

**COUNTY LAND LOAN AGREEMENT
(\$2,900,000)**

Between County of Santa Barbara

and

Pescadero Lofts Isla Vista, L.P.

(Pescadero Lofts)

COUNTY LAND LOAN AGREEMENT (Pescadero Lofts)

This County Land Loan Agreement is made as of this ____ day of September 2013, by and between the County of Santa Barbara, a political subdivision of the State of California (“Lender”), and Pescadero Lofts Isla Vista, L.P., a California limited partnership (“Borrower”).

RECITALS

A. These Recitals utilize certain capitalized terms that are defined in Article 1 of this Agreement. The parties intend to refer to those definitions in connection with their use in these Recitals.

B. Lender wishes to promote the development of more affordable rental housing in neighborhoods in need of revitalization in the Santa Barbara County community and provide a greater choice of housing opportunities for persons and families of low income.

C. Borrower proposes to acquire the parcel located at 761 Camino Pescadero in Isla Vista, Santa Barbara County, California, as more particularly described in Exhibit A. The parcel consists of .82 acres, and Lender previously demolished an existing structure located on the Property in anticipation of developing the Project. The County Land Loan will be used for the acquisition of the Property.

D. Borrower wishes to borrow from Lender and Lender wishes to extend to Borrower a loan of non-federal, County funds in the amount of Two Million Nine Hundred Thousand Dollars and No Cents (\$2,900,000.00) to finance the acquisition of the Property. The County Land Loan is being made to finance acquisition costs associated with the Project in order to help achieve financial feasibility for the Project and maximize the affordability of the rental housing.

E. Lender has provided to Borrower a loan of federal HOME Investment Partnerships Program (HOME) funds in the amount of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars and No Cents (\$1,642,234.00) to finance construction of the Project (“County HOME Loan”) and Lender and Borrower executed a regulatory agreement that restricts thirteen (13) of the thirty three (33) units to very low-income persons in compliance with HOME regulations (“County HOME Loan Regulatory Agreement”).

F. Lender has an obligation under HOME regulations to provide a matching contribution to housing that qualifies as affordable housing under the HOME program, which may be in the form of cash contributions of funds from nonfederal sources, and Lender intends to designate the County Land Loan as a matching contribution to help meet Lender’s matching contribution obligation to the extent permitted by HOME regulations.

G. Borrower has secured a loan from Union Bank, N.A. in the amount of Four Million Nine Hundred Eighty One Thousand Sixty Eight Dollars and No Cents (\$4,981,068.00) for development of the Project, which will be recorded in a first (1st) lien position in priority and superiority (“Senior Loan”).

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and

representations, and in further consideration for the making of the Loan, Borrower and Lender hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this County Land Loan Agreement, attached Exhibits, or documents incorporated into this County Land Loan Agreement by reference.

1.1 **"ANNUAL FINANCIAL STATEMENT"** means the financial statement of Operating Expenses and Revenues, prepared at Borrower's expense, by an independent certified accountant reasonably acceptable to Lender, which shall form the basis for determining Residual Receipts.

1.2 **"AREA MEDIAN INCOME"** means the area median income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area, as determined annually by HUD with adjustments for household size.

1.3 **"ASSISTED UNIT"** means any one of the twenty (20) units on the Property that are not HOME-Assisted Units (as such term is defined in the County Land Loan Regulatory Agreement).

1.4 **"BORROWER"** means Pescadero Lofts Isla Vista L.P., a limited partnership of the State of California, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

1.5 **"COUNTY"** means the County of Santa Barbara, a political subdivision of the State of California and its authorized representatives, officers, officials, directors, employees, and agents.

1.6 **"COUNTY LAND LOAN"** means the loan of County funds in the amount of Two Million Nine Hundred Thousand Dollars (\$2,900,000) from the Lender to the Borrower as provided in this County Land Loan Agreement to finance the acquisition of the Property.

1.7 **"COUNTY LAND LOAN AGREEMENT"** means this loan agreement entered into between Lender and Borrower.

1.8 **"COUNTY LAND LOAN DOCUMENTS"** are collectively the County Land Loan Agreement, the County Land Loan Note, the County Land Loan Deed of Trust, and the County Land Loan Regulatory Agreement, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.9 **"COUNTY LAND LOAN REGULATORY AGREEMENT"** means the agreement which regulates the operation of the Project executed by Borrower and Lender, substantially in the form attached hereto as Exhibit D, as well as any amendments to, modifications of, and restatements of the County Land Loan Regulatory Agreement, whenever that County Land Loan Regulatory Agreement is recorded. The terms of the recorded County Land Loan Regulatory Agreement are hereby incorporated into this County Land Loan Agreement.

1.10 **"COUNTY LAND LOAN DEED OF TRUST"** is that deed of trust, assignment of rents, and security agreement recorded as a lien against the Property as security for the County Land Loan Note that evidences the County Land Loan by Borrower as trustor with Lender as beneficiary, substantially in the form attached hereto as Exhibit B, as well as any amendments to, modifications of, and restatements of the County Land Loan Deed of Trust, whenever that County Land Loan Deed of Trust is recorded. The terms of the recorded County Land Loan Deed of Trust are hereby incorporated into this County Land Loan Agreement.

1.11 **"ESCROW HOLDER"** means the person or entity designated by the Borrower and approved by Lender to hold all County Land Loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.12 **"HAZARDOUS MATERIALS"** means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation: petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards at the time of such use.

1.13 **"HUD"** means the United States Department of Housing and Urban Development.

1.14 **"LENDER"** means the County of Santa Barbara, a public body corporate and politic, and its authorized representatives, officers, officials, directors, employees, and agents.

1.15 **"COUNTY LAND LOAN NOTE"** means the promissory note executed by the Borrower in favor of Lender in the amount of Two Million Nine Hundred Thousand Dollars and No Cents (\$2,900,000.00) to evidence the Loan, as well as any amendments to, modifications of, or restatements of the note, substantially in the form attached hereto as Exhibit C; the terms of the County Land Loan Note are hereby incorporated into this County Land Loan Agreement.

1.16 **"OPERATING EXPENSES"** shall mean, actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance, and management of the Project, including painting, cleaning, repairs and alterations, landscaping, utilities, rubbish removal, certificates, permits and licenses, sewer charges, real and personal property taxes and assessments, insurance, property management fee, security, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, cash deposited into reserves for capital replacements with respect to the Project in an amount not to exceed reserve requirements reasonably imposed by Senior Lender, cash deposited into an operating reserve in an amount not to exceed the amount reasonably required by Senior Lender, purchase, lease, repair, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of accountants, attorneys, consultants and other professionals, and any required debt service under the Senior Loan. Operating Expenses shall include (i) payment by Borrower of an annual partnership management fee of Twelve Thousand Dollars and No Cents (\$12,000.00) (increasing annually by three percent

(3%) per annum, (ii) an annual asset management fee of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) (increasing annually by three percent (3%) per annum, (iii) payment of a developer fee in accordance with Borrower's First Amended and Restated Agreement of Limited Partnership, as amended, in an aggregate amount not to exceed Seven Hundred One Thousand Seven Hundred Ninety One Dollars and No Cents (\$701,791.00), and (iv) repayment of any loans related to the Project made by Borrower's limited partners to Pescadero Lofts Isla Vista, L.P. The Operating Expenses shall be reported in the Annual Financial Statement, and the Operating Expenses shall be subject to review and approval by Lender.

1.17 **"PAYMENT DATE"** means the first day of April following recordation of a notice of completion issued for the Project and each April 1st thereafter until the County Land Loan is paid in full or the County Land Loan Agreement is terminated.

1.18 **"PROJECT"** means the operation, management, and maintenance of the Property, in accordance with the terms of this County Land Loan Agreement, including thirty three (33) rental housing units with rents and incomes restricted in accordance with the terms of the County Land Loan Regulatory Agreement and the County HOME Loan Regulatory Agreement.

1.19 **"PROJECT UNITS"** means all thirty three (33) rental housing units of the Project.

1.20 **"PROPERTY"** means the real property located at 761 Camino Pescadero in the community of Isla Vista in Santa Barbara County, California, as more particularly described in Exhibit A, which is incorporated into this County Land Loan Agreement by this reference.

1.21 **"RESIDUAL RECEIPTS"** means an amount equal to fifty percent (50%) of the excess of annual Revenue over annual Operating Expenses, which shall be paid by Borrower to Lender for repayment of the County Land Loan. The remaining fifty percent (50%) of the excess of annual Revenue over annual Operating Expenses shall be retained by Borrower. In the event annual Operating Expenses exceed annual Revenue for any given year, accounting for that shortfall shall not carry over to the following year's calculation of Residual Receipts.

1.22 **"REVENUE"** means all gross income received in whole or in part in connection with the Project, as approved by Lender, including, but not limited to rent from the Project Units and income from laundry operations, vending machines, meeting space rental, storage, and parking.

1.23 **"SENIOR LOAN"** means the loan from Union Bank, N.A. in the amount of Four Million Nine Hundred Eighty One Thousand Sixty Eight Dollars and No Cents (\$4,981,068.00) for development of the Project.

1.24 **"SENIOR LOAN DOCUMENTS"** are collectively the Senior Loan agreement, note, deed of trust and related documents, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

ARTICLE 2. TERMS OF THE LOAN

2.1 **LOAN.** On and subject to the terms and conditions of the Loan Documents, Lender agrees to make and Borrower agrees to accept the County Land Loan with the following terms:

2.2 AMOUNT. The principal amount of the County Land Loan shall be an amount not to exceed Two Million Nine Hundred Thousand Dollars and No Cents (\$2,900,000.00) and shall be evidenced by the County Land Loan Note.

2.3 INTEREST. Subject to the provisions of Section 2.4, the County Land Loan Note shall bear simple interest at a rate of three percent (3%) per annum from the date of the County Land Loan Note. Interest is not compounding.

2.4 DEFAULT INTEREST. In the Event of Default by Borrower of any of its obligations under this County Land Loan Agreement and expiration of applicable cure periods (as described in Article 8), Borrower shall pay to Lender interest on the outstanding principal of the Loan, at an annual rate equal to the lesser of (i) ten percent (10%) or (ii) the highest interest allowed by law, from the date of the Event of Default until the date that the default is cured or the County Land Loan is repaid in full.

2.5 TERM OF LOAN. The principal and all current and accrued interest of the County Land Loan shall be due and payable on the earlier of: (a) fifty-five (55) years from the date of the recordation of a notice of completion issued for the Project, or (b) the date the Property is sold or otherwise transferred or (c) an Event of Default by Borrower which has not been cured as provided for in this County Land Loan Agreement.

2.6 USE OF FUNDS. County Land Loan proceeds shall be used only for the purchase of the Property, including related closing costs.

2.7 SECURITY. Borrower shall secure its obligation to repay the County Land Loan and County Land Loan Note by executing the County Land Loan Deed of Trust and recording it as a lien against the Property.

2.8 ORDER OF LOAN REPAYMENT. Monthly payments to amortize the Senior Loan are included as part of the Operating Expenses and thereby precede payments on the County Land Loan and the County HOME Loan. Payments on the County Land Loan and the County HOME Loan are made from Residual Receipts. Residual Receipt payments shall be used first to retire the County Land Loan in full before Residual Receipt payments are made on the County HOME Loan.

2.9 REPAYMENT OF THE COUNTY LAND LOAN. All accrued interest and principal shall be due and payable in accordance with the terms set forth in Section 2.5.

No repayment is due under the County Land Loan until the Payment Date. Payments shall commence on the first day of April following recordation of a notice of completion issued for the Project. Borrower shall make annual payments on the County Land Loan in the amount equal to Residual Receipts, which shall equal fifty percent (50%) of the excess of annual Revenue over annual Operating Expenses. On or before each Payment Date, Borrower shall submit the Annual Financial Statement to Lender for the preceding calendar year. Lender shall review and approve the Annual Financial Statement and determine annual Revenue. Lender shall review and approve the Annual Financial Statement and determine annual Operating Expenses as provided for below.

2.9.1 Operating Expenses. Thirty (30) days prior to the end of the calendar year, Borrower shall submit to Lender, for Lender's review and approval, a proposed operating budget for the Project, for the following calendar year. The proposed operating budget shall include scheduled payments to be made into accounts for operating and capital replacement reserves. Should the actual total figure for operating expenses as established in the Annual Financial Statement exceed the proposed operating budget approved by Lender, then Borrower shall submit to Lender, for Lender's review and approval, the revised operating budget, and Lender shall determine what amount will constitute annual Operating Expenses in establishing the amount of Residual Receipts due to Lender.

2.9.2 Payments. All payments made by Borrower for the County Land Loan shall be applied as follows: first to pay current annual interest due, if any; then to the cumulative interest owed, if any; then to reduce the principal amount of the County Land Loan. Lender shall deposit all payments made by Borrower into Lender's HOME Account as program income.

