

**LOAN AGREEMENT
(\$235,000)**

Between

County of Santa Barbara

and

Surf Development Company

(Braddock House)



HOME Investment Partnerships Program

Catalog of Federal Domestic Assistance Number 14.239

**LOAN AGREEMENT
(Braddock House)**

This Loan Agreement is made as of this ___ day of _____, 2011, by and between the County of Santa Barbara, political subdivision of the State of California (“Lender”), and Surf Development Company, a California nonprofit public benefit corporation (“Borrower”).

RECITALS

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

B. Borrower has provided affordable housing services to low income households in Santa Barbara County since 1988; and

C. Borrower has constructed a congregate care home including four Home Assisted Units for low-income disabled residents (the “Project”) on land it owns located at 5575 Armitos Avenue in the City of Goleta, California, as more particularly described in Exhibit A (the “Property”).

D. Lender has received Home Investment Partnerships Program funds (“HOME Funds”) from the United States Department of Housing and Urban Development (“HUD”) pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 for the purpose of expanding the supply of decent, safe, sanitary and affordable housing for low-income persons and families.

E. Surf Development Company has been certified by the County as a Community Housing Development Organization (“CHDO”) as defined by HUD under its HOME Investment Partnerships (“HOME”) Program.

F. Borrower has executed a document restricting rents and tenant income titled HOME Regulatory Agreement and Declaration of Restrictive Covenants (HOME Regulatory Agreement) in which all four (4) of the congregate care units are identified as HOME-assisted units.

G. Borrower wishes to borrow from Lender and Lender wishes to extend to Borrower a loan in the total amount of Two Hundred Thirty Five Thousand Dollars (\$235,000) (the “Loan”) to repay a construction loan on the Project which was used for certain costs eligible for payment under the HOME program. The terms of the Loan are set out in this Agreement.

H. The HOME Loan will be evidenced by a promissory note in the amount of Two Hundred Thirty Five Thousand Dollars (\$235,000) executed by Borrower in favor of Lender, and secured by a deed of trust.

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 Loan Agreement, attached Exhibits, or documents incorporated into this 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 acceptable to Lender, which shall be provided as part of the Annual Report to Lender.

1.2 **“BORROWER”** is Surf Development Company, a California nonprofit public benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

1.3 **“BUDGET”** means that budget for permanent financing of the Project attached as Exhibit B, which is hereby incorporated into this Loan Agreement by this reference and which identifies the eligible items on which Loan proceeds may be spent.

1.4 **“CHDO”** means Community Housing Development Organization as defined in 24 CFR 92.2. The CHDO must be a non-profit organization that has among its purposes the provision of decent housing that is affordable to low- and moderate-income persons.

1.5 **“COUNTY”** means the County of Santa Barbara, political subdivision of the State of California.

1.6 **“DEED OF TRUST”** is that deed of trust, assignment of rents, and security agreement placed on the Property and the improvements to be constructed thereon as security for the HOME Loan by Borrower as trustor with Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust, attached hereto as Exhibit C. The terms of the Deed of Trust are incorporated into this Loan Agreement.

1.7 **“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.

1.8 **“HOME AFFORDABILITY PERIOD”** means the fifty-five (55) year term during which the HOME Assisted Units must meet the affordability requirements imposed under the HOME Program, commencing when the Project is closed in the Federal Integrated Disbursement Information System.

1.9 **“HOME ASSISTED UNIT”** means any of the four (4) housing units on the Property which are supported by HOME Funds.

1.10 **“HOME FUNDS”** means funds provided to Borrower by the Lender from the HOME Investment Partnerships Program, as stated in 42 U.S.C. Sections 12701, et seq., 24 C.F.R. Part 92.

1.11 **“HOME REGULATORY AGREEMENT”** means the agreement executed by Borrower and Lender, attached as Exhibit E, and recorded against the Property which regulates the use of the HOME Assisted Units in the Project.

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

1.13 **“INSURANCE REQUIREMENTS”** means the insurance coverage and indemnity requirements which must be in full force and effect during the term of the Regulatory Agreement, as specified in Exhibit F.

1.14 **“LENDER”** means the County of Santa Barbara, political subdivision of the State of California and its authorized representatives, officers, officials, directors, employees, and agents.

