably determine is necessary to correct the breach, and without further notice to Owner, the Agency may declare a default under the Agreement, effective on the date of such declaration of default, and upon such default the Agency may: (a) take any action then available under the Funding Agreement for a default under the Funding Agreement and (b) apply to any court for specific performance of this Regulatory Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Regulatory Agreement, for money damages or for such other relief as may be appropriate, since the injury to the Agency arising from a default under any of the terms in this Regulatory Agreement would be irreparable, and the amount of damage would be difficult to ascertain.

17. **BINDING SUCCESSORS IN INTEREST.** This Regulatory Agreement shall bind and the benefits shall inure to the Owner, its successors in interest and assigns, and to the Agency and its successors for the term of this Regulatory Agreement.

18. **CONTRADICTORY AGREEMENTS.** Owner warrants that he has not, and will not, execute any other agreement with provisions contradictory of or in opposition to, the provisions of this Regulatory Agreement, and that, in any event, the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict with this Regulatory Agreement.

19. **ATTORNEYS' FEES.** If the services of any attorney are required by any party to secure the performance of this Regulatory Agreement or otherwise upon the breach of default of another party, or if any judicial remedy or mediation is necessary to enforce or interpret any provision of this Regulatory Agreement or the rights and duties of any person in relation to this Regulatory Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Any award of damages following judicial remedy or arbitration as a result of this Regulatory Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law. The prevailing party shall mean the party receiving an award in arbitration or a judgment in its favor, unless the award or judgment is less favorable than the best settlement offered in writing in a reasonable manner by the other party, in which case the prevailing party is the other party.

20. **SEVERABILITY.** The invalidity of any clause, part or provision of this Regulatory Agreement shall not affect the validity of the remaining portions.

21. **ELECTION OF REMEDIES.** To the extent applicable, in the event of any breach of the covenants, conditions and restrictions contained in this Regulatory Agreement, the Agency shall reasonably endeavor to remedy such breach by conference and conciliation. If, in the opinion of Agency, the Agency and Owner are unable mutually to agree upon a suitable remedy or the circumstances so warrant, such breach may be enjoined or abated by appropriate proceedings brought by the Agency.

Agency may institute or prosecute in its own name, any suit Agency may consider advisable in order to compel performance of any obligation of any owner to develop and maintain the subject property in conformity with this Regulatory Agreement and to remedy any default of this Regulatory Agreement. Agency may also seek a decree requiring removal of any improvements constructed on the Property which improvements are designed for uses not permitted under this Regulatory Agreement and which improvements are unsuitable only for uses not permitted under this Regulatory Agreement.

The remedies of the Agency under this Regulatory Agreement are cumulative, and the exercise of one or more of such remedies, including, without limitation, remedies under the Funding Agreement shall not be deemed an election of remedies and shall not preclude the exercise by the Agency of any one or more of its other remedies.

22. **NO WAIVER.** No waiver by the Agency of any breach of or default under this Regulatory Agreement shall be deemed to be a waiver of any other or subsequent breach or default.

23. **NOTICES.** Written notices and other written communications by and between the parties shall be addressed to the Owner at the Owner Address and to the Agency at the Agency Address or such other address as each respective party has designated by written notice to the other party.

THE PARTIES HAVE EXECUTED THIS REGULATORY AGREEMENT in Sacramento, California as of the Effective Date

OWNER :
OAK PARK SENIOR HOUSING PARTNERS,
L.P.,
A CALIFORNIA LIMITED PARTNERSHIP

By: Related/Oak Park Senior
Development Co., LLC,
a California limited liability company
its Administrative General Partner

By: _____
Frank Cardone, Vice President

By: Oak Park Senior Housing Partners
MGP, LLC,
a California limited liability company
its Managing General Partner

By: Affordable Housing Access, Inc.
a California nonprofit public
benefit
corporation,
its sole member and manager

By: _____
Jonathan B. Webb,
President

Approved as to form:

Borrower Counsel

AGENCY:
REDEVELOPMENT AGENCY OF THE CITY
OF SACRAMENTO

By: _____

LaShelle Dozier, Executive Director

Date: _____

Approved as to form:

Agency Counsel

**EXHIBIT 6
ESCROW INSTRUCTIONS**

**JOINT ESCROW INSTRUCTIONS
FOR AGENCY LOAN**

“Effective Date”	*** Date***
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Agency and Borrower execute these Escrow Instructions as of the Effective Date. This document, including attachments and any amendments and additions, shall constitute the joint escrow instructions of Agency and Borrower for the Agency loan secured by the Property.