2.9.3 Dispute Resolution. In the event that Lender determines that there is an understatement in the amount and payment of Residual Receipts due to Lender, Borrower shall promptly pay to Lender such understatement, but in any event, no later than within twenty (20) days of notice of such understatement. In the event that Lender determines that there has been an overpayment in the amount and payment of Residual Receipts due to Lender, Lender shall pay to Borrower the amount of overpayment promptly, but in any event, within twenty (20) days of such determination. If contested, Borrower has the right to pay under protest and request an audit by an independent Certified Public Accountant.

2.10. **PREPAYMENT OF COUNTY LAND LOAN.** No prepayment-penalty will be charged to Borrower for payment of all or any portion of the County Land Loan amount prior to the end of the term described herein. However, prepayment of the County Land Loan shall not affect Borrower's obligations under the County Land Loan Regulatory Agreement.

2.11 **SUBORDINATION OF COUNTY LAND LOAN.** This County Land Loan is in second (2nd) lien position on title, subordinate only to the deed of trust securing the Senior Loan. This County Land Loan is not subordinate to the deed of trust securing the County HOME Loan which is in third (3rd) lien position on title.

2.12 **RECORDING.** Upon closing date, Escrow Holder shall record the County Land Loan Deed of Trust and the County Land Loan Regulatory Agreement with the Recorder for the County of Santa Barbara, and shall deliver conformed copies of the recorded documents to the Lender and Borrower.

2.13 **OPERATING AND CAPITAL REPLACEMENT RESERVE FUNDS.** Borrower shall fund a capital replacement reserve in the amount of not less than \$300 per unit per year, increasing annually by three percent (3%) per annum and shall capitalize an operating reserve in an amount equal to no less than three (3) months of estimated Operating Expenses and debt service under stabilized occupancy.

ARTICLE 3. COUNTY LAND LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. Lender shall not be obligated to make any disbursement of the County Land Loan or take any other action under this County Land Loan Agreement unless the following conditions precedent are satisfied prior to the disbursement of the County Land Loan:

A. There exists no Event of Default nor any act, failure, omission or condition that with the giving of notice or passage of time would constitute an Event of Default;

B. Borrower has executed and delivered to Lender all documents, instruments, and policies required under the Loan Documents, including but not limited to an ALTA Lender's policy of title insurance in the amount of the County Land Loan from a title insurance company approved by Lender in a form reasonably acceptable to Lender;

C. Borrower has submitted and Lender has approved an appraisal for the Property;

D. Borrower has provided evidence of insurance satisfactory to Lender as set forth in Article 6 hereof.

3.2 DISBURSEMENT OF COUNTY LAND LOAN PROCEEDS. Disbursement of County Land Loan shall not exceed Two Million Nine Hundred Thousand Dollars and No Cents (\$2,900,000.00). Lender shall disburse County Land Loan proceeds to the Escrow Holder to fund the acquisition of the Property.

ARTICLE 4.

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ARTICLE 5. OPERATION

5.1 OPERATION OF PROJECT. Borrower shall operate, manage, and maintain the Project in full conformance with the terms of the County Land Loan Regulatory Agreement, which, among other provisions, include restrictions on the Property and the Project regarding Assisted Unit rents and tenant income, leases, and property standards. Any breach of the terms of the County Land Loan Regulatory Agreement and any of the other County Land Loan Documents shall constitute a breach of this County Land Loan Agreement, subject to all applicable notice and cure periods.

5.2 CONFLICTS BETWEEN COVENANTS OR RESTRICTIONS AFFECTING THE PROPERTY. Any conflicts between the restrictive provisions contained in this County Land Loan Agreement and the County Land Loan Documents or any other agreements in connection with the County Land Loan or which affect the Property, are to be resolved by applying the more restrictive covenants or restrictions which affect the County Land Loan or the Property.

5.3 NONDISCRIMINATION. Borrower shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Assisted Units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family

status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any basis prohibited by law. Borrower shall include a statement in all advertisements, notices and signs for the availability of Assisted Units for rent to the effect that Borrower is an Equal Housing Opportunity Provider. Borrower shall comply with all applicable local, state, and federal laws concerning discrimination in housing.

5.4 RECORDS AND REPORTS. Borrower shall be accountable to Lender for all County Land Loan funds disbursed to Borrower pursuant to the County Land Loan Documents. Borrower agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures for construction, and to keep all invoices, receipts, and other documents related to expenditures for construction costs for the Project until five (5) years after the term of the County Land Loan Regulatory Agreement.

Commencing on the first day of April following recordation of a notice of completion issued for the Project, Borrower shall submit reports annually to Lender with information regarding tenant income, rent and inspection information for all Assisted Units. Such information and all records related to any revenue received relating to, arising out of, or in connection with the Project must be kept until five years after the term of the Regulatory Agreement. Records must be kept accurate and current.

Borrower shall promptly comply with all requirements and conditions of this County Land Loan Agreement relating to notices, extensions, and other events required to be reported or requested. Borrower shall promptly supply, upon the request of Lender, any and all information and documentation which involves the Project or the County Land Loan and cooperate with Lender in the development of the Project.

Borrower shall submit monthly to Lender written Project construction progress reports and updated construction schedules within ten (10) days following the end of each month, commencing with the execution of this County Land Loan Agreement and concluding upon the recordation of the notice of completion.

Records of all permits, entitlements and approvals, inspections and sign-offs required by all permitting and regulatory authorities and jurisdictions shall be submitted by Borrower to Lender within 30 days following the recordation of the notice of completion.

Copies of the certificate(s) of occupancy shall be submitted by Borrower to Lender upon receipt.

5.5 AUDITS. Borrower shall conduct annual audits and submit to Lender an Annual Financial Statement. Borrower shall make available to Lender for examination at reasonable intervals and during normal business hours all books, accounts, reports, files, and other papers or property with respect to all matters covered by this County Land Loan Agreement, and shall permit Lender to audit, examine, and make excerpts or transcripts from such records. Lender may audit any transaction, record, or document relating to the County Land Loan at any time during and up to 5 years after the conclusion of the County Land Loan Regulatory Agreement.

Lender shall notify Borrower of any records it deems insufficient. Borrower shall immediately begin to correct any deficiency in the records specified by Lender in said notice as soon as reasonably possible. Borrower shall have fifteen (15) calendar days from the date of said notice to correct any deficiency. If more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Borrower shall submit a written request to Lender for an extension. Lender shall respond to an extension request within fifteen (15) days.

5.6 ENCUMBRANCE OF PROPERTY. Except for the Senior Loan and the County HOME Loan, Borrower shall not engage in any financing or any other transaction creating any security interest or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or allow any encumbrance or lien to be made on or attached to the Property, except with the prior written consent of Lender, and shall be made only if duly executed by an authorized representative of Lender.

5.7 TRANSFER OF PROPERTY. Borrower warrants and represents that it has not made, permitted, allowed, acquiesced in or created, and Borrower shall not, make, permit, acquiesce in or create any sale, assignment, conveyance, lease (other than the leasing of Assisted Units in the Project pursuant to an approved lease), or other transfer of this County Land Loan Agreement, the Project, or the Property, or any part thereof, without the prior written consent of Lender duly executed by an authorized representative of Lender. Borrower shall obtain the prior written consent of Lender duly executed by an authorized representative of Lender prior to and as a condition of assigning the County Land Loan.

5.8 TRANSFER OF PARTNERSHIP INTEREST. Borrower warrants and represents that it has not made, permitted, allowed, acquiesced in or created, and Borrower shall not make, permit, acquiesce in or create any sale, assignment, conveyance, or other transfer of any general partnership interests without the prior written consent of Lender, provided; however, the transfer of the Project and Property pursuant to the terms of that certain Purchase Option and Right of First Refusal between Borrower and the Housing Authority of the County of Santa Barbara, a public body, corporate and politic, shall not require consent of the Lender.

Notwithstanding anything to the contrary contained in the County Land Loan Documents, (i) Lender will permit the Borrower's limited partners to transfer their respective limited partner interests to any person or entity at any time provided that, if at such time the limited partner has not made one hundred percent (100%) of the capital contributions it is required to make to the Borrower, the transferring limited partner shall remain liable to the Borrower for such capital contributions, and (ii) Lender will permit Borrower's limited partners to remove the general partner of the Borrower in accordance with the Borrower's partnership agreement, provided that the substitute general partner shall be acceptable to Lender in its reasonable discretion; and an affiliate of the limited partner shall be an acceptable substitute general partner.

5.9 FEES, TAXES, AND OTHER LEVIES. Borrower shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so

long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by Lender, Borrower deposits with Lender any funds or other forms of assurance Lender in good faith from time to time determines appropriate to protect Lender from the consequences of the contest being unsuccessful.

5.10 DAMAGE TO PROPERTY. If the Property or any building on the Property is damaged or destroyed by an insurable cause, Borrower shall, at its sole cost and expense, diligently undertake to repair or restore said buildings if Borrower reasonably determines that such restoration or repair is economically feasible. Such work or repair shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be complete within one (1) year thereafter, subject to any extensions of time granted by Lender. If Borrower elects to rebuild, all insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Borrower shall make up the deficiency.

If Borrower determines that restoration or repair is not economically feasible, then Lender may declare an Event of Default pursuant to Article 8 below. Upon request by Lender to repay principal and interest after an Event of Default, Borrower shall apply all insurance proceeds thereto.

5.11 EQUAL EMPLOYMENT OPPORTUNITY. Borrower and all contractors, subcontractors, and professional service providers for the Project shall comply with all Federal, state and local requirements concerning equal employment opportunity, including, but not limited to, equal opportunities for businesses and lower-income persons (referred to as a Section 3 clause, of the Housing and Urban Development Act of 1968, 12 U.S.C.).

5.12 COMPLIANCE WITH COMMUNITY REDEVELOPMENT LAW. Borrower shall comply to the extent applicable with all requirements established in Community Redevelopment Law (California Health and Safety Code Sections 33000 et seq.) imposed on projects assisted with redevelopment funds. In the event of an irreconcilable conflict between the County Land Loan Documents and Community Redevelopment Law, Community Redevelopment Law shall control.

ARTICLE 6. INDEMNITY AND INSURANCE

6.1 INDEMNITY. Borrower shall comply with the indemnification provisions set forth in Exhibit E "Standard Indemnification and Insurance Provisions" attached hereto and incorporated herein.

6.2 INSURANCE. Borrower shall comply with the insurance provisions set forth in Exhibit E "Standard Indemnification and Insurance Provisions" attached hereto and incorporated herein.

6.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. No officials, employees and agents of Lender shall be personally liable to Borrower for any obligation created under the terms of these County Land Loan Documents.

ARTICLE 7. HAZARDOUS MATERIALS

7.1 REPRESENTATIONS AND WARRANTIES. After reasonable investigation and inquiry, Borrower hereby represents and warrants to the best of its knowledge, as of the date of this County Land Loan Agreement and except as previously disclosed and acknowledged in writing by Lender or as disclosed by the reports based on environmental audit(s) performed on the Property and submitted to Lender, that (a) the Property is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials in violation of federal or state law; (b) the Property is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the Property by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the Property (including in the soil, surface water, or groundwater under the Property) or any other occurrences or conditions on the Property or on any other real property that could cause the Property or any part thereof to be classified as a "hazardous waste facility" or as a "buffer zone" under California Health and Safety Code Sections 25100, *et seq.*

7.2 NOTIFICATION TO LENDER. Borrower shall promptly notify Lender in writing of any of the following: (a) the discovery of any concentration or amount of Hazardous Materials of which Borrower becomes aware on, under, or near the Property requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge or discovery by Borrower that the Property does not comply with any Hazardous Materials Laws; (c) the receipt by Borrower of written notice of any claims or actions pending or threatened with respect to the Property relating to Hazardous Materials Laws by any governmental entity, agency, corporation or person; or (d) the discovery by Borrower of any occurrence or condition on the Property or on any real property located within 2,000 feet of the Property that could cause the Property or any part thereof to be designated as a "hazardous waste facility" or as a "buffer zone" under California Health and Safety Code Sections 25100, *et seq.*

7.3 USE AND OPERATION OF PROPERTY. Borrower and Borrower's agents, employees, contractors, subcontractors, tenants, guests, and permittees shall not use the Property or allow the Property to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. Borrower shall comply and cause the Project to comply with Hazardous Materials Laws.

7.4 REMEDIAL ACTIONS. If Borrower has actual knowledge of the presence of any Hazardous Materials on, under, or near the Property, Borrower shall take, at no cost or expense to Lender and without any liability on the part of or attributable to Lender, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any claims or actions related to Hazardous Materials Laws. The foregoing, however, shall be subject to Borrower's right of contest below.

7.5 RIGHT OF CONTEST. Borrower may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by Borrower in good faith, (b) Borrower promptly commences and thereafter

diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by Lender, Borrower deposits with Lender any funds or other forms of assurance Lender in good faith from time to time determines appropriate to protect Lender from liability. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by Borrower under the conditions of this section.