1.15 **“LOAN”** means the loan of HOME Funds in the amount of Two Hundred Thirty Five Thousand Dollars (\$235,000) as provided in this Loan Agreement to refinance certain development costs of the Project.

1.16 **“LOAN AGREEMENT”** means this loan agreement entered into between Lender and Borrower.

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

1.18 **“MEDIAN INCOME”** means the median income for the Santa Barbara/Santa Maria/Goleta Primary Metropolitan Statistical Area as determined by HUD with adjustments for household size.

1.19 **“NOTE”** means the promissory note executed by the Borrower in favor of Lender in the amount of Two Hundred Thirty Five Thousand Dollars (\$235,000), to evidence the Loan of HOME Funds as well as any amendments to, modifications of, or restatements of said promissory notes, substantially in the form attached hereto as Exhibit D.

1.20 **“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, reasonable property management fee, security, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, lease payments if any, cash deposited into reserves for capital replacements with respect to the Project in an amount not to exceed reserve requirements reasonably imposed by any lender, cash deposited into an operating reserve in an amount not to exceed the amount reasonably required by any lender, purchase, 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 may also include a deferred developer fee so long as the total amount of developer fees does not exceed ten percent (10%) of the total development budget. The Operating Expenses shall be reported in the Annual Financial Statement.

1.21 **“PAYMENT DATE”** shall mean April 1st 2012 and each April 1st thereafter until the Loan is paid in full or otherwise terminated.

1.22 **“PROJECT”** means the operation and management of the Property and the improvements constructed thereon according to the terms of this Loan Agreement.

1.23 **“PROPERTY”** means property located at 5575 Armitos Avenue, located in the City of Goleta, California, as more particularly described in Exhibit A. (the “Property”).

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

1.25 **“QUALIFYING RENT”** means the total annual charges for rent, utilities, and related services to each Very Low Income Household which shall not exceed thirty percent (30%) of fifty percent (50%) of median income for the Santa Barbara/Santa Maria/Goleta Primary Metropolitan Statistical Area as determined by HUD with adjustments for household size.

1.26 **“RESIDUAL RECEIPTS”** means the excess of annual Revenues over Operating Expenses.

1.27 **“REVENUE”** means all income derived from the Project, including but not limited to rent from the units and income from laundry operations.

1.28 **“VERY LOW INCOME HOUSEHOLD”** means a household whose annual income does not exceed fifty percent (50%) of median income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area as determined by HUD with adjustments for household size.

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 a loan with the following terms:

2.2 **AMOUNT.** The principal amount of the Loan shall be an amount not to exceed Two Hundred Thirty Five Thousand Dollars (\$235,000) and shall be evidenced by the Note.

2.3 **INTEREST.** Subject to the provisions of Section 2.4, the Note shall bear simple interest at a rate of three percent (3%) per annum from the date of the Note.

2.4 **DEFAULT INTEREST.** In the event of a default by Borrower of any of its obligations under this Loan Agreement and expiration of applicable cure periods, 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 are repaid in full.

2.5 **TERM OF LOAN.** For each Loan, the principal of the Loan shall be due and payable on the earlier of: (a) thirty (30) years from the date of the Note evidencing that loan, or (b) the date the Property is sold or otherwise transferred, except, if Borrower is a limited partnership, for a transfer to the General Partner of the Borrower or a Lender approved affiliate thereof or (d) an Event of Default by Borrower which has not been cured as provided for in this Loan Agreement. In any event, the principal and all current and accrued interest of the Loan shall be due and payable no later than December 15, 204142. In the Event of Default by Borrower, which has not been cured as provided for in this Loan Agreement, all current and accrued interest shall be due and payable.

2.6 **REPAYMENT OF FUNDS TO HOME ACCOUNT.** Any and all repayment or prepayment of the Loan will paid to the Lender and will be invested in future projects in accordance with Federal Rules and Regulations regarding the HOME Program.

2.7 **USE OF FUNDS.** Loan proceeds shall be used only for those certain housing development costs as specified in the Budget attached hereto as Exhibit B and shall only be disbursed after the costs for which they are to be paid have been incurred. HOME Funds shall not be utilized for any commercial costs associated with the Project.