ARTICLE I. GENERAL TERMS.

24. **GENERAL.** These Escrow Instructions, in addition to items listed below, include Article II Instructions, which is attached to and incorporated in these Escrow Instructions by this reference.

25. **DEFINITIONS.** The capitalized terms in these Escrow Instructions shall have the meanings assigned in Article I General Terms and as defined in Article II Instructions. (Terms being defined are indicated by quotation marks.)

“Title Company”	Old Republic Title Company			
	Address :	555 12th Street, Suite 2150, Oakland, CA 94607		
“Escrow with Title Company”	Escrow Number :	1117007635-JM	Attention:	Julie Massey
	“Agency”			
Redevelopment Agency of the City of Sacramento				
Address :				
801 12 th Street, Sacramento, CA 95814				
Attention:				
Bernadette Austin				
“Borrower”	Oak Park Senior Housing, L.P.			
	Address :			
	18201 Von Karman Avenue, Suite 900, Irvine, CA 92612			
“Closing Date”	Attention:			
	Steven Oh			
Closing Date				
“Property”	Address :			
	Broadway and Martin Luther King Boulevard		APN:	014-0171-001, 014-0171-017, 014-0171-018, 014-0171-019, 014-0171-020, 014-0171-025

Description of the transaction	A seller carry back loan for the value of the Agency owned property at Broadway and MLK in exchange for the transfer of the property to the Borrower and a construction and permanent loan to the Borrower for the construction of a mixed use development
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“Recorded Documents”- The following documents are to be recorded in the order listed (top being first in priority). Copies of the Recorded documents are attached.	Documents:	Marked for return to:
	Disposition and Development Agreement	Sacramento Housing and Redevelopment Agency 801 12 th Street Sacramento, CA 95814 Attn: Bernadette Austin
	Grant Deed	
	Deed of Trust for Permanent and Construction Loan	
	Deed of Trust for Acquisition Loan	
	Regulatory Agreement	
Notice of Affordability Covenants		
“Agency Items”	Promissory Note for subject loan	
	Loan Agreement for the Permanent and Construction Loan	
	Loan Agreement for the Acquisition Loan	
	Note for the Permanent and Construction Loan	
	Note for the Acquisition Loan	
“Borrower Items”	Authorizing resolutions for all Borrower signatories	
	Conformed copies of recorded documents	

“Special Provisions”:	Title Policy shall, in addition to customary endorsements, bear the following endorsements: <ul style="list-style-type: none"> • For the Regulatory Agreement CLTA 124.1 • ALTA 102.5 Foundation Endorsement • ALTA Rewrite upon project completion • LTA 101.1 Mechanic’s Lien Endorsement
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“Agency Title Policy” in the form of an ALTA Agency’s Policy insuring that the following are valid liens against the property:	Documents:	Coverage amount:	
	Regulatory Agreement and Trust Deeds	In the amount of the loans secured (\$5,416,924)	
The title policies shall be subject only to the following “Conditions of Title”:	Items ***Conditions of Title*** of Title Company’s Preliminary Report for the Escrow	Dated:	***Preliminary Report Date***
		Number :	1117007635-JM

THE PARTIES HAVE EXECUTED THESE ESCROW INSTRUCTIONS in Sacramento, California as of the date first written above.