ARTICLE 8. DEFAULT AND REMEDIES

8.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall constitute an "Event of Default" under this County Land Loan Agreement. Borrower shall provide immediate written notice to Lender of any occurrence or potential occurrence of any of the following events:

A. Monetary. (1) Borrower's failure to pay when due any sums payable under the County Land Loan Agreement and County Land Loan Note or any advances made by Lender under the County Land Loan Deed of Trust or this County Land Loan Agreement; (2) Borrower's use of County Land Loan funds for costs other than acquisition of the Property or for uses inconsistent with any term or restriction in the County Land Loan Documents; (3) Borrower's failure to obtain and maintain the insurance coverage required under this County Land Loan Agreement; (4) Borrower's failure to make any other payment due under the County Land Loan Documents; (5) Borrower's failure to pay taxes; (6) Borrower's default, after applicable notice and cure periods have expired, under the Senior Loan Documents, the County HOME Loan Documents, or any other agreement related to, in connection with, or arising out of debt secured by the Property;

B. Operation. (1) Discrimination by Borrower on the basis of characteristics prohibited by this County Land Loan Agreement or applicable law or (2) the imposition of any encumbrances or liens on the Property, other than those related to the Senior Loan and the County HOME Loan, without Lender's prior written approval or that have the effect of reducing the priority of or invalidating the County Land Loan Deed of Trust or County Land Loan Regulatory Agreement;

C. General performance of County Land Loan Documents obligations. Any substantial breach by Borrower beyond applicable notice and cure periods of any material obligations on Borrower imposed in the Loan Documents;

D. General performance of other obligations. Any substantial or continuous breach by Borrower beyond applicable notice and cure periods of any material obligations on Borrower imposed by any other agreements, including any grant or loan agreements, with respect to the financing, rehabilitation, or operation of the Project or the Property, whether or not Lender is a party to such agreement, which may materially impair Lender's security under the County Land Loan Deed of Trust;

E. Representations and warranties. A determination by Lender that its security under the County Land Loan Deed of Trust has or will be materially impaired due to the fact that any of Borrower's representations or warranties made in the Loan Documents, or any certificates, documents, or schedules supplied to Lender by Borrower, were untrue in any material respect when

made, or that Borrower concealed or failed to disclose a material fact from Lender;

F. Damage to Property. Material damage or destruction to the Property by fire or other casualty, if Borrower does not take steps to reconstruct the Project as required by the Loan Documents;

G. Bankruptcy, dissolution, and insolvency. Borrower's (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

8.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For all Events of Default, Lender shall give written notice to Borrower of any Event of Default by specifying:

(a) the nature of the event or deficiency giving rise to the Event of Default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken or if a cure is not possible within thirty (30) days, to begin such cure and diligently prosecute such to completion which shall, in any event, not exceed ninety (90) days from the date of receipt of the notice to cure. The Lender has the sole discretion to determine whatever additional reasonable time is needed to cure. Borrower's limited partners shall have the right, but not the obligation, to cure defaults of Borrower hereunder, and the Lender hereby agrees to accept any cure of any default made or tendered by one or more of Borrower's limited partners on the same basis as if made or tendered by Borrower.

8.3 LENDER'S REMEDIES. Upon the occurrence of an Event of Default by Borrower and a failure to cure said Event of Default within the time specified in Section 8.2 above, Lender may, in addition to other rights and remedies permitted by the County Land Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination Lender may choose in its sole discretion:

A. Terminate this County Land Loan Agreement, in which event the entire principal amount outstanding and all accrued interest under the County Land Loan Agreement and County Land Loan Note, as well as any other monies advanced to Borrower by Lender under the County Land Loan Documents including administrative costs, shall immediately become due and payable at the option of Lender;

B. Bring an action in equitable relief (1) seeking the specific performance by Borrower of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding and all accrued interest under the County Land Loan Agreement and County Land Loan Note, as well as any other monies advanced to Borrower by Lender under the Loan Documents;

D. Enter the Property and take any actions necessary in its judgment to complete construction of the Project (subject to Lender's right at any time to discontinue work without liability), including without limitation (1) making changes in the scope of work or other work or materials with respect to the Project, (2) entering into, modifying, or terminating any contractual arrangements, and (3) taking any remedial actions with respect to Hazardous Materials that Lender deems necessary to comply with Hazardous Materials Laws or to render the Property suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve Lender's interest in seeing the Project developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that Lender or the receiver deems necessary to comply with Hazardous Materials Laws or to render the Property suitable for occupancy) and to operate, manage, and maintain the Project;

F. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the County Land Loan Deed of Trust;

G. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under applicable law, including, but not limited to California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

H. Pursue any other remedy allowed at law or in equity. Nothing in this section is intended or shall be construed as precluding Lender from proceeding with a non-judicial foreclosure under the power of sale contained in the County Land Loan Deed of Trust in the Event of Default by Borrower.

ARTICLE 9. GENERAL PROVISIONS

9.1 BORROWER'S WARRANTIES. Borrower represents and warrants: (1) that it is duly organized, validly existing and in good standing under the laws of the State of California, (2) that it has the full power and authority to purchase the Property and to execute this County Land Loan Agreement, (3) that the persons executing and delivering this County Land Loan Agreement are authorized to execute and deliver this County Land Loan Agreement and all such other reasonable or necessary documents on behalf of Borrower, (4) that there has been no substantial adverse change in Borrower's financial condition since March 20, 2012, including, but not limited to, judgment liens, tax liens, mechanic's liens, or bankruptcy, and (5) that all representations of Borrower regarding this County Land Loan (including all supplementary submissions of documents) are true, correct and complete in all material respects and are offered to induce Lender to make this County Land Loan.

9.2 MONITORING AND EVALUATION. Except as otherwise provided for in this County Land Loan Agreement, Borrower shall maintain and submit records to Lender within ten (10) business days of Lender's request which document Borrower's performance of each requirement of this County Land Loan Agreement.

9.3 CONFLICTS OF INTEREST. Borrower covenants that:

A. Except for approved eligible administrative or personnel costs, no person described in subsection (B) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this contract or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. The Borrower shall exercise due diligence to ensure that the prohibition in this Section is followed.

B. The conflict of interest provisions of Section 9.3(A) above apply to any person who is an employee, agent, consultant, officer, partner, representative, or independent contractor of Borrower, or any immediate family member of such person, or any person related within the third (3rd) degree of such person. No employee, agent, consultant, officer, partner, representative, or independent contractor of Borrower, or any immediate family member of such person, or any person related within the third (3rd) degree of such person, is an elected or appointed official of the County.

9.4 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by Lender or Borrower under this County Land Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office or of any measures or initiatives.

9.5 PUBLICITY. Any publicity produced by Borrower for the Project during the term of this County Land Loan Agreement and for one (1) year thereafter shall make reference to the contribution of Lender in making the Project possible. The words "County of Santa Barbara" will be prominently displayed in any and all pieces of publicity, including but not limited to flyers, press releases, posters, signs, brochures, public service announcements, interviews, and newspaper articles. Borrower further agrees to cooperate with authorized staff and officials of Lender in any Lender-generated publicity or promotional activities undertaken with respect to the Project.

9.6 TERM OF THIS AGREEMENT. This County Land Loan Agreement shall commence on the date set forth above and remain in full force and effect throughout the term of this County Land Loan Agreement specified in Section 2.5 above.

9.7 GOVERNING LAW. This County Land Loan Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

9.8 STATUTORY REFERENCES. All references in this County Land Loan Agreement to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the County of Santa Barbara shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject as the provision to which specific reference was made.

9.9 TIME. Time is of the essence in this County Land Loan Agreement.

9.10 CONSENTS AND APPROVALS. Any consent or approval of Lender or Borrower required under this County Land Loan Agreement shall not be unreasonably withheld. Any approval required under this County Land Loan Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

9.11 NOTICES, DEMANDS AND COMMUNICATIONS. All notices, demands and communications between Borrower and Lender shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Borrower and Lender as follows:

LENDER: County of Santa Barbara
Housing and Community Development
105 E Anapamu Street, Room 406
Santa Barbara, CA 93101-2065
Attn: Deputy Director

With a copy to: Office of the County Counsel
105 E Anapamu Street, Room 201
Santa Barbara, CA 93101-2065

BORROWER: Pescadero Lofts Isla Vista, L.P.
815 West Ocean Avenue
Lompoc, CA 93436
Attn: Executive Director

With a copy to: Union Bank, N.A.
200 Pringle Avenue, Suite 355
Walnut Creek, CA 945967
Attn: CDF Division Head

9.12 BINDING UPON SUCCESSORS. All provisions of this County Land Loan Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this section does not waive the prohibition on assignment of this County Land Loan Agreement by Borrower without Lender's consent under Section 9.14.

9.13 RELATIONSHIP OF PARTIES. The relationship of Borrower and Lender under this County Land Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Lender neither undertakes nor assumes any responsibility or duty to Borrower (except as provided for herein) or any third party with respect to the Project, the Property, the County Land Loan, or the County Land Loan Documents.

9.14 ASSIGNMENT AND ASSUMPTION. Borrower shall not assign any of its rights or interests under this County Land Loan Agreement to any other party, except as specifically permitted under the terms of this County Land Loan Agreement, without the prior written consent

of Lender, and shall be made only if duly executed by an authorized representative of Lender. Any unauthorized assignment shall be void and shall constitute a breach of this County Land Loan Agreement.

9.15 WAIVER. Any waiver by Lender of any Borrower obligation or Lender right or remedy in this County Land Loan Agreement or any waiver by Lender of any term of the County Land Loan Documents must be in writing, and shall be made only if duly executed by an authorized representative of Lender. No waiver will be implied from any delay or failure by Lender to take action on any breach or default of Borrower or to pursue any remedy allowed under this County Land Loan Agreement, the County Land Loan Documents or applicable law. Any extension of time granted to Borrower to perform any obligation under this County Land Loan Agreement shall not operate as a waiver or release from any of its obligations under this County Land Loan Agreement or any term of the County Land Loan Documents. Consent by Lender to any act or omission by Borrower shall not be construed as a waiver to any other or subsequent act or omission or to waive the requirement for Lender's written consent to future waivers.

9.16 INTEGRATION. This County Land Loan Agreement and the County Land Loan Documents contain the entire agreement of the parties relating to, connected with, or arising out of the Property and/or Project and supersede any and all prior negotiations.

9.17 OTHER AGREEMENTS. Borrower represents that it has not entered into any agreements that are inconsistent or in conflict with the terms of this County Land Loan Agreement or the Loan Documents. Borrower shall not enter into any agreements that are inconsistent or in conflict with the terms of the County Land Loan Documents without an express waiver by Lender in writing.

9.18 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this County Land Loan Agreement must be in writing, and shall be made only if executed by both Borrower and Lender.

9.19 SEVERABILITY. Every provision of this County Land Loan Agreement is intended to be severable. If any provision of this County Land Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

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IN WITNESS WHEREOF, Lender and Borrower have caused this County Land Loan Agreement to be executed by their duly authorized representatives.

APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By: _____
Deputy County Counsel

APPROVED AS TO FORM:

BOB GEIS
AUDITOR CONTROLLER

By: _____

**APPROVED AS TO INSURANCE FORM
RAY AROMATORIO RISK PROGRAM
ADMINISTRATOR**

By: _____

APPROVED:

By: _____

Department Head

LENDER:

COUNTY OF SANTA BARBARA, a political
subdivision of the State of California

By: _____
Salud Carbajal, Chair

BORROWER

PESCADERO LOFTS ISLA VISTA L.P., a
California limited partnership

By: Housing Authority of the County of
Santa Barbara, a public body, corporate and
politic, its administrative general partner

BY: _____
Fred Lamont, Executive Director

By: Surf Development Company, a
California nonprofit public benefit corporation,
its managing general partner

By: _____
Alfred Holzheu, President

By: _____
Secretary

EXHIBIT A - LEGAL DESCRIPTION OF THE PROPERTY

Parcel One:

Commencing at the intersection of the Northerly line of Pasado Road with the Easterly line of Camino del Sur, as shown upon the map of Isla Vista Tract recorded in Book 15, Pages 81, 82 and 83 of Maps, in the County of Santa Barbara, State of California, thence, along said Easterly line of Camino del Sur, North 1252.50 feet, thence, East 600 feet to a 1/2 Iron pipe; thence, North 421.50 feet to a 1/2 inch Iron pipe; thence, East 253.50 feet to the true point of beginning of the tract of land herein described;

thence, continuing East 303.51 feet to a point on the Westerly line of Ocean Terrace Tract, as shown on map of said tract recorded in Book 15, Pages 101, et seq., of Maps, from which a 1/2 inch pipe bears West 50.00 feet;

thence, South along said Westerly line 140.50 feet to the point from which a 1/2 inch survey pipe bears West 50 feet;

thence, West 303.96 feet;

thence North 140.50 feet to the true point of beginning.

