

Attachment A

**LOAN AGREEMENT
(\$180,000)**

Between

County of Santa Barbara

and

**Surf Development Company
(Vintage Walk Apartments)**

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**LOAN AGREEMENT
(VINTAGE WALK APARTMENTS)**

This Loan Agreement is made as of this __ day of September, 2007, by and between the County of Santa Barbara, a political subdivision of the State of California, and the Surf Development Company, a nonprofit public benefit corporation.

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 a newly constructed two-story building located at 575 and 595 Avenue of the Flags in Buellton, Santa Barbara County, California, containing six (6) one-bedroom residential units and approximately one thousand three hundred forty (1340) square feet of commercial space. The 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 in the amount of One Hundred Eighty Thousand Dollars (\$180,000) of local Santa Ynez Housing Market Area low-income housing funds to partially finance the acquisition of the Property. The 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.

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 "**AREA MEDIAN INCOME**" means the median income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area, with adjustments for household size, as determined from time to time by the United States Department of Housing and Urban Development ("HUD") pursuant to the United States Housing Act of 1937, as amended, or such other method of median income calculation applicable to the Lender that HUD may hereafter adopt in connection with said Act.

1.2 **"ASSISTED UNIT"** means any one of the six (6) Units on the Property which is supported by Loan funds.

1.3 **"BORROWER"** means the Surf Development Company, a California nonprofit public benefit corporation and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

1.4 **"BUDGET"** means that budget for the acquisition attached as Exhibit B, which is hereby incorporated into this Loan Agreement by this reference.

1.5 **"CLOSING DATE"** means the date the Borrower acquires the Property.

1.6 **"DEED OF TRUST"** is that deed of trust, assignment of rents, and security agreement placed on the Property as security for the 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 have been incorporated into this Loan Agreement.

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

1.8 **"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.

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

1.10 **"LOAN"** means the loan of funds in the amount of One Hundred Eighty Thousand Dollars (\$180,000) from the Lender to the Borrower as provided in this Loan Agreement to finance the acquisition of the Property.

1.11 **"LOAN AGREEMENT"** means this loan agreement entered into between Lender and Borrower.

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

1.13 **"NOTE"** means the promissory note executed by the Borrower in favor of Lender in the amount of One Hundred Eighty Thousand Dollars (\$180,000) to evidence the Loan, substantially in the form attached hereto as Exhibit D, as well as any amendments to, modifications of, or restatements of said promissory note.

1.14 **"PROJECT"** means the acquisition of the Property which includes a two-story building containing six (6) one-bedroom residential units and approximately one thousand three hundred and forty (1,340) square feet of commercial space located at 575 and 595 Avenue of the Flags in Buellton, Santa Barbara County, California.

1.15 **"PROPERTY"** means that certain real property and improvements consisting of one two-story building at located at 575 and 595 Avenue of the Flags in Buellton, Santa Barbara County, California, as more particularly described in Exhibit A, which is incorporated into this Loan Agreement by this reference.

1.16 **"REGULATORY AGREEMENT"** means the agreement executed by Borrower and Lender, attached as Exhibit E, and recorded against the Property prior to or contemporaneously with the Loan which regulates the Units in the Project.

1.17 **"UNIT"** means one of the residential units in the Project.

1.18 **"VERY LOW-INCOME HOUSEHOLD"** means a household with an Adjusted Income that does not exceed fifty percent (50%) of Area Median Income, with adjustments for smaller and larger households, and as such income ceilings may be adjusted by HUD.

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 Loan with the following terms:

2.2 **AMOUNT.** The principal amount of the Loan shall be an amount not to exceed One Hundred Eighty Thousand Dollars (\$180,000) 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 on the outstanding principal balance of the Loan until paid.

2.4 **DEFAULT INTEREST.** In the event of a default by Borrower of any of its obligations under this Loan Agreement, 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.

2.5 TERM OF LOAN. The principal of and all accrued interest on the Loan shall be due and payable on the earlier of: (a) thirty (30) years from the date of the Closing Date, (b) the date the Property is sold or refinanced or (c) an Event of Default by Borrower which has not been cured as provided for in this Loan Agreement.

2.6 USE OF FUNDS. 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 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.

2.8 SUBORDINATION OF DEED OF TRUST AND REGULATORY AGREEMENT. Lender agrees to subordinate the Deed of Trust to the lien of the deed of trust securing the Community West Bank acquisition loan to Borrower in the approximate amount of Five Hundred Thousand Dollars (\$500,000), provided that adequate notice and cure rights are granted to Lender and subject to Lender approval of the form of subordination agreement.