BORROWER :
OAK PARK SENIOR HOUSING PARTNERS,
L.P.,
A CALIFORNIA LIMITED PARTNERSHIP

By: Related/Oak Park Senior
Development Co.,
LLC,
a California limited liability company
its Administrative General Partner

By: _____
Frank Cardone, Vice President

By: Oak Park Senior Housing Partners
MGP, LLC,
a California limited liability company
its Managing General Partner

By: Affordable Housing Access, Inc.
a California nonprofit public
benefit
corporation,
its sole member and manager

By: _____
Jonathan B. Webb,
President

Approved as to form:

Borrower Counsel

AGENCY:
REDEVELOPMENT AGENCY OF THE CITY
OF SACRAMENTO

By: _____
LaShelle Dozier
Executive Director

ARTICLE II. INSTRUCTIONS

1. **CLOSING DATE.** Escrow shall close on or before the Closing Date as it may be changed from time to time by written agreement of Borrower and Agency.

2. **CONDITIONS TO CLOSE OF ESCROW.** "Close of Escrow" means the fulfillment of the Escrow terms and conclusion of the Escrow, including, without limitation, the execution of unexecuted documents, the recordation of documents specified for recording, the issuance of title insurance policies, the payment of fees and the delivery of funds and documents as directed in the escrow instructions for the Escrow. The Close of Escrow shall occur on the Closing Date.

2.1. **CONDITIONS.** The following are conditions to the Close of Escrow:

2.1.1. The conditions precedent to performance stated in the Recorded Documents are satisfied as of the Closing Date.

2.1.2. Simultaneously with the Close of Escrow, Title Company shall issue the Agency Title Insurance to Agency (at Borrower's cost) in the amount stated. The Agency Title Insurance shall include all usual and customary endorsements and any endorsements and other commitments as Agency may reasonably require. The Agency Title Insurance shall show the Recorded Documents marked for return to Agency as valid liens against the Property in favor of the Agency, subject only to the Conditions of Title, and securing, as applicable, Borrower's performance of its obligations and repayment of Agency Funding.

2.1.3. Prior to the Closing Date, the parties shall duly execute (in Escrow or prior to deposit in Escrow) each such document and shall execute those to be recorded in a manner suitable for recording.

2.1.4. On or before the Closing Date, Agency shall also deposit with Title Company the Borrower Items and any Loan Amount then to be disbursed under this Agreement, but not less than closing costs, fees and charges required for Close of Escrow.

2.1.5. On or before the Close of Escrow, Borrower shall also deposit with Title Company the Agency Items and Borrower's share of closing costs and fees.

2.1.6. Title Company is satisfied that all required funds have been deposited in Title Company's account for the Escrow, have cleared the originating bank and are available for transfer by Title Company's check or wire transfer to the appropriate party.

2.2. **TRUST DEED FORM.** If no exhibit setting out the form of the Trust Deed form is attached, the Title Company shall draw the Trust Deed on the Title Company's Long Form Deed of Trust. Title Company shall assure that the Trust Deed includes a standard clause giving Agency the option to accelerate the Loan upon the sale, conveyance, transfer or further encumbrance of the Property, whether voluntary or involuntary. Title Company shall also affix the following provision to the Trust Deed and incorporate it in the Trust Deed by reference:

“The Loan Agreement requires the filing of the “Regulatory Agreement” that is defined in the Loan Agreement. The Regulatory Agreement contains covenants running with the land and is recorded against the Property. If Developer does not comply with the requirements of the Regulatory Agreement and fails to come into compliance with the Regulatory Agreement within thirty (30) days after Agency’s written notice to Developer of such failure, the principal balance of the Loan shall, at Agency’s option, be immediately due and payable, together with all unpaid interest at the stated rate from the date of the advancement of the Loan’s proceeds.”