Parcel Two:

A non-exclusive easement created by deed recorded March 13, 1953 as Instrument No. 4054 in Book 1137, Page 96 of Official Records, for road and public utility purposes in, on over and across the Northerly 25 feet of that portion of the Dos Pueblos Rancho in the County of Santa Barbara, State of California, described as follows:

Commencing at the intersection of the Northerly line of Pasado Road with the Easterly line of Camino del Sur as shown upon the map of Isla Vista Tract recorded in Book 15, Pages 81, 82 and 83 of Maps; thence along said Easterly line of Camino del Sur, North 1252.50 feet; thence, East 600 feet to a 1/2 inch iron pipe; thence, North 140.40 feet to a 1/2 inch pipe set at the true point of beginning of the tract of land herein described;

thence, North 140.50 feet to a 1/2 inch survey pipe;

thence, East 557.46 feet to a point on the Westerly line of Ocean Terrace Tract as shown on the map thereof recorded in Book 15, Page 101 et seq., of Maps, from which a 1/2 inch pipe bears West 50 feet;

thence, along said line South 140.50 feet to a point from which a 1/2 inch pipe bears West 50 feet;

thence, West 557.91 feet to the true point of beginning.

APN: 075-020-005

EXHIBIT B - COUNTY LAND LOAN DEED OF TRUST

NO FEE DOCUMENT

**Recording requested by and
when recorded, mail to:**

County of Santa Barbara
105 E. Anapamu Street, Room 105
Santa Barbara, CA 93101
Attn: Deputy Director

NO FEE DOCUMENT PURSUANT TO
GOVERNMENT CODE SECTION 6103 and 27383

**COUNTY LAND LOAN
PERMANENT DEED OF TRUST, ASSIGNMENT OF
RENTS, AND SECURITY AGREEMENT**

THIS COUNTY LAND LOAN DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT ("County Land Loan Deed of Trust") is made as of this ___ day of September 2013, by Pescadero Lofts Isla Vista, L.P., a California limited partnership ("Trustor"), to First American Title Company, as trustee ("Trustee"), for the benefit of the County of Santa Barbara, a political subdivision of the State of California ("Beneficiary"). This County Land Loan Deed of Trust is junior and subordinate to the Union Bank Loan Deed of Trust, in favor of Union Bank, in the amount of \$4,981,068.00, recording concurrently herewith.

GRANT IN TRUST

1. **GRANT.** Trustor, in consideration of the indebtedness referred to below, hereby irrevocably grants and conveys to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, all of Trustor's interest in the real property located at 761 Camino Pescadero Road in Isla Vista, which is located in Santa Barbara County, California, as more particularly described in Exhibit A (the "Property") incorporated herein by this reference;

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property; all buildings, structures, fixtures, improvements, signs, and landscaping now or hereafter erected or located on the Property, including all equipment and machinery used for supplying or distributing heating, cooling, electricity, gas, water, air, and light, all kitchen and laundry appliances such as washers, dryers, refrigerators, garbage disposals, ovens, ranges, dishwashers, all plumbing and bathroom fixtures, all security and access control equipment, fire prevention and extinguishment equipment, elevators, floor coverings, window coverings, paneling, cabinets, (provided, however, that

Trustor shall have the right to remove, if necessary, such fixtures, furnishings, and equipment for the purpose of replacement with similar items of the same quality performing the same functions, which replacements shall themselves become part of this grant); all building material and equipment either now or hereafter delivered to the Property and installed or intended to be installed on the Property; all reserves, accounts, deferred payments, and refunds relating to development on the Property; all rents and income generated by the Property or improvements thereon (subject however to the assignment of rents to Beneficiary contained herein); all leases, subleases and rental agreements covering the Property or any portion thereof now existing or hereafter entered into, and all interests of Trustor in security deposits, advance rentals, accounts, or payments of similar nature with respect to such leases, subleases, or rental agreements; all easements and rights-of-way appurtenant to the Property, including parking and recreational easements, and all interests of Trustor in any land lying within the right-of-way of any street, sidewalks, and areas of land adjacent to or used in connection with the Property; all development rights and credits, air rights, water rights, and oil, gas or mineral rights with respect to the Property; all claims or demands with respect to insurance proceeds, and all awards made for a taking by eminent domain; all interests and rights in any private or government grants, subsidies, loans, or other financing with respect to development on the Property; all interests in personal property used in and about the Property (except furniture and other personal property of tenants of dwelling units on the Property); all intangible property and rights relating to the Property or operations on the Property, including trade names, goodwill, trademarks, and service marks; all government permits, approvals, and map rights related to construction on the Property; all architectural, structural, and mechanical plans, specifications, designs, studies, and data with respect to construction of improvements on the Property; all environmental tests, studies and reports with respect to the Property; all current and future claims and rights of action of Trustor against prior owners and operators of the Property, neighboring property owners and operators, tenants and former tenants, consultants, advisors, and other third parties with respect to environmental or Hazardous Materials contamination and cleanup of the Property under any federal, state, or local ordinances, statutes, regulations, or administrative decisions or common law.

All of the foregoing, together with the Property, is herein referred to as the "Security."

OBLIGATIONS SECURED

2. **OBLIGATIONS.** Trustor makes this grant for the purpose of securing the following obligations:

A. Repayment of the indebtedness of Trustor to Beneficiary in the principal sum of Two Million Nine Hundred Thousand Dollars and No Cents (\$2,900,000.00), with interest thereon, evidenced by a promissory note executed by Trustor on file at the offices of Beneficiary and hereby incorporated by reference into this Deed of Trust (the "County Land Loan Note"), or as much as has been disbursed to Trustor therewith; and

B. Payment of any sums advanced by Beneficiary to protect the security and priority of this Deed of Trust; and

C. Performance of every obligation, covenant or agreement of Trustor contained in this County Land Loan Deed of Trust, the County Land Loan Note, the County Land Loan Agreement, and the regulatory agreement executed between Trustor and Beneficiary concurrently herewith (the "County Land Loan Regulatory Agreement"), including all modifications, extensions and renewals of these obligations; and

D. Performance of any other obligation or repayment of any other indebtedness of Trustor to Beneficiary, where such evidence of obligation or indebtedness specifically recites that it is secured by this Deed of Trust, including but not limited to any Funds or additional funding or security that may be provided pursuant to Section 21, below; and

E. Performance of any obligations of Trustor in any other agreements with respect to financing of the Project or the Security the absence of which would adversely affect Beneficiary, whether or not Beneficiary is a party to such agreements.

ABSOLUTE ASSIGNMENT OF RENTS AND RIGHT TO POSSESSION

3. **ASSIGNMENT.** As additional security, Trustor hereby assigns to Beneficiary:

(a) all of the rents, revenues, profits, and income from the Security, any deposits now or hereafter in Trustor's possession which have been collected with respect to the Security, and any reserve or capital funds now or hereafter held by Trustor with respect to construction or operation of the Security (collectively, the "Rents"); and (b) the right to enter, take possession of, and manage the Security; provided however that Trustor shall have, before an Event of Default, as defined herein, the exclusive right to possess the Security and to collect Rents and use them in accordance with the documents described in Section 2.C. above (collectively, the "Loan Documents"). This assignment is intended to be an absolute and present transfer of Trustor's interest in existing and future Rents, effective as of the date of this Deed of Trust.

4. **ENFORCEMENT.** Upon the happening of an Event of Default which remains uncured after expiration of the applicable cure period pursuant to the terms of the County Land Loan Agreement or other Loan Documents, Beneficiary may, in addition to other rights and remedies permitted by the County Land Loan Agreement, this County Land Loan Deed of Trust, or applicable law: (a) enter upon, take possession of, and manage the Security, either in person as a mortgagee-in-possession, by agent, or by a receiver appointed by a court, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Security, (b) collect all Rents, including those past due and unpaid, and apply the same to pay for the costs and expenses of operation of the Security, including attorneys' fees, and pay off any indebtedness secured by this County Land Loan Deed of Trust, all in such order as Beneficiary may determine and/or (c) Beneficiary may make, cancel, enforce, and modify leases and rental agreements, obtain and evict tenants, set and modify rent terms, sue for rents due, enter into, modify, or terminate any contracts or agreements, or take any legal action, as it deems necessary with respect to the Rents or to development or operation of the Security, subject to the rent restrictions imposed against the Property. Trustor's limited partners shall have the right, but not the obligation, to cure defaults of Trustor hereunder, and the Beneficiary hereby agrees to accept any

cure of any default made or tendered by one or more of Trustor's limited partners on the same basis as if made or tendered by Trustor.

5. APPOINTMENT OF A RECEIVER. In any action to enforce this assignment, Beneficiary may apply for the appointment of a receiver to take possession of the Security and take whatever measures are necessary to preserve and manage the Security for the benefit of Beneficiary and the public interest. Trustor hereby consents to the appointment of a receiver. The receiver shall have all of the authority over the Security that Beneficiary would have if Beneficiary took possession of the Security under this assignment as a mortgagee-in-possession, including the right to collect and apply Rents and the right to complete construction of improvements.

6. NO WAIVER OF POWER OF SALE. The entering upon and taking possession of the Security and the collection of Rents shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or notice of default and, notwithstanding the continuance in possession of the Security or the collection and application of Rents, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon occurrence of any Event of Default, including the right to exercise the power of sale.

COMMERCIAL CODE SECURITY AGREEMENT

7. GRANT. This County Land Loan Deed of Trust is intended to be a security agreement and financing statement pursuant to the California Commercial Code for any of the items specified above as part of the Security which under applicable law may be subject to a security interest pursuant to the Commercial Code, and Trustor hereby grant Beneficiary a security interest in said items. Beneficiary may file a copy of this County Land Loan Deed of Trust in the real estate records or other appropriate index as a financing statement for any of the items specified as part of the Security. Trustor shall execute and deliver to Beneficiary at Beneficiary's request any financing statements, as well as extensions, renewals, and amendments thereof, and copies of this instrument in such form as Beneficiary may require to perfect a security interest with respect to said items. Trustor shall pay all costs of filing such financing statements and shall pay all reasonable costs of any record searches for financing statements and releases. Without the prior written consent of Beneficiary, Trustor shall not create or permit any other security interest in said items. This County Land Loan Deed of Trust constitutes a fixture filing under Sections 9313, 9334, and 9501 et seq. of the California Commercial Code.

8. REMEDIES. Upon Trustor's breach of any obligation or agreement in the Loan Documents, and after expiration of any applicable cure period, Beneficiary shall have the remedies of a secured party under the Commercial Code and at Beneficiary's option may also invoke the remedies provided for elsewhere in this County Land Loan Deed of Trust with respect to said items. Beneficiary may proceed against the items of real property and personal property specified above separately or together and in any order whatsoever.

RIGHTS AND OBLIGATIONS OF TRUSTOR

9. **PERFORMANCE OF SECURED OBLIGATION.** Trustor shall promptly perform each obligation secured by this County Land Loan Deed of Trust in accordance with the Loan Documents.

10. **PAYMENT OF PRINCIPAL AND INTEREST.** Trustor shall promptly pay when due the principal and any interest due on the indebtedness evidenced by the Note.

11. **MAINTENANCE OF THE SECURITY.** Trustor shall, at the Trustor's own expense, maintain and preserve the Security or cause the Security to be maintained and preserved in good condition, in good repair, and in a decent, safe, sanitary, habitable and tenantable condition. Trustor shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitudes as they pertain to improvements, alterations, maintenance or demolition on the Security. Trustor shall not commit or permit waste on or to the Security. Trustor shall not abandon the Security. Beneficiary shall have no responsibility over maintenance of the Security. In the event Trustor fails to maintain the Security in accordance with the standards in this County Land Loan Deed of Trust, the County Land Loan Agreement, or the County Land Loan Regulatory Agreement, Beneficiary and after any applicable cure periods have expired, Beneficiary may, but shall be under no obligation to make such repairs or replacements as are necessary and provide for payment thereof. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of interest as specified in the County Land Loan Promissory Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this County Land Loan Deed of Trust.

12. **INSPECTION OF THE SECURITY.** Trustor shall permit Beneficiary to enter and inspect the Security during normal business hours for compliance with these obligations upon at least 24 hours advance notice of such visit by Beneficiary to Trustor or Trustor's Property manager.

13. **LIENS, ENCUMBRANCES, AND CHARGES.** Trustor shall discharge any lien, encumbrance, or charge not approved in writing by Beneficiary that may attain priority over this County Land Loan Deed of Trust.

14. **DEFENSE AND NOTICE OF CLAIMS AND ACTIONS.** Trustor shall appear in and defend, at its own expense, any action or proceeding relating to, connected with, or arising out of the Security and/or the rights of Beneficiary. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding and of any condemnation offer or action with respect to the Security upon Trustor's receipt of notice thereof.

15. **SUITS TO PROTECT THE SECURITY.** Beneficiary shall have power to initiate and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Security or the rights of Beneficiary, (b) to preserve or protect its interest in the Security and in the Rents, and (c) to restrain the enforcement of or compliance with any governmental legislation, regulation, or order, if the enforcement of or compliance with

such legislation, regulation, or order would impair the Security or be prejudicial to the interest of Beneficiary.