2.8 **SECURITY.** Borrower shall secure its obligation to repay the Loan by executing a Deed of Trust, in substantially the form attached hereto as Exhibit C and recording it as a lien against the Property, subordinate only to the Senior Loan.

2.9 REPAYMENT OF THE LOAN.

Payments shall commence on April 1st 2012. Borrower shall make annual payments on the Loan from Residual Receipts. On or before each Payment Date the Borrower shall submit the Annual Financial Statement to Lender for the preceding calendar year together with an amount equal to the Residual Receipts for the preceding calendar year. Lender shall review and approve such statement, or request revisions, within sixty (60) days after receipt. In the event Lender fails to approve or disapprove the Annual Financial Statement within the sixty (60) day period, Borrower may request a written determination of approval or disapproval following the expiration of such period. In the event Lender fails to provide a written determination to Borrower within ten (10) days following the receipt of Borrower's request for determination, the Annual Financial Statement shall be deemed approved.

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, 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. All payments made by Borrower 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 HOME Loan. In any event all principal owed and all current and accrued interest of the Loan shall be due and payable as provided in Section 2.5 above.

In any event, all accrued interest and principal shall be due and payable thirty (30) years from the date of the Note.

Upon receipt of any payment applied to this Note, the money shall be deposited into the County's HOME account in conformity with its HOME Consortium Agreement.

2.10 NOTICE REGARDING CHDO SET-ASIDE FUND REPAYMENT. Any HOME Funds are provided under this Agreement from the HOME Consortium CHDO set-aside pursuant to 24 CFR 92.300 are to be repaid to the Lender as set forth herein in the same manner as the balance of HOME Funds.

2.11 PREPAYMENT OF LOAN. No prepayment penalty will be charged to Borrower for payment of all or any portion of the Loan amounts prior to the end of the terms described herein. However, prepayment of the Loan shall not affect Borrower's obligations under the HOME Regulatory Agreement.

2.12 ANNUAL OPERATING EXPENSES. Thirty (30) days prior to end of the calendar 2011 and each year thereafter, Borrower shall submit to Lender, for Lender's 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 operating and replacement

reserve accounts. If the amount of the proposed budget for the following calendar year does not exceed the budget for the prior calendar year by greater than five percent (5%) (or any one line item has not increased by greater than ten percent (10%)), the proposed budget shall be approved by Lender. Only Operating Expenses incurred by Borrower which do not exceed one hundred twenty percent (120%) of the amount approved by Lender in the approved operating budget may be used in the calculation of Residual Receipts without Lender's prior written consent.

2.13 **RECORDING.** Upon closing date, Escrow Holder shall record the Deed of Trust and the HOME 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.

2.14 **OPERATING AND REPLACEMENT RESERVE FUND.** Borrower shall fund a replacement reserve in the amount of not less than \$300 per unit per year and capitalize an operating reserve in the total amount which is not less than six (6) months of operating expenses including required debt service but which shall not exceed seven (7) months of operating expenses including required debt service. Reserve balances shall be provided in the Annual Financial Statement submitted to Lender annually.

ARTICLE 3 LOAN DISBURSEMENT

3.1 **CONDITIONS PRECEDENT TO DISBURSEMENT.** Lender shall not be obligated to make any disbursements of Loan proceeds or take any other action under the Loan Documents unless the following conditions precedent are satisfied prior to the disbursement of the 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 a ALTA Lender's policy of title insurance in the amount of Two Hundred Thirty Five Thousand Dollars (\$235,000), from a title insurance company approved by the Lender in a form reasonably acceptable to Lender;
- C. Borrower has provided to Lender a certificate of insurance or copy of the insurance policy, which policy shall be satisfactory to the Lender;
- D. Borrower has submitted and Lender has approved an appraisal for the Property;
- E. Borrower has complied with all reporting requirements set forth in this Loan Agreement; and
- F. Lender has reviewed and approved the proposed use of the Loan proceeds, as shown on Exhibit B.

3.2 **DISBURSEMENT OF LOAN PROCEEDS.** Disbursement of Loan proceeds shall not exceed a total of Two Hundred Thirty Five Thousand Dollars (\$235,000) to be disbursed through escrow in one payment except that, as a special disbursement condition, Lender shall holdback Ten Thousand Dollars (\$10,000) of HOME funds for general development costs until 30 days after Borrower has completed the construction of the Project and provided beneficiary data for all non-manager units of the project as required under the HOME Program; and any and all liens against the Property are released. All Loan funds shall be used as specified in the Sources and Uses identified in the Budget attached hereto as Exhibit B and incorporated herein by this reference.