2.9 REPAYMENT OF THE LOAN. Commencing on the Closing Date, interest shall accrue on the outstanding principal balance of the Loan at a fixed rate of three percent (3%) per annum. On the Closing Date, if not the last day of the calendar month, Borrower shall pay, in advance, all interest to accrue on the Loan from and including the Closing Date, through and including the last day of that month. On the first (1st) day of the second (2nd) full month following the Closing Date, and on the first (1st) day of each month thereafter, Borrower will make payments of principal and interest with respect to the Loan until payment in full of all amounts due under the Loan. Such payments shall be based on a thirty (30)-year level, fully amortized basis. All amounts due with respect to the Loan are due and payable on the first (1st) day of the three hundred sixty-first (361st) full calendar month following the Closing Date.

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

2.11 RECORDING. Upon the Closing Date, Escrow Holder shall record the Deed of Trust and the Regulatory Agreement with the Recorder for the County of Santa Barbara as an encumbrance against the Property, and shall deliver conformed copies of the recorded documents to the Lender and Borrower.

**ARTICLE 3.
LOAN DISBURSEMENT**

3.1 **CONDITIONS PRECEDENT TO DISBURSEMENT.** Lender shall not be obligated to make any disbursements of the 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 an ALTA Lender's policy of title insurance from a title insurance company approved by the Lender in a form reasonably acceptable to Lender;

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

D. Concurrently with the disbursement, Borrower shall acquire a fee interest in the Property;

E. Borrower has provided evidence of insurance satisfactory to Lender as set forth in Section 6.1 hereof.

3.2 **DISBURSEMENT OF LOAN PROCEEDS.** Disbursement of Loan proceeds shall not exceed One Hundred Eighty Thousand Dollars (\$180,000). Lender must approve all requests for payment prior to disbursement of Loan proceeds. Lender shall disburse Loan proceeds to the Escrow Holder to fund the acquisition of the Property.

**ARTICLE 4.
OPERATION**

4.1 **OPERATION OF PROJECT.** Borrower shall lease, operate and manage the Project after completion in full conformance with the terms of the Regulatory Agreement. Borrower shall agree to maintain and operate the Assisted Units so as to provide decent, safe, and sanitary housing. Any optional services provided must be available to all residents under the same terms and conditions.

4.2 **INCOME CERTIFICATION.** Borrower shall limit for the full term of the Regulatory Agreement the rental of Assisted Units to Very Low-Income Households according to the schedule contained in the Regulatory Agreement. The income levels and other qualifications of applicants for the Assisted Units shall be certified in accordance with standards, policies and procedures currently in place and as amended from time-to-time, pursuant to the federal Department of Housing and Urban Development's Section 8 rental assistance program as

established under the United States Housing Act of 1937. Notwithstanding the above, in the event that the County adopts income certification procedures (“New Certification Procedures”) and notifies Borrower of the New Certification Procedures, Borrower shall comply with the Certification Procedures. Certification shall take place within ninety (90) days of the household’s expected occupancy of one of the Assisted Units and at least annually thereafter.

4.3 AFFORDABILITY RESTRICTIONS. A total of six (6) Units in the Project shall be designated as Assisted Units. The Assisted Units must be occupied, or reserved for occupancy by, Very-Low Households.

4.4 MAXIMUM RENTAL CHARGES. For each Assisted Unit, the total charges to be paid by each Very Low Income Household for rent, utilities, and related services shall not exceed thirty percent (30%) of fifty percent (50%) of Median Income. Initial rents for each Assisted Unit shall be as set forth in the Regulatory Agreement. Annual rent increases shall be calculated by Lender based on the change in permissible rents published annually by HUD. For each Assisted Unit, Borrower shall annually certify each tenant household’s gross income and make any rent adjustment pursuant to the terms of the Regulatory Agreement. This Section 4.4 is not intended to prohibit the Borrower from receiving the "Fair Market Rent" in accordance with local reasonableness standards for an Assisted Unit in the event Borrower has received Section 8 rental assistance for the Assisted Unit.

4.5 CONFLICTS BETWEEN COVENANTS OR RESTRICTIONS AFFECTING THE PROPERTY. Any conflicts between the restrictive provisions contained in this Loan Agreement, Note, Deed of Trust, 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.

4.6 NONDISCRIMINATION. Borrower shall not discriminate or segregate in the rehabilitation, 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 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.

4.7 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 three (3) years after completion of the Project. 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 rehabilitation of the Project.

4.8 **AUDITS.** 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 this Loan.

4.9 **ENCUMBRANCE OF PROPERTY.** Except for the Community West Bank acquisition loan described in Section 2.8, 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.

4.10 **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, without the prior written consent of Lender.

4.11 **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.

4.12 **DAMAGE TO PROPERTY.** If any building 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 if Borrower reasonably determines that such restoration or repair is economically feasible. Such work or repair shall be commenced within one hundred eighty (180) 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. 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.