16. DAMAGE TO SECURITY. Trustor shall give Beneficiary and Trustee prompt notice in writing of any damage to the Security. If the Property or any building on the Property is damaged or destroyed by an insurable cause, Trustor shall, at its sole cost and expense, diligently undertake to repair or restore said buildings if Trustor reasonably determines that such restoration or repair is economically feasible. Such work or repair shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be complete within one (1) year thereafter, subject to any extensions of time granted by Beneficiary. If Trustor elects to rebuild, all insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Trustor shall make up the deficiency.

If Trustor determines that restoration or repair is not economically feasible, then Beneficiary may declare an Event of Default pursuant to Section 24 below. Upon request by Lender to repay principal and interest after an Event of Default, Borrower shall apply all insurance proceeds thereto.

17. TITLE. Trustor warrants that Trustor lawfully has, or will have after purchase and conveyance, legal title to the Security without any limitation on the right to encumber other than those limitations set forth in the Loan Documents or other financing documents approved by Beneficiary.

18. GRANTING OF EASEMENTS. Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to the Security except those required or desirable for installation and maintenance of public utilities including water, gas, electricity, sewer, cable television, telephone, or those required by law.

19. TAXES AND LEVIES. Trustor shall pay prior to delinquency, all taxes, fees, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security. However, Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any contested liabilities. In the event that Trustor fails to pay any of the foregoing items, Beneficiary may, but shall be under no obligation to, pay the same, after Beneficiary has notified Trustor of such failure to pay and Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of interest as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this County Land Loan Deed of Trust.

20. INSURANCE. Trustor shall provide such insurance as required under the County Land Loan Agreement and the Regulatory Agreement. In the event Trustor fails to maintain the full insurance coverage required by this County Land Loan Deed of Trust, Beneficiary, after at least seven (7) business days prior notice to Trustor, may, but shall be under no obligation

to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this County Land Loan Deed of Trust.

21. **CONDEMNATION.** Subject to the rights of any senior lienholders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of taking all or any part of or interest in the Security under assertion of the power of eminent domain ("Funds") are hereby assigned to and shall be paid to Beneficiary. Beneficiary is authorized (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as Beneficiary shall determine at its sole option. All or any part of the amounts so collected and recovered by Beneficiary may be released to Trustor upon such conditions as Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by Beneficiary or the release thereof shall not cure or waive any default under this County Land Loan Deed of Trust. Notwithstanding anything to the contrary set forth herein, Beneficiary shall, prior to the application of the Funds or any portion thereof to the indebtedness or other obligations, apply such portion of the Funds as is reasonable and necessary to repair and preserve the value, marketability and rentability of the Security. Trustor shall have the right to rebuild the Project, and to use all available condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the County Land Loan and all other loans encumbering the Property in balance and rebuild the Project in a manner that provides adequate security to Beneficiary for repayment of the County Land Loan and all other loans encumbering the Property or, if such proceeds are insufficient or such security is inadequate, then Trustor shall fund any deficiency and/or provide additional security, which shall then become part of the Security; (b) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, which approvals shall not be unreasonably withheld, conditioned or delayed; and (c) no default then exists under the County Land Loan or all other loans encumbering the Property other than any default which is a direct result of the condemnation.

22. **ACCELERATION ON TRANSFER OF SECURITY; ASSUMPTION.** In the event that Trustor, without the prior written consent of the Beneficiary, sells, transfers or conveys, or agrees to sell, transfer, or convey its interest in the Security or any part thereof or interest therein, Beneficiary may at its option, after delivery of notice of default to Trustor and thirty (30) days opportunity to cure, or if such default is not capable of being cured within thirty (30) days, then within a period not to exceed ninety (90) days from the date of receipt of the notice to cure, provided Trustor commences such cure within the initial thirty (30) day period and diligently prosecutes such cure to completion, declare all sums secured by this County Land Loan Deed of Trust to be immediately due and payable. This option shall not apply in case of:

A. The grant of a leasehold interest to qualifying households who will occupy units in the Project as provided for under the County Land Loan Documents, the County Land Loan Regulatory Agreement, the HOME Loan Documents, and the HOME Loan Regulatory Agreement; or

B. The sale or transfer by Trustor of personal property of occupants of the Project. Consent to one (1) sale or transfer shall not be deemed to be a waiver of the right to require such consent to future or successive transactions.

C. Transfer of the Property pursuant to Section 5.7 of the County Land Loan Agreement governing the transfer of the Property.

23. RECONVEYANCE BY TRUSTEE. This trust is intended to continue for the entire term of the County Land Loan Regulatory Agreement. After the term of and full compliance with the County Land Loan Regulatory Agreement and upon written request of Beneficiary stating that all sums secured by this County Land Loan Deed of Trust have been paid and upon surrender of this County Land Loan Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

DEFAULT AND REMEDIES

24. EVENTS OF DEFAULT. Any of the events listed in the County Land Loan Agreement and all other loans encumbering the Property as an Event of Default shall also constitute an Event of Default under this County Land Loan Deed of Trust, subject to all applicable notice and cure periods.

25. ACCELERATION OF MATURITY. Upon the happening of an Event of Default which has not been cured within the times and in the manner provided in the County Land Loan Agreement, Beneficiary may declare all sums advanced to Trustor under the County Land Loan Note and this County Land Loan Deed of Trust immediately due and payable. Trustor's limited partners shall have the right, but not the obligation, to cure defaults of Trustor hereunder, and the Beneficiary hereby agrees to accept any cure of any default made or tendered by one or more of Trustor's limited partners on the same basis as if made or tendered by Trustor.

26. BENEFICIARY'S REMEDIES. Upon the happening of an Event of Default which has not been cured within the times and in the manner provided in the County Land Loan Agreement, Beneficiary may, in addition to other rights and remedies permitted by the County Land Loan Agreement, the Note, or applicable law, proceed with any or all of the following remedies:

A. Enforce the assignment of rents and right to possession as provided for in this County Land Loan Deed of Trust, and/or seek appointment of a receiver to take over possession of the Security and collect Rents;

B. Enter the Security and take any actions necessary in its judgment to complete construction on the Security, either in person or through a receiver appointed by a court;

C. Commence an action to foreclose this County Land Loan Deed of Trust pursuant to California Code of Civil Procedure Section 725a et seq., as amended, and/or seek appointment of a receiver from a court of competent jurisdiction with the authority to protect Beneficiary's interests in the Security, including the authority to complete construction of improvements;

D. Deliver to Trustee a written declaration of Default and demand for sale, and a written Notice of Default and election to cause Trustor's interest in the Security to be sold and exercise its power of sale as provided for below, as required by California Civil Code Section 2924a et seq.; or

F. Pursue any other rights and remedies allowed at law or in equity.

27. FORECLOSURE BY POWER OF SALE. Should Beneficiary elect to foreclose by exercise of the power of sale contained in this County Land Loan Deed of Trust, Beneficiary shall notify Trustee and shall deposit with Trustee this County Land Loan Deed of Trust (the deposit of which shall be deemed to constitute evidence that the unpaid sums disbursed under the Notes are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to sell as then required by law and by this County Land Loan Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as they may determine unless specified otherwise by Trustor, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to the purchaser its deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee, or Beneficiary, may purchase at the sale.

Trustee may postpone the sale of all or any portion of the property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

28. APPLICATION OF SALE PROCEEDS. After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale as follows: first, to the payment of all sums then secured by this County Land Loan Deed of Trust, in such order and amounts as Beneficiary in its sole discretion determines; and second, the remainder, if any, to the person or persons legally entitled thereto.

29. REMEDIES CUMULATIVE. No right, power or remedy conferred upon or reserved

to Beneficiary by this County Land Loan Deed of Trust is intended to be exclusive of any other rights, powers or remedies, but each such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

GENERAL PROVISIONS

30. GOVERNING LAW. This County Land Loan Deed of Trust shall be interpreted under and governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

31. STATEMENT OF OBLIGATION. Beneficiary may collect a fee not to exceed the maximum allowable under applicable law for furnishing a statement of obligations, as provided in California Civil Code Section 2924c et seq.

32. CONSENTS AND APPROVALS. Any consent or approval of Beneficiary required under this County Land Loan Deed of Trust shall not be unreasonably withheld.

33. TIME. Time is of the essence in this County Land Loan Deed of Trust.

34. NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between Trustor and Beneficiary shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Trustor and Beneficiary as follows:

BENEFICIARY: County of Santa Barbara
105 E. Anapamu Street, Room 105
Santa Barbara, CA 93101
Attn: Deputy Director

TRUSTOR: Pescadero Lofts Isla Vista L.P.

815 W. Ocean Ave.
Lompoc, CA 93436
ATTN: Executive Director

With a copy to: Union Bank, N.A.
200 Pringle Avenue, Suite 355
Walnut Creek, CA 945967
Attn: CDF Division Head

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in

this Section 34. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

35. **BINDING UPON SUCCESSORS.** All provisions of this County Land Loan Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Trustor, Trustee, and Beneficiary.

36. **WAIVER.** Any waiver by Beneficiary of any obligation of Trustor in this County Land Loan Deed of Trust must be in writing. No waiver will be implied from any delay or failure by Beneficiary to take action on any breach or default of Trustor or to pursue any remedy allowed under the County Land Loan Deed of Trust or applicable law. Any extension of time granted to Trustor to perform any obligation under this County Land Loan Deed of Trust shall not operate as a waiver or release Trustor from any of its obligations under this County Land Loan Deed of Trust. Consent by Beneficiary to any act or omission by Trustor shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's written consent to future waivers.

37. **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this County Land Loan Deed of Trust must be in writing, and shall be made only if executed by both Beneficiary and Trustor.

38. **LOAN AGREEMENT CONTROLS.** If there is any contradiction between this instrument and the County Land Loan Agreement, the terms of the County Land Loan Agreement shall control, except that Trustor shall have no defense or claim that this instrument does not establish a valid lien on the Property or the Security.

39. **DEFINITIONS.** Capitalized terms not otherwise defined in this County Land Loan Deed of Trust shall have the same meaning as defined terms in the County Land Loan Agreement.

40. **PROOFS OF CLAIM.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, re-composition or other proceedings affecting Trustor, its creditors or its property, Trustee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

41. **SEVERABILITY.** Every provision of this County Land Loan Deed of Trust is intended to be severable. If any term or provision of this County Land Loan Deed of Trust is declared to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the legality, validity, and enforceability of the remaining provisions shall not be affected. If the lien of this County Land Loan Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt and all payments made on the debt (whether voluntary or under foreclosure or other enforcement action or procedure) shall be considered to have been first paid or applied to the payment of that portion of the debt which is not secured or partially secured by the lien of this County Land Loan Deed of Trust.

42. **SUBSTITUTION OF TRUSTEE.** Beneficiary may from time to time appoint another trustee to act in the place and stead of Trustee or any successor. Upon such appointment and without conveyance, the successor trustee shall be vested with all title, powers, and duties conferred upon Trustee.

43. **ACCEPTANCE BY TRUSTEE.** Trustee accepts this Trust when this County Land Loan Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under this County Land Loan Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

44. **NONRECOURSE OBLIGATION.** Except as expressly provided in the second paragraph of this section, the Trustor, and the Trustor's officers, directors, employees, partners and agents shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Note or the performance of the covenants of the Trustor under the County Land Loan Deed of Trust securing the Note. The sole recourse of the Beneficiary with respect to the principal of, or interest on, the Note shall be to the property securing the indebtedness evidenced by the Note. However, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the Beneficiary, or (b) be deemed in any way to impair the right of the Beneficiary to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note, except as hereafter set forth; nothing contained herein is intended to relieve the Trustor of personal liability for (a) fraud or willful misrepresentation; (b) the failure to pay taxes, assessments or other charges (which are not contested by Trustor in good faith) which may create liens on the Property that are payable or applicable prior to any foreclosure under the County Land Loan Deed of Trust (to the full extent of such taxes, assessments or other charges); (c) the fair market value of any personal property or fixtures removed or disposed of by Trustor other than in accordance with the County Land Loan Deed of Trust; (d) the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; (e) the Trustor's indemnification obligations under Article 6 of the County Land Loan Agreement; and (f) payment to the Beneficiary of any rental income or other income arising with respect to the Property received by the Trustor after the Beneficiary has given notice to the Trustor of the occurrence of an Event of Default, subject to the rights of any lender providing a loan secured by the Property to which the Beneficiary has subordinated the County Land Loan Deed of Trust.

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IN WITNESS WHEREOF, Trustor has executed this County Land Loan Deed of Trust as of the day and year first above written.