ARTICLE 4 COMPLIANCE WITH HOME REQUIREMENTS

4.1 **HOME PROGRAM AND OTHER FEDERAL REQUIREMENTS.** All requirements imposed on properties assisted under the HOME program as contained in 42 U.S.C. Sections 12701, et seq., 24 C.F.R. Part 92, and other implementing rules and regulations are incorporated by this reference. In the event of any conflict between this Loan Agreement and the HOME regulations, the HOME regulations shall govern, unless otherwise waived by the Lender. The laws and regulation that apply to the use of Loan proceeds under this Agreement include by are not limited to:

A. **Applicability of OMB Circulars.** The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102, Revised, A-110 and A-122.

B. **Audit requirements.** In accordance with 24 CFR 84.26 and 85.26, agencies that expend \$500,000 or more in federal funds in a year as calculated therein must undergo a single audit in compliance with OMB Circular A-133.

C. **Architectural Barriers.** The requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157).

D. **Handicap Discrimination.** The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), and federal regulations issued pursuant thereto, which prohibits discrimination against the handicapped in any federally assisted program.

E. **Environmental Review.** The provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), and applicable related environmental authorities at 24 CFR Part 50.4, and HUD's implementing regulations at 24 CFR Part 50.

F. **Fair Housing.** The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Parts 100, 109 and 110; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted

Programs) and implementing regulations issued at 24 CFR Part 1, and will affirmatively further fair housing.

G. Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701, requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. Developer agrees to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project.”

H. HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to HOME.

ARTICLE 5 OPERATION

5.1 **OPERATION OF PROJECT.** Borrower shall operate and manage the Project in full conformance with the terms of the Regulatory Agreement.

Borrower shall agree to maintain and operate the HOME Assisted Units so as to provide decent, safe, and sanitary housing. Optional services provided must be available to all residents under the same terms and conditions.

Borrower agrees that during the term of the HOME Regulatory Agreement, Lender shall have the right to review, approve and demand material changes to the Management Plan, operation of the building and property management entity, if determined by the County important in order to preserve the affordability, physical appearance and condition of the Project. Any changes not disapproved by Lender within thirty (30) days after receipt of such changes shall be deemed approved.

5.2 **AFFIRMATIVE MARKETING PLAN.** The Project contains less than five (5) units, and is not, therefore, subject to affirmative marketing requirements.

5.3 **MANAGEMENT PLAN.** Before leasing or operating any portion of the Project, Borrower shall submit its proposed form of Management Plan, and management contract for the

on-going management and operation of the Project for Lender's review and approval. Any changes to the Management Plan must be approved in writing by the County. Borrower's approved Management Plan is attached hereto as Exhibit G.

5.4 LEASING THE PROJECT. Before leasing any portion of the Project, Borrower shall submit its proposed form of lease for Lender's review and approval. The term of the Lease shall be for no less than one year and shall not contain any provision which is prohibited by 24 C.F.R. Section 92.253(b) and any modifications thereto. No rent increase shall occur at any time during the term of the lease. Any termination of the Lease or refusal to renew must be in conformance with 24 C.F.R. 92.253(c) and any modifications thereof must be preceded by not less than 30 days written notice to the tenant by the Borrower specifying the grounds for the action.

5.5 TENANT SELECTION. Before leasing the Project, Borrower shall provide Lender for its review and approval Borrower's written tenant selection plan. The Borrower's tenant selection plan must, at a minimum, meet the requirements for tenant selection set out in 24 C.F.R. 92.253(e) and any modifications thereto.

Borrower shall rent the Assisted Units to any Qualifying Household according to the tenant selection plan. Borrower shall verify the prospective tenant's eligibility and require from each tenant a statement that such household's income from all sources does not exceed allowable limits as described the Regulatory Agreement.

5.6 INCOME CERTIFICATION. Borrower shall limit for the full term of the HOME Regulatory Agreement the rental of Assisted Units to Qualifying Households according to the schedule and methods contained in the HOME Regulatory Agreement.