2.3. UPON CLOSE OF ESCROW. The Close of Escrow shall take place on the Closing Date. On the Closing Date, Title Company shall complete the Close of Escrow as follows and in the following order (unless otherwise stated, all recorded documents are recorded with the Sacramento County Recorder):

2.3.1. Assure fulfillment of the Special Provisions;

2.3.2. Assure all documents are complete and affix legal descriptions of the Property as necessary to complete them;

2.3.3. Obtain full execution of all unexecuted documents;

2.3.4. Date all undated documents as of the Closing Date;

2.3.5. Record the Recorded Documents in the priority listed;

2.3.6. Determine all closing costs and fees; including without limitation, all charges, fees, taxes and title insurance premiums payable under this Agreement on Close of Escrow and any other fees and charges approved for payment from Escrow by both parties and deduct such fees from the Loan proceeds deposited by Agency in Escrow;

2.3.7. Deliver the Agency Items to Agency and the Borrower Items to Borrower; and

2.3.8. Prepare and deliver to Borrower and Agency, respectively, one signed original of all documents included for delivery to either party and not delivered for recording, one signed original of Title Company's closing statement showing all receipts and disbursements of the Escrow, and one conformed copy of each of the recorded documents.

2.4. INABILITY TO CLOSE. If Title Company is unable to simultaneously perform all of the preceding instructions, Title Company shall notify Borrower and Agency, and upon each of their directions return to each party all documents, items and funds deposited in Escrow by such party (less fees and expenses incurred by the respective party) and bill the respective parties for any unpaid fees and expenses incurred in Escrow. If Escrow fails to close on the Closing Date because Borrower has not complied with Borrower's obligations under this Loan Agreement, then Borrower shall pay the costs incurred through Escrow to the date the Escrow is terminated, including the cost of any preliminary title report and any cancellation fees or other costs of this

Escrow. If Escrow fails to close on or before the Closing Date because Agency has not complied with Agency's obligations under this Loan Agreement, such costs shall be paid by Agency. If Escrow fails to close on or before the Closing Date for any other reason, such costs shall be divided equally between the parties.

2.5. **COMMISSIONS.** Agency is not responsible, by this Loan Agreement or otherwise, to pay commissions in relation to this transaction.

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ACCEPTANCE OF ESCROW INSTRUCTIONS

Your acceptance of this escrow shall create a contractual obligation by you with Agency and Borrower for complete compliance with these instructions. Agency and Borrower reserve the right to jointly revoke this escrow at any time upon their payment to you of your fees and reimbursement to you of your expenses in accordance with the terms of these escrow instructions. Your obligations as Escrow Holder under these escrow instructions shall be subject to the following provisions:

You are not responsible as to the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow nor as to the authority or rights of any person executing such instrument. Except as otherwise provided in these escrow instructions, your duties as Escrow Holder are limited to the proper handling of monies and the proper safekeeping of instruments and other items received by you as Escrow Holder, and for the performance of your obligations as specifically provided under these escrow instructions. You are responsible for the sufficiency of any instruments or documents prepared by you for this escrow.

Borrower agrees to indemnify and hold you harmless from damages incurred as a result of your good faith and diligent performance of your duties under these escrow instructions.

Upon your acceptance of these escrow instructions, return the executed counterparts of these escrow instructions to Agency and Borrower, respectively.

Escrow Holder acknowledges receipt of the foregoing escrow instructions and agrees to act as Escrow Holder and to comply with the terms and conditions of the escrow instructions.

Dated: _____

TITLE COMPANY
OLD REPUBLIC TITLE COMPANY

By: _____

Name: _____

Title: _____

Its authorized agent and signatory

**EXHIBIT 7
FEDERAL REQUIREMENTS**

**HOME FUNDING AND OTHER FEDERAL REQUIREMENTS
RENTAL PROJECT**

These "HOME Funding and Other Federal Requirements" are attached to the Loan Documents (Loan Agreement and Regulatory Agreement), and are incorporated in the Loan Documents. The capitalized terms used in these HOME and Other Federal Funding Requirements shall have the meanings below in the body of these HOME Funding and other Federal Requirements. Terms being defined are indicated by quotation marks. Capitalized terms in these HOME Funding and Other Federal Requirements that are not defined below are defined in the Loan Documents. References to the CFR are to the Code of Federal Regulations