TRUSTOR:

Pescadero Lofts Isla Vista, L.P., a California
limited partnership

By: Surf Development Company, a
California nonprofit public benefit
corporation, its managing general
partner

By:

Alfred Holzheu
President

By: Housing Authority of the County of
Santa Barbara, a public body, corporate and
politic, its administrative general partner

By:

Frederick C. Lamont
Executive Director

Signature must be notarized

EXHIBIT A Legal Description of the Property

"Attachment 1"

LEGAL DESCRIPTION

Parcel One:

Commencing at the intersection of the Northerly line of Pasado Road with the Easterly line of Camino del Sur, as shown upon the map of Isla Vista Tract recorded in Book 15, Pages 81, 82 and 83 of Maps, in the County of Santa Barbara, State of California; thence, along said Easterly line of Camino del Sur, North 1252.50 feet; thence, East 600 feet to a 1/2 inch iron pipe; thence, North 421.50 feet to a 1/2 inch iron pipe; thence, East 253.50 feet to the true point of beginning of the tract of land herein described;

thence, continuing East 303.51 feet to a point on the Westerly line of Ocean Terrace Tract, as shown on map of said tract recorded in Book 15, Pages 101, et seq., of Maps, from which a 1/2 inch pipe bears West 50.00 feet;

thence, South along said Westerly line 140.50 feet to the point from which a 1/2 inch survey pipe bears West 50 feet;

thence, West 303.96 feet;

thence North 140.50 feet to the true point of beginning.

Parcel Two:

A non-exclusive easement created by deed recorded March 13, 1953 as Instrument No. 4054 in Book 1137, Page 96 of Official Records, for road and public utility purposes in, on over and across the Northerly 25 feet of that portion of the Dos Pueblos Rancho in the County of Santa Barbara, State of California, described as follows:

Commencing at the intersection of the Northerly line of Pasado Road with the Easterly line of Camino del Sur as shown upon the map of Isla Vista Tract recorded in Book 15, Pages 81, 82 and 83 of Maps; thence along said Easterly line of Camino del Sur, North 1252.50 feet; thence, East 600 feet to a 1/2 inch iron pipe; thence, North 140.40 feet to a 1/2 inch pipe set at the true point of beginning of the tract of land herein described;

thence, North 140.50 feet to a 1/2 inch survey pipe;

thence, East 557.46 feet to a point on the Westerly line of Ocean Terrace Tract as shown on the map thereof recorded in Book 15, Page 101 et seq., of Maps, from which a 1/2 inch pipe bears West 50 feet;

thence, along said line South 140.50 feet to a point from which a 1/2 inch pipe bears West 50 feet;

thence, West 557.91 feet to the true point of beginning.

APN: 075-020-005

EXHIBIT C - COUNTY LAND LOAN PROMISSORY NOTE

COUNTY LAND LOAN PROMISSORY NOTE

Santa Barbara, California

\$2,900,000.00

September __, 2013

FOR VALUE RECEIVED, Pescadero Lofts Isla Vista L.P., a California limited partnership (the "Borrower"), whose address is 815 W. Ocean Ave., Lompoc, CA 93436, hereby promises to pay to the order of the County of Santa Barbara, a political subdivision of the State of California, a public body corporate and politic (the "Lender"), whose address is 105 E Anapamu Street, Suite 105, Santa Barbara, CA 93101, the principal amount of Two Million Nine Hundred Thousand Dollars and No Cents (\$2,900,000.00), or so much thereof as may be advanced by the Lender to the Borrower, together with interest thereon, as set forth below.

1. **BORROWER'S OBLIGATION.** This County Land Loan Promissory Note (the "County Land Loan Note") evidences the Borrower's obligation to pay the Lender the principal amount of Two Million Nine Hundred Thousand Dollars and No Cents (\$2,900,000.00) for the funds loaned to the Borrower by the Lender (the "Loan") for the acquisition of certain real property located at 761 Camino Pescadero Road in Isla Vista, Santa Barbara County, California (the "Property").
2. **INTEREST.** Subject to Section 3 of this County Land Loan Note, the County Land Loan Note shall bear simple interest at a rate of three percent (3%) per annum on the outstanding principal balance of the County Land Loan Agreement until paid in full.
3. **DEFAULT INTEREST.** In the event of a default by Borrower of any of its obligations under this County Land Loan Note, the County Land Loan, or the County Land Loan Deed of Trust, Borrower shall pay to Lender interest on the outstanding principal of the Loan, at an annual rate equal to the lesser of (i) ten percent (10%) or (ii) the highest interest allowed by law, from the date of the default until the date that the default is cured or the Loan is repaid in full.
4. **AMOUNT AND TIME OF PAYMENT.** The principal and all current and accrued interest of the County Land Loan Agreement shall be due and payable the earlier of: (a) fifty-five (55) years from the date of recordation of a notice of completion issued for the Project (b) subject to the provisions of Section 5.6 of the County Land Loan Agreement by and between the Lender and the Borrower executed concurrently herewith, the date the Property is sold or (c) upon an event of default by Borrower which has not been cured as provided for in the County Land Loan Agreement and all other loans encumbering the Property, subject to all applicable notice and cure periods.
5. **DEFINITIONS.** The following terms are defined in the Loan Agreement and repeated here for convenience of reference. All terms not defined in this County Land Loan Note shall have

the meaning set forth in the Loan Agreement:

- a. "Annual Financial Statement" means the financial statement of Operating Expenses and Revenues, prepared at Borrower's expense, by an independent certified accountant reasonably acceptable to Lender, which shall form the basis for determining Residual Receipts.
- b. "Operating Expenses" shall mean, actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance, and management of the Project, including painting, cleaning, repairs and alterations, landscaping, utilities, rubbish removal, certificates, permits and licenses, sewer charges, real and personal property taxes and assessments, insurance, property management fee, security, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, cash deposited into reserves for capital replacements with respect to the Project in an amount not to exceed reserve requirements reasonably imposed by Senior Lender, cash deposited into an operating reserve in an amount not to exceed the amount reasonably required by Senior Lender, purchase, lease, repair, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of accountants, attorneys, consultants and other professionals, and any required debt service under the Senior Loan. Operating Expenses shall include (i) payment by Borrower of an annual partnership management fee of Twelve Thousand Dollars and No Cents (\$12,000.00) (increasing annually by three percent (3%) per annum), (ii) an annual asset management fee of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) (increasing annually by three percent (3%) per annum), (iii) payment of a developer fee in accordance with Borrower's First Amended and Restated Agreement of Limited Partnership, as amended, in an aggregate amount not to exceed Seven Hundred One Thousand Seven Hundred Ninety One Dollars and No Cents (\$701,791.00), and (iv) repayment of any loans related to the project made by Borrower's limited partners to Pescadero Lofts Isla Vista, L.P. The Operating Expenses shall be reported in the Annual Financial Statement, and the Operating Expenses shall be subject to review and approval by Lender.
- c. "Project" means the operation, management, and maintenance of the Property, in accordance with the terms of the County Land Loan Agreement, including thirty three (33) rental housing units with rents and incomes restricted in accordance with the terms of the County Land Loan Regulatory Agreement and County HOME Loan Regulatory Agreement.
- d. "Residual Receipts" means an amount equal to fifty percent (50%) of the excess of annual Revenue over annual Operating Expenses, which shall be paid by Borrower to Lender for repayment of the County Land Loan. The remaining fifty percent (50%) of the excess of annual Revenue over annual Operating Expenses shall be retained by Borrower. In the event annual Operating Expenses exceed annual Revenue for any given year, accounting for that shortfall shall not carry over to the following year's calculation of Residual Receipts.

e. "Revenue" means all income derived from the Project, including but not limited to rent from the units and income from laundry operations.

6. **PAYMENTS.** Borrower shall make annual payments to Lender equal to the Residual Receipts commencing on the first day of April following recordation of a notice of completion issued for the Project and on each April 1st thereafter until the Loan is paid in full or otherwise terminated. Notwithstanding the Residual Receipts payments made pursuant to this Section 6, all outstanding interest and principal due under the County Land Loan Note shall be due and payable at the time set forth in Section 4 above.
7. **PLACE AND MANNER OF PAYMENT.** All amounts due and payable under this County Land Loan Note are payable at the office of the Lender at the address set forth above, or at such other place as the Lender may designate to the Borrower in writing from time to time, in any coin or currency of the United States which on the respective dates of payment thereof shall be legal tender for the payment of public and private debts.
8. **DEFAULT AND ACCELERATION.** This County Land Loan Note is secured by the County Land Loan Deed of Trust executed concurrently herewith. All covenants, conditions and agreements contained in the Deed of Trust and the Loan Agreement are hereby made a part of this County Land Loan Note. The following shall constitute an "Event of Default" under this County Land Loan Note: a) Borrower's failure to pay when due any sums payable under this County Land Loan Note which has not been cured within fifteen (15) days following written notice from Lender to Borrower of such failure; b) Borrower's failure to observe or to perform any of its other covenants, agreements or obligations under the County Land Loan Deed of Trust or County Land Loan Documents after the expiration of applicable cure periods, if any, but in no event less than thirty (30) days from the date of receipt of notice by Borrower, or if a cure is not possible within thirty (30) days, then within a period not to exceed ninety (90) days from the date of receipt of the notice to cure, provided Borrower commences such cure within the initial thirty (30) day period and diligently prosecutes such cure to completion; and c) any other Event of Default as defined in the County Land Loan Agreement or the County Land Loan Deed of Trust, which has not been cured pursuant to the County Land Loan Agreement or the County Land Loan Deed of Trust. Borrower agrees that the unpaid balance of the then principal amount of this County Land Loan Note, shall, at the option of the Lender, become immediately due and payable upon any Event of Default. Upon any Event of Default, the Lender may exercise any other right or remedy permitted under the County Land Loan Agreement, this County Land Loan Note and the County Land Loan Deed of Trust, or by law or in equity. Borrower's limited partners shall have the right, but not the obligation, to cure defaults of Borrower hereunder, and the Lender agrees to accept any cure of any default made or tendered by one or more of Borrower's limited partners on the same basis as if made or tendered by Borrower.
9. **PREPAYMENT.** The Borrower may pay the principal and any interest due on the County Land Loan Note in advance of the time for payment thereof as provided in this County Land Loan Note, without penalty or premium.
10. **APPLICATION OF PAYMENTS.** Payments by Borrower pursuant to this County Land Loan Note shall be applied first to accrued interest then to current interest, then to other

charges, if any, then to reduce the principal.

11. **NO OFFSET.** Borrower hereby waives any rights of offset it now has or may hereafter have against the Lender, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this County Land Loan Note.
12. **WAIVERS.** Presentment, notice of dishonor, and protest are waived by all makers, sureties, guarantors, and endorsers of this County Land Loan Note, if any.
13. **CONSENTS AND APPROVALS.** Any consent or approval of the Lender required under this County Land Loan Note shall not be unreasonably withheld or delayed.
14. **NOTICES.** Except as may be otherwise specifically provided herein, any approval, notice, direction, consent, request or other action by either party to this County Land Loan Note shall be in writing and may be communicated to the other party at its principal office as set forth in the County Land Loan Agreement, or at such other place or places as the parties may designate in writing, from time to time, for the receipt of communications.
15. **BINDING UPON SUCCESSORS.** All provisions of this County Land Loan Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of the Borrower and the Lender.
16. **GOVERNING LAW.** This County Land Loan Note shall be interpreted under and governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.
17. **SEVERABILITY.** Every provision of this County Land Loan Note is intended to be severable. If any provision of this County Land Loan Note shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
18. **TIME.** Time is of the essence in this County Land Loan Note.
19. **WAIVER.** Any waiver by the Lender of any obligation in this County Land Loan Note must be in writing. No waiver shall be implied from any failure of the Lender to take, or any delay or failure by Lender to take action on any breach or default by the Borrower or to pursue any remedy allowed under this County Land Loan Note or applicable law. Any extension of time granted to the Borrower to perform any obligation under this County Land Loan Note shall not operate as a waiver or release from any of its obligations under this County Land Loan Note.
20. **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this County Land Loan Note must be in writing, and shall be made only if executed by both the Borrower and the Lender.
21. **NONRECOURSE.** Except as expressly provided in the second paragraph of this Section 21, the Borrower, and the Borrower's partners, officers, directors, employees and agents shall not have any direct or indirect personal liability for payment of the principal of, or interest on, this County Land Loan Note. The sole recourse of the Lender with respect to the principal of, or interest on, the County Land Loan Note shall be to the property securing the indebtedness

evidenced by the County Land Loan Note. However, nothing contained in the foregoing limitation of liability shall (i) limit or impair the enforcement against all such security for the County Land Loan Note of all the rights and remedies of the Lender, or (ii) be deemed in any way to impair the right of the Lender to assert the unpaid principal amount of the County Land Loan Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the County Land Loan Note, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of personal liability to the extent of actual damages for (i) Borrower's fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges (which are not contested by the Borrower in good faith) which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by the Borrower other than in accordance with the Deed of Trust; (iv) the material misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; (v) the Borrower's indemnification obligations under the Loan Agreement; and (vi) payment to the Lender of any rental income or other income arising with respect to the Property received by the Borrower after the Lender has given notice to the Borrower of the occurrence of an Event of Default and after the expiration of all applicable notice and cure periods, subject to the rights of any lender providing a loan secured by the Property to which the Lender has subordinated the Deed of Trust.

22. **LOAN AGREEMENT CONTROLS.** In the event that any provisions of this County Land Loan Note and the County Land Loan Agreement conflict, the terms of the County Land Loan Agreement shall control.

IN WITNESS WHEREOF, Borrower has executed this County Land Loan Promissory Note as of the day and year first above written.