5.7 AFFORDABILITY RESTRICTIONS. All four (4) units in the Project shall be designated as HOME Assisted Units. All of the Assisted Units must be occupied, or reserved for occupancy by Qualifying Households, as set forth in the HOME Regulatory Agreement.

5.8 ASSISTED UNIT RENTS. Rents for Assisted Units shall be limited to Qualifying Rents as set forth in the HOME Regulatory Agreement.

5.9 CONFLICTS BETWEEN COVENANTS OR RESTRICTIONS AFFECTING THE PROPERTY. Any conflicts between the restrictive provisions contained in this Loan Agreement, Note, Deed of Trust, HOME Regulatory Agreement, and any other agreements in connection with the Loan which affect the Property, are to be resolved by applying the more restrictive covenants or restrictions which affect the Property.

5.10 NONDISCRIMINATION. Borrower shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Property on the basis of race, color, ancestry, national origin, religion, sex, sexual preference or orientation, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC)

acquired or perceived, or any other arbitrary basis. Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

5.11 **RECORDS.** Borrower shall be accountable to Lender for all funds disbursed to Borrower pursuant to the Loan Documents. Borrower agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than five years after completion of the Project as evidenced by the close-out of the project in the federal Integrated Disbursement and Information System. Tenant income, rent and inspection information must be kept for the most recent five years, until five years after the affordability period ends. Records must be kept accurate and current. Lender shall notify Borrower of any records it deems insufficient. Borrower shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by Lender in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Borrower shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

Borrower shall promptly comply with all requirements or conditions of the Loan Documents 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 and cooperate with Lender in the development of the Project.

5.12 **AUDITS.** Borrower shall conduct annual audits in accordance with 24 CFR Part 44, and OMB Circular A-133. Borrower shall make available for examination at reasonable intervals and during normal business hours to Lender all books, accounts, reports, files, and other papers or property with respect to all matters covered by these Loan Documents, and shall permit Lender to audit, examine, and make excerpts or transcripts from such records. Lender may make audits of any conditions relating to the Loan.

5.13 **ENCUMBRANCE OF PROPERTY.** Except as otherwise provided in this Loan Agreement, 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. Borrower shall notify Lender in writing in advance of any financing secured by any deed of trust, mortgage, or other similar lien instrument that it proposes to enter into with respect to the Project or Property, and of any encumbrance or lien that has been created on or attached to the Property whether by voluntary act of Borrower or otherwise.

5.14 **TRANSFER OF PROPERTY.** Borrower has not made or created, and shall not make or permit any sale, assignment, conveyance, lease (other than the leasing of units in the Project pursuant to an approved lease), or other transfer of this Loan Agreement, the Project, or the Property, or any part thereof, including the sale or transfer of any general partnership interests, without the prior written consent of Lender.

5.16 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.

5.17 DAMAGE TO PROPERTY. If any building or Improvements erected by Borrower on the Property is damaged or destroyed by an insurable cause, Borrower shall, at its cost and expense, diligently undertake to repair or restore said buildings and Improvements consistent with the original Plans and Specifications for the Project if Borrower reasonably determines that such restoration or repair is economically feasible. Such work or repair shall be commenced within 120 days after the damage or loss occurs and shall be complete within one year thereafter, subject to any extensions of time granted pursuant to the provisions of Section 4.16. Subject to Borrower's election 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.

5.18 EQUAL EMPLOYMENT OPPORTUNITY. Borrower and any contractors, subcontractors, and professional service providers for the Project shall comply with all requirements concerning equal employment opportunity. Borrower and any contractors, subcontractors, and professional service providers for the Project shall comply with all requirements concerning equal opportunities for business and lower-income persons (referred to as a Section 3 clause, of the HUD Act of 1968, 12 U.S.C.).

5.19 PROPERTY STANDARDS. Borrower shall maintain and operate the Project in good repair and habitable condition.

Borrower shall operate the Project in full conformance with applicable local, state and federal statutes and regulations, and building and housing codes, including:

- A. All applicable State and local codes and zoning ordinances;
- B. International Energy Conservation Code and applicable state and local energy conservation codes;
- C. Handicapped accessibility requirements, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and with implementing regulations at 24 CFR, Part 8; and
- D. Site and neighborhood standards at 24 CFR 893.6(b).