1. **DEFINITIONS** . For the purposes of the Loan Documents and in addition to the definitions made elsewhere in the Loan Documents, the following capitalized words and phrases contained in this Contract shall have the following meanings:

a. "HOME" is the federal HOME Investment Partnership program (Catalogue of Federal Domestic Assistance FDA 14.239) administered by the U.S. Department of Housing and Urban Development

b. The "HOME Requirements" are the laws, rules and regulations which are specifically applicable to this contract. A substantial portion of the Federal Requirements included in this Attachment 2.

c. "Exhibits" to this Attachment 2 contain a substantial portion of the Federal Requirements, and are incorporated into this Agreement in the form of a Compact Disc (CD). Borrower acknowledges receipt of the CD by initialing here: _____. The Exhibits included the following:

i) Exhibit 1 – HOME Regulations: 24 U.S.C.F.R. 92 *et seq.*

ii) Exhibit 2 – OMB Circular A-110; Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations [*applies only to Subrecipients who are not a state or local government or a public Agency*]

iii) Exhibit 3 – OMB Circular A-122; Cost Principles for Nonprofit Organizations [*applies only to Subrecipients who are not a state or local government, a public Agency or an educational institution*]

iv) Exhibit 4 – OMB Circular A-133; Audits of States, Local Governments, and Non-Profit Organizations [*applies only to Recipients who are a state or local government, a public Agency or an educational institution*]

v) Exhibit 5 – Requirements for nonprofit sугrantees; 24 U.S.C.F.R. 84

vi) Exhibit 6 – New Restrictions on Lobbying; 24 U.S.C.F.R. 87

vii) Exhibit 7 – Executive Order 11246

viii) Exhibit 8 – Executive Order 12432

ix) Exhibit 9 – Executive Order 11625

x) Exhibit 10 – Executive Order 12138

xi) Federal 11- Federal Labor Standards Provisions: 29CFR 5.5

2. RECITALS. The Agency Funding includes proceeds of the federal HOME Investment Partnerships Act (“HOME”) and its implementing regulations (commencing at 24 CFR 92) (“HOME Funds”). The Agency has approved the Agency Funding on condition that the property described in the Loan Documents (“Property”) is rehabilitated or developed as residential rental property (“Project”) with certain units regulated in accordance with laws, rules and regulations regarding the use of HOME funds for the benefit of low-income persons (“HOME Restricted Units”) by recordation of these Home Funding and Other Federal Restrictions as covenants running with the land. HOME Restricted Units are made affordable by such regulation to persons and households that qualify as low-income or very low-income as indicated in the table in Article I.

3. USE OF HOME FUNDS. Owner shall assure that the HOME Funds are used only for qualified uses. HOME Funds may only be used to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance, including security deposits; to provide payment of reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations, all as further defined in 24 CFR 92.205-92.209. The HOME Funds shall not be used for project reserve accounts except as expressly authorized or to provide operating subsidies.

Owner represents that it is not primarily a religious organization; that Owner is not using HOME Funds to rehabilitate or construct housing owned by primarily religious organizations or to assist primarily religious organizations in acquiring housing; that the Project is being used by Owner exclusively for secular purposes; that the Project units are available to all persons regardless of religion; and that there are no religious or membership criteria for tenants of the Property.

4. PROPERTY STANDARDS. Upon completion, the Project will comply with the applicable property standards of 24 CFR 92.251. For the term of these Funding Requirements, Owner shall provide Agency access at all reasonable times for inspection to assure compliance with such standards. Such provisions are generally as follows:

a. If the Project is new construction, it must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. Newly

constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

b. All other HOME-assisted housing (such as acquisition) must meet all applicable State and local housing quality standards and code requirements.

c. The housing must meet the accessibility requirements at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).

d. Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such housing. Also, installation of manufactured housing units must comply with applicable State and local laws or codes, or in the absence of such laws or codes, the participating jurisdiction must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing that is rehabilitated using HOME funds must meet the requirements set out in section 4.a.

e. Owner must maintain the housing in compliance with all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