BORROWER:

Pescadero Lofts Isla Vista L.P., a
California limited partnership

By: Surf Development Company,
a California nonprofit public benefit
corporation, its managing general
partner

By: _____
Alfred Holzheu
President

By: Housing Authority of the
County of Santa Barbara, a public
body, corporate and politic, its
administrative general partner

By: _____
Frederick C. Lamont
Executive Director

EXHIBIT D - COUNTY LAND LOAN REGULATORY AGREEMENT

NO FEE DOCUMENT

**Recording requested by and
When recorded, mail to:**

County of Santa Barbara
Housing and Community Development
105 East Anapamu Street, Room 105
Santa Barbara, CA 93101
Attn: Deputy Director

NO FEE DOCUMENT PURSUANT TO
CALIFORNIA GOVERNMENT CODE SECTIONS 6103 AND 27383

**COUNTY LAND LOAN REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS**

This County Land Loan Regulatory Agreement and Declaration of Restrictive Covenants (this "Agreement") is made as of this ____ day of September, 2013 by and between the County of Santa Barbara, a political subdivision of the State of California (the "Lender"), and Pescadero Lofts Isla Vista, L.P., a California Limited Partnership, (the "Owner").

RECITALS

A. The Owner owns a parcel of real property located at 761 Camino Pescadero, Isla Vista, California, as more particularly described in Exhibit A (the "Property") upon which the Owner intends to construct a thirty three (33) unit affordable rental housing project restricted to very low-income homeless persons (the "Project").

B. Lender sold the Property to Owner, and Lender and Owner entered into a purchase money transaction by which Lender is financing Owner's purchase of the Property with an acquisition loan of Two Million Nine Hundred Thousand Dollars and No Cents (\$2,900,000.00) in County funds ("County Land Loan").

C. Lender also provided Owner with a loan of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars and No Cents (\$1,642,234.00) in federal HOME funds to be used for construction of the Project ("County HOME Loan"), and Lender and Owner executed a regulatory agreement that restricts thirteen (13) of the thirty three (33) units to very-low income persons in compliance with HOME regulations ("HOME Regulatory Agreement").

D. Lender intends to the extent permitted by Home regulations designate the County Land Loan as funds that meet Lender's obligations to provide matching funds pursuant to the HOME Investment Partnerships Program Final Rule, 24 CFR Part 92 ("HOME Match Funds").

E. In order to meet federal requirements for HOME Match Funds, the remaining twenty (20) units restricted to very-low income persons must qualify as affordable housing under

24 CFR 92.254 and meet other requirements of the HOME Program, including rent and income requirements.

F. As further consideration for the County Land Loan, and to further the interests of the Lender, Owner has agreed to enter into and record this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership, and management of the Project. The covenants in this Agreement are intended to run with the land and be binding on the Owner and its successors and assigns in the Property.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the aforementioned funding, the Owner and the Lender hereby agree as follows:

1. DEFINITIONS

All initially capitalized terms in this Agreement shall have the definition ascribed to such terms in the County Land Loan Agreement. Some of the following terms are defined in the County Land Loan Agreement and repeated here for convenience of reference. Where such terms are not defined in the County Land Loan Agreement, the following terms have the meanings and content set forth in this section wherever used in this Agreement or attached exhibits.

1.1 **“ANNUAL INCOME”** means the definition of Annual Income as more particularly defined at 24 CFR 5.609.

1.2 **“AREA MEDIAN INCOME”** means the area median income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area, as determined annually by HUD with adjustments for household size.

1.3 **“COUNTY-ASSISTED UNIT”** means any of the remaining twenty (20) Units on the Property not designated as HOME-Assisted Units.

1.4 **“COUNTY HOME LOAN”** means the loan of federal HOME Investment Partnerships Program (HOME) funds in the amount of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars and No Cents (\$1,642,234.00) from the Lender to the Owner as provided in the County HOME Loan Documents to finance construction of the Project.

1.5 **“COUNTY HOME LOAN AGREEMENT”** is the loan agreement executed by and between Owner and Lender, setting forth the terms and conditions governing the County HOME Loan.

1.6 **“COUNTY HOME LOAN DOCUMENTS”** are collectively the County HOME Loan Agreement, the County HOME Loan Note, the County HOME Loan Deed of Trust, and the County HOME Loan Regulatory Agreement, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.7 **“COUNTY HOME LOAN REGULATORY AGREEMENT”** means the agreement which regulates the Project’s thirteen (13) HOME-Assisted Units executed by and between Owner and Lender.

1.8 **“COUNTY LAND LOAN”** means the loan of County funds in the amount of Two Million Nine Hundred Thousand Dollars and No Cents (\$2,900,000.00) from the Lender to the Borrower as provided in the County Land Loan Agreement to finance the acquisition of the Property.

1.9 **“COUNTY LAND LOAN AGREEMENT”** is the loan agreement executed by and between Owner and Lender, setting forth the terms and conditions governing the County Land Loan.

1.10 **“COUNTY LAND LOAN DEED OF TRUST”** is that deed of trust, assignment of rents, and security agreement recorded as a lien against the Property as security for the County Land Loan Note that evidences the County Land Loan by Borrower as trustor with Lender as beneficiary, substantially in the form attached hereto as Exhibit B, as well as any amendments to, modifications of, and restatements of the County Land Loan Deed of Trust, whenever that County Land Loan Deed of Trust is recorded.

1.11 **“COUNTY LAND LOAN DOCUMENTS”** are collectively the County Land Loan Agreement, the County Land Loan Note, the County Land Loan Deed of Trust, and this Agreement, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.12 **“COUNTY LAND LOAN NOTE”** means the promissory note executed by Owner in favor of Lender in the amount of Two Million Nine Hundred Thousand Dollars and No Cents (\$2,900,000.00) to evidence the County Land Loan, as well as any amendments to, modifications of, or restatements of the County Land Loan Note, substantially in the form attached hereto as Exhibit C.

1.13 **“HOME-ASSISTED UNIT”** means any of the thirteen (13) Units on the Property designated by Owner as units restricted under the County HOME Loan Regulatory Agreement.

1.14 **“LENDER”** means the County of Santa Barbara, a public body corporate and politic, and its authorized representatives, officers, officials, directors, employees, and agents.

1.15 **“MANAGER’S UNIT”** means the one (1) two-bedroom unit on the Property designated by Owner to be occupied by the resident manager of the Project.

1.16 **“OWNER”** means Pescadero Lofts Isla Vista, L.P., a California Limited Partnership.

1.17 **“PROJECT”** means the operation, management, and maintenance of the Property, in accordance with the terms of the County Land Loan Agreement, including thirty three (33) rental housing units with rents and incomes restricted in accordance with the terms of this Agreement and the County HOME Loan Regulatory Agreement.

1.18 **“PROPERTY”** means the real property located at 761 Camino Pescadero in the community of Isla Vista in Santa Barbara County, California, as more particularly described in Exhibit A, which is incorporated into this Agreement by this reference.

1.19 **“QUALIFYING HOUSEHOLD”** means a household that qualifies as a Very Low-Income Household.

1.20 **“QUALIFYING RENT”** means the total monthly charges for rent, which shall not exceed either:

a) the fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111 and 24 CFR 888.113, or

b) one twelfth (1/12) of thirty percent (30%) of the Annual Income of a family whose income equals fifty percent (50%) of Area Median Income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD annually with adjustments for household size in accordance with 24 CFR 92.252(b).

In accordance with 24 CFR 92.252(c), if the Tenant pays for utilities and services (excluding telephone), then the Qualifying Rent shall be reduced by the maximum monthly allowance for utilities and services that is determined annually by the Housing Authority of the County of Santa Barbara.

1.21 **“TENANT”** means a household occupying a Unit.

1.22 **“TERM”** means the period of time during which the County-Assisted Units must meet the affordability requirements imposed under this Agreement, California Government Code section 25539.4, California Health and Safety Code Sections 33000 et seq., and the HOME Program, commencing with the date of the County Land Loan Note and terminating fifty five (55) years from the date of the recordation of a notice of completion issued for the Project.

1.23 **“UNIT”** means a housing unit in the Project.

1.24 **“VERY LOW-INCOME HOUSEHOLD”** means a household, as defined in 24 CFR 92.2, whose annual income does not exceed fifty percent (50%) of the Area Median Income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD with adjustments for household size.

2. TERM AND COMPLIANCE

2.1 **COMPLIANCE WITH COUNTY LAND LOAN DOCUMENTS.** The Owner's actions with respect to the Property and the use of funds from the County Land Loan shall at all times be in full conformity with all of the requirements of the County Land Loan Documents, including but not limited to the insurance requirements contained therein.

2.2 **TERM OF AGREEMENT.** This Agreement shall commence with the date of the County Land Loan Note and terminate fifty five (55) years from the date of recordation of a notice of completion issued for the Project. The requirements of this Agreement shall remain in

full force and effect and apply throughout the Term without regard to the term of any loan or mortgage or any transfer of ownership of the Property.

2.3 COMPLIANCE WITH HOME PROGRAM REQUIREMENTS. The Owner shall comply with all requirements established in 24 CFR 92.219(b)(2) et seq. imposed on projects assisted under the HOME Program.

3. PROJECT OCCUPANCY AND RENTS

3.1 OCCUPANCY OF PROJECT. A total of twenty (20) Units in the Project shall be designated by Owner as County-Assisted Units. The County-Assisted Units must be occupied, or reserved for occupancy by, Qualifying Households.

3.2 COUNTY-ASSISTED UNITS. The Owner shall limit for the full Term of this Agreement the rental of twenty (20) County-Assisted Units to Qualifying Households at Qualifying Rents that do not exceed the maximum rental charges for each County-Assisted Unit as set forth in Section 1.20 above. The twenty (20) County-Assisted Units shall be designated as "floating" units, so that the Units that are designated as County-Assisted Units may change over time as long as the total number of County-Assisted Units in the Project remains constant.

The twenty (20) County-Assisted Units shall meet the following standards:

- A. Be similarly constructed and of comparable quality to all other Units in the Project and be dispersed throughout the Project; and
- B. Provide Tenants of County-Assisted Units access and enjoyment of all common areas and facilities of the Project on the same basis as Tenants of other Units.

3.3 MAXIMUM RENTAL CHARGES.

A. Maximum rental charges for County-Assisted Units shall not exceed the Qualifying Rent as defined above in Section 1.20.

B. The Qualifying Rent for each County-Assisted Unit shall be set by the Lender at the time of initial occupancy of the Project. Annual increases in Qualifying Rents shall be calculated based on the change in Area Median Income published annually by HUD. At least sixty (60) calendar days prior to increasing Qualifying Rents on any County-Assisted Unit, Owner shall submit to the Lender for review and approval a written request for such increase. Tenants of County-Assisted Units shall be given at least thirty (30) days written notice prior to any increase in Qualifying Rents, consistent with state law. Lender shall approve such request if the increased Qualifying Rents will comply with all applicable HOME Program requirements.

3.4 INCOME CERTIFICATION.

The Annual Income levels and other qualifications of applicants for the County-Assisted Units shall be certified by Owner no earlier than sixty (60) calendar days prior to the Qualifying Household's expected occupancy of a County-Assisted Unit and recertified annually thereafter by the Owner. If the household size of a Qualifying Household occupying a County-Assisted Unit

changes, the Owner may request additional information and documentation to determine eligibility. Owner shall comply with all requirements of 24 CFR 92.203 and 24 CFR 92.252(h).A. Initial Annual Income Verification. Before any Tenant occupies a County-Assisted Unit, the Owner shall verify that the Annual Income provided in an Annual Income certification is accurate by examining the source documents evidencing annual income (e.g. wage statement, interest statement, unemployment compensation statement) for the Tenant. Owner shall retain all documentation in the Project files. Owner shall also contact all third parties to provide information to verify Annual Income. Written requests and responses of third parties are required.

B. Annual Income Recertification. Upon lease renewal or pursuant to an annual schedule adopted by the Owner, and no later than the one-year anniversary of the initial Annual Income verification and annually thereafter, Owner shall recertify the Annual Income of each Tenant occupying a County-Assisted Unit using one of the following three methods:

i. Examine the source documents evidencing annual income (e.g. wage statement, interest statement, unemployment compensation) for each Tenant.

ii. Obtain from each Tenant a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.

iii. Obtain 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. The statement must indicate each Tenant's family size and state the amount of each Tenant's annual income; or alternatively, the statement must indicate the current dollar limit for very low-income households for the family size of the Tenant and state that the Tenant's annual income does not exceed this limit.

Owner shall retain all documentation in the Project files.

3.5 INCREASES IN QUALIFYING HOUSEHOLD INCOMES.

In the event that recertification of a previously-Qualifying Household's Annual Income indicates that the Annual Income exceeds the limit established by HUD for very low-income households (50% of Area Median Income), the Owner shall increase rents on such County-Assisted Unit pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

4. LEASING THE PROJECT.

4.1 **TENANT LEASES.** The Owner shall execute a written lease with Tenants of County-Assisted Units for a term of at least one year, unless the Owner and the Tenant mutually agree to a shorter period. A lease may not be for a period less than thirty (30) days. The Tenant lease and any changes thereto must be approved by Lender.