The above property standards apply throughout the HOME Affordability Period.

5.20 DISPLACEMENT AND RELOCATION. If and to the extent that development or operation of the Project results in the permanent or temporary displacement of residential

tenants, homeowners, or businesses, Borrower shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws. Borrower hereby agrees to indemnify Lender for any action brought against Lender based on an alleged failure to comply with relocation obligations on this Project.

5.21 BARRIERS TO THE DISABLED. The Project shall be developed and the Property shall be maintained and operated to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.22 LEAD-BASED PAINT AND ASBESTOS REMOVAL. Borrower and its contractors and subcontractors shall not use lead-based paint or asbestos in the construction or maintenance of the Property and shall comply with Federal Regulations set forth in 24 CFR Part 35, subparts A, B, J, K, M and R, , 29 C.F.R., 40 C.F.R., Title X, California O.S.H.A., California health codes, and all County standards. Borrower shall incorporate or cause to be incorporated this provision in all contracts and subcontracts for work performed on the Property which involve the application of paint or removal of asbestos.

ARTICLE 6 INDEMNITY AND INSURANCE

6.1 INDEMNITY AND INSURANCE. Borrower shall comply with the insurance and indemnification provisions set forth in Exhibit F and incorporated herein by this reference.

6.2 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 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 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 property” or as a “border zone property” under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

7.2 NOTIFICATION TO LENDER. Borrower shall promptly notify Lender in writing of: (a) the discovery of any concentration or amount of Hazardous Materials of which Borrower becomes aware on or under the Property requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by Borrower (after verification of the veracity of such knowledge to Borrower's reasonable satisfaction) that the Property does not comply with any Hazardous Materials Laws; (c) the receipt by Borrower of written notice of any Hazardous Materials claims; and (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 property” or as a “border zone property” under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

7.3 USE AND OPERATION OF PROPERTY. Neither Borrower, nor any agent, employee, or contractor of Borrower, nor any authorized user of the Property shall 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 or under the Property, Borrower shall take, at no cost or expense 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 Hazardous Materials claims. 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 the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. 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.

7.6 ENVIRONMENTAL INDEMNITY. Borrower shall defend, indemnify, and hold Lender free and harmless against any claims, demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and reasonable attorney’s fees, that Lender may directly or indirectly sustain or suffer as a

consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not Borrower knew of same) of any Hazardous Materials occurring prior to or during Borrower's use or occupancy of the Property.

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 Loan Agreement:

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

B. Operation. (1) Discrimination by Borrower on the basis of characteristics prohibited by this Loan Agreement or applicable law, (2) the imposition of any encumbrances or liens on the Property without Lender's prior written approval that are prohibited under this Loan Agreement or that have the effect of reducing the priority of or invalidating the Deed of Trust or (3) failure to maintain the Property in a safe and sanitary state and with all of the HOME Assisted Units either being under repair, occupied or being actively marketed;

C. General performance of Loan 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 agreements, with respect to the financing, construction, 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;

E. Representations and warranties. A determination by Lender that its security 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 or failure to maintain Property. Material damage or destruction to the Property by fire or other casualty, if Borrower does not take steps to reconstruct the Property as required by the Loan Documents, or if Borrower fails to adequately maintain Property as set forth in this Agreement;

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.

H. Program compliance. Any non-compliance with HOME Program requirements described in this Loan Agreement and the Home Regulatory Agreement pursuant to the HOME Investment Partnerships Program Final Rule at 24 CFR § 92, including other Federal Requirements at 24 CFR 92 Subpart H.

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 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 cure to completion which shall, in any event, not exceed ninety (90) days from the date of receipt of the notice to cure.

8.3 LENDER'S REMEDIES. Upon the happening 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's obligation to disburse Loan proceeds shall terminate, and Lender may also, in addition to other rights and remedies permitted by the 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 Loan Agreement, in which event the entire principal amount outstanding and all accrued interest under the Note, as well as any other monies advanced to Borrower by Lender under the 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 Note, as well as any other monies advanced to Borrower by Lender under the Loan Documents;

D. Disburse from Loan proceeds any amount necessary to cure any monetary default;

E. Enter upon, take possession of, and manage the Property, either in person, by agent, or by a receiver appointed by a court, and collect rents and other amounts specified in the assignment of rents in the Deed of Trust and apply them to operate the Property or to pay off the Loan or any advances made under the Loan Documents, as provided for by the Deed of Trust;

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

G. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under 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 nonjudicial foreclosure under the power of sale contained in the Deed of Trust in the Event of Default by Borrower and failure to cure as provided in Section 8.2.