5. LEAD-BASED PAINT. Owner shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations.

6. AFFORDABILITY REQUIREMENTS. Owner shall assure that the of HOME Restricted Units shall be rented at or below the following rates:

a. Low-Income Units shall be rented for amounts that do not exceed thirty percent (30%) of sixty-five percent (65%) of the Sacramento Metropolitan Statistical Area median income ("Median Income"), as determined annually by the federal Department of Housing and Urban Development ("HUD"), as adjusted for family size appropriate to the size and number of bedrooms in the respective HOME Restricted Unit.

b. Very Low-Income Units shall be rented for amounts that do not exceed thirty percent of 50% of the Median Income as adjusted for family size appropriate to the size and number of bedrooms in the respective HOME Restricted.

c. Notwithstanding any other provision, the maximum rent on any HOME-Restricted Unit shall not exceed the "Fair Market Rent" as established by HUD under 24 CFR 888.111.

d. Unless Owner has obtained prior written Agency authorization, Owner shall maintain the allocation of HOME-Restricted Units by the bedroom sizes stated in the Regulatory Agreement.

e. Such maximum rent limits shall be recalculated periodically after HUD determination of the Fair Market Rent or the Median Income; provided, however, that the rents are not required to be lower than the initial rent for the HOME-Restricted Units. Owner shall give tenants not less than thirty (30) days notice of a change in rents.

f. The foregoing affordability requirements may, with the consent of the Agency, terminate on foreclosure or deed in lieu of foreclosure; provided, however, that the affordability requirements will revive according to the original terms if the Owner at the time of foreclosure, or any entity that includes such Owner or anyone with whom such Owner has or had family or business ties, obtains an ownership interest in the Project or Property.

7. OCCUPANCY REQUIREMENTS. Owner shall assure that all HOME Restricted Rental Units shall be initially occupied by households earning less than sixty-five percent (65 %) of Median Income, as verified by the Agency. Notwithstanding any other provision, if more than five units in the Project are HOME-Restricted Units, not less than twenty percent of the HOME-Restricted Units shall be Very Low-Income Units and shall be occupied by families whose annual income does not exceed 50% of the Median Income. If a tenant of a HOME-Restricted Unit no longer qualifies as for the HOME-Restricted Unit as a result of an increase in family income, the HOME-Restricted Unit continues to qualify under these Funding Requirements so long as actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with these Funding Requirements until the noncompliance is corrected. Such tenants shall pay as rent the lesser of the amount payable by the tenant under State or local law or thirty percent (30%) of the family's adjusted income, except that tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by such section. In addition, for projects where HOME units are designated as floating pursuant to 24 CFR 92.252(j), tenants who no longer qualify as low-income are not required to pay as rent an amount that exceeds the market rent for comparable, unassisted units in the neighborhood

8. INCOME VERIFICATION. Owner shall fully cooperate with Agency by requiring every prospective tenant of a HOME Restricted Unit to provide to Owner, prior to initial occupancy of a Home-Restricted Unit and annually, all information required to verify income-eligibility of the prospective tenant to assure income eligibility in accordance with 24 CFR 92.203. For the initial eligibility determination, Owner shall cause the tenant to provide the Agency with the source documents evidencing annual income (by way of example, wage statement, interest statement, unemployment compensation statement) for the family. Thereafter, Owner shall cause the tenant to provide the Owner with such source documents; a written statement of the amount of the family's annual income and family size, with a certification that the information is complete and accurate and assurance that the family will provide source documents upon request; or a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family, stating the tenant's family size and the amount of the family's annual income or alternatively, stating the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed such limit.