A. The Owner shall include in leases for all County-Assisted Units provisions which provide that a Qualifying Household is subject to annual certification of Annual Income and that the tenancy of the Qualifying Household shall be terminated as soon as possible in accordance with state law should one or more of the Qualifying Household's members misrepresent any material fact regarding the Qualifying Household's qualification as a Very Low-

Income Household. The Owner shall include in all leases for County-Assisted Units provisions which prohibit the Qualifying Household from subleasing the County-Assisted Unit.

B. In addition to executing a lease for a County-Assisted Unit, the Owner shall require that each Qualifying Household leasing a County-Assisted Unit execute a declaration of intent to occupy which shall require the Qualifying Household to occupy the County-Assisted Unit as the Qualifying Household's primary residence.

C. The lease for each County-Assisted Unit shall not contain any of the prohibited provisions identified at 24 CFR §92.253(b) including the following:

1. *Agreement to be sued.* 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. *Treatment of property.* Agreement by the Tenant that the Owner may take, hold or sell personal property of Qualifying Household members without notice to the Tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the Tenant concerning disposition of personal property remaining in the County-Assisted Unit after the Tenant has moved out of the County-Assisted Unit. The Owner may dispose of this personal property in accordance with State law;

3. *Excusing Owner from responsibility.* 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. *Waiver of notice.* Agreement of the Tenant that the Owner may institute a lawsuit without notice to the Tenant;

5. *Waiver of legal proceedings.* Agreement by the Tenant that the Owner may evict the Tenant or Qualifying 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. *Waiver of a jury trial.* Agreement by the Tenant to waive any right to a trial by jury;

7. *Waiver of right to appeal court decision.* 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. *Tenant chargeable with cost of legal actions regardless of outcome.* 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.

D. Owner shall not terminate the tenancy or refuse to renew the lease of a Tenant of a County-Assisted Unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; or for other good cause. To terminate or refuse to renew the tenancy, the Owner shall serve written notice upon the Tenant specifying the grounds for the action at least thirty (30) days prior to termination of tenancy.

4.2 SECTION 8 CERTIFICATE HOLDERS. The Owner will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates

for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Units by such prospective Tenants.

4.3 CONDOMINIUM CONVERSION. The Owner shall not convert Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights in the Property during the Term of Agreement.

4.4 NONDISCRIMINATION. The Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any basis prohibited by law. The Owner shall include a statement in all advertisements, notices and signs for the availability of Units for rent to the effect that the Owner is an Equal Housing Opportunity Provider.

5. PROPERTY MANAGEMENT

5.1 MANAGEMENT RESPONSIBILITIES. The Owner is responsible for all management functions with respect to the Project, including without limitation the selection of Tenants, certification and recertification of Qualifying Household size and Annual Income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Lender shall have no responsibility over management of the Project. The Owner shall submit to the Lender for its approval its proposed Property manager. The Owner may only remove and/or replace the Property manager with the prior written consent of the Lender which consent shall not be unreasonably withheld.

5.2 APPROVAL OF MANAGEMENT POLICIES. The Owner shall submit its written management policies with respect to the Project to the Lender for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement, the requirements of the existing HOME Program, as may be amended from time to time, and the requirements of all lenders providing financing for the Project.

5.3 INSPECTION AND RECORDS. The Owner shall maintain records for a period of five (5) years after the Term which clearly document the Owner's performance of its obligations to operate the Property under the terms of this Agreement. The Owner shall submit all requested records to the Lender within ten (10) business days of the Lender's request. The Owner shall permit the Lender to enter and inspect the Property for compliance with Owner's obligations under this Agreement upon twenty-four (24) hours advance notice of such visit by the Lender to the Owner or the Owner's Property manager and to Tenants of any Units.

5.4 COMPLIANCE MONITORING. The Owner shall operate the Property in full compliance with this Agreement and the HOME Program regulations at 24 CFR Part 92 in effect on the date the County HOME Loan is executed by all parties, and as may be amended from time to time, and shall remain in compliance therewith throughout the Term of this Agreement. The

Owner shall permit the Lender to conduct annual compliance monitoring, including performing on-site records review and inspections of the Property, as required by regulation or reasonably requested by Lender.

5.5 ANNUAL REPORT. The Owner shall submit to the Lender a report in a form approved by Lender for the preceding period of January 1st through December 31st, containing the information requested by Lender so as to allow the Lender to determine the Owner's compliance with this Agreement. The report shall be submitted annually no later than March 1st, and shall include, at a minimum: (i) an Annual Financial Statement as defined in Section 1.1 of the County Land Loan Agreement, (ii) a report on the occupancy of the Project, (iii) a report on the physical condition of the Project, (iv) a report on the general management of the Project, (v) for each County-Assisted Unit, the rent, Annual Income, and household size of the Tenant in occupancy. The report shall also state the date the tenancy commenced for each County-Assisted Unit and such other information as the Lender may request.

Within thirty (30) days after receipt of a written request, Owner shall submit any other information or completed forms requested by the Lender in order to comply with reporting requirements of the United States Department of Housing and Urban Development, or the State of California, or the Lender. The Lender shall have the right to examine and make copies of all books, records or other documents of Owner which pertain to the Project or any Unit to determine compliance with this Agreement.

5.6 FEES, TAXES, AND OTHER LEVIES. The Owner shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency.

5.7 PROPERTY TAX EXEMPTION. The Owner shall not apply for a property tax exemption for the Property under any provision of law other than California Revenue and Taxation Code Section 214(g) without the Lender's prior written consent.

5.8 MAINTENANCE OF PROJECT. Owner shall maintain all buildings on the Property in good condition, in good repair and in a decent, safe, sanitary, habitable and tenantable condition. All Units in the Project must meet HUD housing quality standards set out in 24 CFR 92.251 (a)(1) throughout the Term of this Agreement. Owner shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitudes as they pertain to improvements, alterations, maintenance or demolition on the Property. Lender shall have no responsibility over maintenance of the Property.

6. GENERAL PROVISIONS

6.1 SUBORDINATION. Except for the loan Owner has secured from Union Bank, N.A. in the amount of Four Million Nine Hundred Eighty One Thousand Sixty Eight Dollars and No Cents (\$4,981,068.00) for development of the Project, this Agreement shall be senior and not be subordinate to any deed of trust, note, agreement and/or to any other obligations of Lender concerning the Property and may be subordinated in priority only as to liens and encumbrances otherwise approved in writing by the Lender in its sole and absolute discretion.

6.2 DEFAULT AND REMEDIES In the event of any breach of any agreement or obligation under this Agreement by the Owner, the Lender shall provide written notice to the Owner of such breach. The Owner shall have an opportunity to cure such breach within thirty (30) days from the Owner's receipt of such written notice or such longer period of time as the Lender determines is necessary to cure the breach if the Owner diligently undertakes to cure such breach. Owner's limited partners shall have the right, but not the obligation, to cure defaults of Owner hereunder, and the Lender hereby agrees to accept any cure of any default made or tendered by one or more of Borrower's limited partners on the same basis as if made or tendered by Borrower.

If the Owner, or Owner's limited partners, fails to perform a timely cure of the specified breach, the Lender may proceed with any or all of the following remedies upon the Owner's or Owner's limited partners' failure to cure:

A. Bring an action in equitable relief seeking the specific performance by the Owner of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;

B. Enter upon, take possession of, and manage the Property and the Project, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Property;

C. After notice provided for herein, make such repairs or replacements to the Property and Project as are necessary and provide for payment thereof; or

D. Pursue any other remedy provided under the County Land Loan Documents or allowed at law or in equity.

6.3 EVENT OF DEFAULT. In the event that the Project fails to meet the affordability requirements included in this Agreement for the Term of the Agreement, this shall constitute an Event of Default under Sections 5.1 and 8.1 of the County Land Loan Agreement.

6.4 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. No official elected or appointed, officer, director, employee or agent of the Lender shall be personally liable to the Owner for any obligation created under the terms of this Agreement.

6.5 INSURANCE AND INDEMNITY. Owner shall comply with the insurance and indemnification provisions set forth in Exhibit B and incorporated herein by this reference.

6.6 GOVERNING LAW. This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

6.7 AGREEMENT CONTROLS. In the event that any provision of this Agreement and that contained in any other County Land Loan Document conflict, the terms of this Agreement shall control. In the event that any provision of this Agreement and that contained in any of the County HOME Loan Documents conflict, the most restrictive terms shall control. In the event that any provision of this Agreement and that contained in HOME regulations conflict, the terms of the HOME regulations shall control.

6.8 **TIME.** Time is of the essence in this Agreement.

6.9 **CONSENTS AND APPROVALS.** Any consent or approval of the Lender required under this Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of the Lender.

6.10 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between the Owner and the Lender shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of the Owner and the Lender as follows:

Lender: County of Santa Barbara
Housing and Community Development
105 E Anapamu Street, Room 105
Santa Barbara, CA 93101
Attn: Deputy Director

With copy to: Office of County Counsel
County of Santa Barbara
105 E Anapamu Street, Room 201
Santa Barbara, CA 93101

Owner: Pescadero Lofts Isla Vista, L.P.
815 W Ocean Avenue
Lompoc, CA 93436
Attn: Managing General Partner

With copy to: Union Bank, N.A.
200 Pringle Avenue, Suite 355
Walnut Creek, CA 94596
Attn: CDF Division Head

6.11 **BINDING UPON SUCCESSORS.** This Agreement shall be recorded and all provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of the Owner, and the Lender, and shall run with the land for the full Term of this Agreement, regardless of any assignment, payment, prepayment, expiration, extinguishment of the County HOME Loan or the County Land Loan or the County HOME Loan Note or the County Land Loan Note, any reconveyance of the County Land Loan Deed of Trust or the County HOME Loan Deed of Trust, or any conveyance or transfer of the Property or portion thereof.

6.12 **RELATIONSHIP OF PARTIES.** The relationship of the Owner and the Lender during the term of this Agreement is solely that of lender and borrower and shall not be construed as a joint venture, equity venture, or partnership.

6.13 **WAIVER.** Any waiver by the Lender of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Lender to take action on

any breach or default of the Owner or to pursue any remedy allowed under this Agreement, the County Land Loan Documents, or applicable law. Any extension of time granted to the Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of Owner's obligations under this Agreement. Consent by the Lender to any act or omission by the Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Lender's written consent to future waivers.

6.14 AMENDMENTS AND MODIFICATIONS. Any amendment to or modification of this Agreement must be in writing, and shall be made only if executed by both the Owner and the Lender.

6.15 SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

Signatures appear on following page. No further text appears here.

IN WITNESS WHEREOF, Lender and Owner have caused this Agreement to be executed by their respective duly authorized officers.

ATTEST:

CHANDRA L. WALLAR
Clerk of the Board

LENDER:

County of Santa Barbara,
a political subdivision of the State of California

By: _____
Deputy Clerk of the Board

By: _____
Salud Carbajal, Chair
Board of Supervisors

**APPROVED AS TO ACCOUNTING
FORM:**

ROBERT W. GEIS
AUDITOR-CONTROLLER

OWNER:

Pescadero Lofts Isla Vista, L.P.,
a California Limited Partnership

By: Surf Development Company, a California nonprofit
public benefit corporation, its managing general
partner

By: _____

By: _____
Alfred Holzeu
President

By: Housing Authority of the County of Santa Barbara, a
public body, corporate and politic, its administrative
general partner

APPROVED AS TO FORM
DENNIS A. MARSHALL
COUNTY COUNSEL

By: _____
Frederick C. Lamont
Executive Director

By: _____
Deputy County Counsel

APPROVED AS TO FORM:

RISK MANAGEMENT

APPROVED:

By: _____

Ray Aromatorio, ARM, AIC
Risk Manager

By: _____

Department Head

State of California
County of Santa Barbara

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT E

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts NOT requiring professional liability insurance

INDEMNIFICATION

BORROWER shall defend, indemnify and save harmless the COUNTY, its officials, officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the BORROWER or its agents, representatives, employees or other independent contractors directly responsible to it; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

BORROWER shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

INSURANCE

Without limiting the BORROWER's indemnification of the COUNTY, BORROWER shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place BORROWER in default. Upon request by the COUNTY, BORROWER shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all BORROWER's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event BORROWER is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if BORROWER has no employees as defined in California Labor Code Section 3350 et seq. during the entire period of this Agreement and BORROWER submits a written statement to the COUNTY stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of BORROWER and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the BORROWER in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and BORROWER. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of BORROWER pursuant to BORROWER's activities hereunder. BORROWER shall require all

subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officials, officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

If the policy providing liability coverage is on a 'claims-made' form, the BORROWER is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this Agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

BORROWER shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the BORROWER may be held responsible for payment of damages resulting from BORROWER'S services of operation pursuant to the Agreement, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the BORROWER is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the BORROWER'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY'S Risk Program Administrator is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. BORROWER agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.