ARTICLE 9 GENERAL PROVISIONS

9.1 **BORROWER'S WARRANTIES.** Borrower represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable Borrower to fully comply with the terms of these Loan Documents and the HOME Regulatory Agreement, and to otherwise carry out the Project, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the Project and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of Borrower, (5) that there has been no substantial adverse change in Borrower's financial condition since the date of application for the Loan such as judgment liens, tax liens, mechanic's liens, bankruptcy, etc.; and (6) that all representations in the Borrower's loan application (including all supplementary submissions) are true, correct and complete in all material respects and are offered to induce Lender to make the HOME Loan.

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

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, or any immediate family member of such person, or any elected or appointed official of the County, or any person related within the third (3rd) degree of such person.

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

9.5 **PUBLICITY.** Any publicity produced by Borrower for the Project during the term of the Loan and for one year thereafter shall make reference to the contribution of Lender in making the Project possible. The words "The 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 Loan Agreement shall commence on the date set forth above and remain in full force and effect throughout the term of the Loan. The project shall comply with the HOME Program and HOME Regulatory Agreement requirements throughout the HOME Affordability Period, regardless of the term of this Agreement.

9.7 **GOVERNING LAW.** The Loan Documents 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 the Loan Documents or HOME Regulatory 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 these Loan Documents.

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

9.11 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal 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 105
Santa Barbara, CA 93101
Attn: Grants Administration Manager

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

BORROWER: Surf Development Company
815 West Ocean Avenue
Lompoc, CA 93436
Attn: Board President

9.12 **BINDING UPON SUCCESSORS.** All provisions of these Loan Documents 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 Loan Agreement by Borrower without Lender's consent.

9.13 **RELATIONSHIP OF PARTIES.** The relationship of Borrower and Lender for this Project under this 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, or the Loan.

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

9.15 **WAIVER.** Any waiver by Lender of any obligation in these Loan Documents must be in writing. 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 the Loan Documents or applicable law. Any extension of time granted to Borrower to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by Lender to any act or omission by Borrower shall not be construed to be a consent 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 Loan Agreement and the other Loan Documents, including exhibits, executed by Borrower for the Property, if any, contain the entire agreement of the parties and supersede any and all prior negotiations.

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

9.18 **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both Borrower and Lender.

9.19 **SEVERABILITY.** Every provision of this Loan Agreement is intended to be severable. If any provision of this 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.

Exhibits

- A Property Description
- B Budget
- C Deed of Trust
- D Promissory Note
- E Home Regulatory Agreement
- F Insurance and Indemnity Requirements
- G Management Plan

IN WITNESS WHEREOF, County and Surf Development Company have caused this Agreement to be executed by their respective duly authorized officer.

ATTEST:

CHANDRA L. WALLAR
Clerk of the Board

COUNTY:

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

By: _____
Deputy Clerk of the Board

By: _____
Joni Gray, Chair
Board of Supervisors

APPROVED AS TO ACCOUNTING FORM:

ROBERT W. GEIS
AUDITOR-CONTROLLER

OWNER:

Surf Development Company
a California nonprofit public benefit corporation

By: _____
Juan Izquierdo
Division Chief

By: _____
Name: Joyce Howerton
Title: Vice-President

APPROVED AS TO FORM

DENNIS A. MARSHALL
COUNTY COUNSEL

By: _____
Mary L. McMaster
Senior Deputy County Counsel

APPROVED AS TO FORM:

RISK MANAGEMENT

By: _____
Ray Aromatorio
Risk Manager

Expenditure Accounting Information
Fund: 0066 Dept: 055
Line Item: 7650 Program: 6000

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

BUDGET

EXHIBIT C
DEED OF TRUST

EXHIBIT D

PROMISSORY NOTE

EXHIBIT E

HOME REGULATORY AGREEMENT

EXHIBIT F
INSURANCE REQUIREMENTS

EXHIBITG
MANAGEMENT PLAN