9. TENANT PROTECTIONS; LEASE PROVISIONS. Owner shall comply with the following provisions for protection of tenants in HOME-Restricted Units.

a. Owner shall enter into an initial lease with a tenant of a HOME-Restricted Unit for not less than one year, unless by mutual agreement between the tenant and the Owner and not required by Owner as a condition of entering into the lease. Such lease shall not contain any of the following provisions, in addition to any other applicable requirements of law:

- 1) Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;
- 2) Agreement by the tenant that the Owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties; excepting an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit that is in accordance with State law;
- 3) Agreement by the tenant not to hold the Owner or the Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
- 4) Agreement of the tenant that the Owner may institute a lawsuit without notice to the tenant;
- 5) Agreement by the tenant that the Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- 6) Agreement by the tenant to waive any right to a trial by jury;
- 7) Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
- 8) Agreement by the tenant to pay attorney's fees or other legal costs, even if the tenant wins in a court proceeding by the Owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

b. An Owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew tenancy, the Owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

c. Owner must adopt written tenant selection policies and criteria that:

- 1) Are consistent with the purpose of providing housing for very low-income and low-income families;
- 2) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;
- 3) Give reasonable consideration to the housing needs of families that would have a Federal preference under section 6(c)(4)(A) of the United States Housing Act of 1936 (commencing at 42 U.S.C. 1437 *et seq.*), as further provided in 24 CFR 92.209(c)(2);
- 4) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

5) Give prompt written notification to any rejected applicant of the grounds for any rejection.

d. Owner shall not refuse to lease a HOME-Restricted unit to a certificate or voucher holder under 24 CFR 982 – Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the tenant as a holder of such certificate, voucher or comparable certification.

10. UNIT QUALITY & DETERMINATION OF COST ALLOCATION. OWNER shall assure that HOME Restricted Units assisted with HOME Funds must be comparable in size and amenities to other units in the Project. If the assisted and non-assisted units are comparable in terms of size, features and number of bedrooms, the actual cost of the HOME Restricted units can be determined by pro-rating the total HOME eligible development costs of the Project so that the proportion of the total development costs charged to the HOME program does not exceed the proportion of the HOME Restricted units in the Project. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on a method of cost allocation.

11. COMPLIANCE WITH LOAN DOCUMENTS. Owner shall comply with any and all applicable provisions of the Loan Agreement for so long as they continue to be in effect.

12. REPAYMENT ON DEFAULT OR EARLY TERMINATION. If the Agency determines the Project does not comply with HOME requirements for affordability as specified in 24 CFR 92.252 or 92.254; or if the Project is terminated before completion, either voluntarily or otherwise; or if Owner does not comply with these funding restrictions; or if the Project is determined to be an ineligible activity under HOME, Owner must repay to Agency any HOME Funds invested in the Project upon demand.

13. PROGRAM INCOME. If Project income is considered to be HOME program income, it shall nevertheless be paid to or retained by Owner in accordance with the agreement between Agency and Owner.

14. ADMINISTRATIVE REQUIREMENTS. Owners that are governmental or non-profit organizations shall comply with the provisions of 24 CFR 92.505 regarding uniform administrative requirements. Owner shall cooperate fully with the Agency and provide all documents and records required by Agency in preparing for HOME related audits. Owner shall comply with all applicable requirements under HOME, including without limitation, recordkeeping and reporting.

15. GOVERNMENTAL ENTITIES, NON-PROFITS, CHDOs. Special HOME regulations apply to an Owner that is governmental or non-profit entities or a community housing development organization. Such Owner is responsible for knowledge of and shall fully comply with such regulations.

16. **TERM.** These covenants shall burden and regulate the HOME Restricted Units assisted with HOME Funds for the following term as applicable, unless a longer term is specified in the body of the document to which this attached:

a. For rehabilitation or acquisition of existing housing, five (5) years if the subsidy for each of HOME-Restricted Unit is less than \$15,000;

b. For ten (10) years if such subsidy is \$15,000 or more but not more than \$40,000;

c. for fifteen (15) years if such subsidy is more than \$40,000 or if the project involves refinancing of an existing loan; and

d. For new construction or acquisition of newly constructed housing, twenty (20) years.

17. **NO TERMINATION ON RECAPTURE.** Notwithstanding any other provisions of the Regulatory Agreement, the provisions of this Home Funding and Other Federal Restrictions shall continue for the duration of the applicable preceding term.