ARTICLE 5. INDEMNITY AND INSURANCE

5.1 LIABILITY INSURANCE. Borrower shall procure or cause to be procured, and maintain or cause to be maintained, throughout the term of the Loan, liability insurance, or alternatively shall establish a program of self-insurance, against risk or loss from public liability and property damage claims for personal injury, death or property damage occasioned by reason of the use and operation of the Property. Such insurance shall afford protection with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence with respect to bodily injury, death or property damage liability or such greater amount as may from time to time be recommended by the Lender's risk management officer or an independent insurance consultant retained by the Lender for that purpose, provided, however, that the Lender's obligation under this Section may be satisfied by self-insurance meeting the requirements of Section 5.5 below.

5.2 CASUALTY INSURANCE. Borrower shall procure or cause to be procured, and maintain or cause to be maintained, throughout the term of the Loan, insurance against loss or damage to any structure constituting any part of the Property by fire and lightning, with extended coverage and vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to the replacement cost (without deduction for depreciation) of all structures constituting any part of the Property, excluding the cost of excavations, of grading and filling and of the land, but in any event, shall be in an amount and in a form sufficient, in the event of total or partial loss, to enable the Borrower to restore the Property to the condition existing before such loss. The Borrower may, in its discretion, insure the Property under blanket insurance policies which insure not only the Property but also other properties as long as such blanket insurance policies comply with the requirements of this Loan Agreement. The Borrower may, at its election, with the prior written consent of Lender, provide for insurance pursuant to this Section partially or wholly by means of a self-insurance program meeting the requirements of Section 5.5 below. Such insurance may at any time include a deductible clause providing for a deductible not to exceed One Million Dollars (\$1,000,000) for all losses in any year.

5.3 INSURANCE PROCEEDS; FORMS OF POLICIES. All policies of insurance required by Sections 5.1 and 5.2 shall provide that all proceeds thereunder shall be payable to the Lender pursuant to a lender's loss payable endorsement substantially in a form approved by Lender.

Each insurance policy required hereunder shall require that the Lender be given thirty (30) days' notice of any intended cancellation thereof or reduction of the coverage provided thereby. The Borrower shall provide Lender with copies of such policies upon request.

The self-insurance program of the Borrower referred to in Sections 5.1 and 5.2 shall afford reasonable protection to the Borrower, the Corporation, its members, directors, officers, agents and employees and the Trustee, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by public entities in the State of California other than the Borrower. Before such other method or plan may be provided by the Borrower, there shall be filed with the Lender for Lender's review and approval, a certificate of an actuary, independent insurance consultant or other qualified person (who may, but need not

be, an employee of the Borrower), stating that, in the opinion of the signer, the substitute method or plan of protection is in accordance with the requirements of this Section and, when effective, would afford reasonable protection to the Borrower, and Lender against loss and damage from the hazards and risks covered thereby.

5.4 INSURANCE ADVANCES. In the event Borrower fails to maintain the full insurance coverage required by this Agreement, Lender, after at least seven (7) business days prior notice to Borrower, 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 Lender, 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 Borrower to Lender and shall be secured by the Deed of Trust.

5.5 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 except in the case of actual fraud or willful misconduct by such person.

5.6 INDEMNITY. Except for the gross negligence and willful misconduct of the Lender, Borrower undertakes and agrees to defend, indemnify, and hold harmless Lender from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the Borrower. Borrower shall pay within ten (10) business days upon Lender's demand any amounts owing under this indemnity. The duty of Borrower to indemnify includes the duty to defend Lender or, at Lender's choosing, to pay Lender's reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the Project or the Property. Borrower's duty to indemnify Lender shall survive the term of this Loan and the reconveyance of the Deed of Trust. Borrower's obligations under this indemnity shall not be construed to abrogate the nonrecourse nature of the Loan or to make Borrower personally liable for the repayment of the Loan.

ARTICLE 6. HAZARDOUS MATERIALS

6.1 CERTAIN COVENANTS AND AGREEMENTS. Following possession of the Property by the Borrower, the Borrower hereby covenants and agrees that:

A. The Borrower shall not knowingly permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Property in violation of any applicable law;

B. The Borrower shall keep and maintain the Project and each portion thereof in compliance with, and shall not cause or permit the Project or any portion thereof to be in violation of, any Hazardous Materials Laws;

C. Upon receiving actual knowledge of the same the Borrower shall within ten (10) days advise the Lender in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted or threatened against the Borrower or the Project pursuant to any applicable Hazardous Materials Laws; (ii) any and all claims made or threatened by any third party against the Borrower or the Project relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (i) and this clause (ii) are hereinafter referred to as "Hazardous Materials Claims"); (iii) the presence of any Hazardous Materials in, on or under the Property in such quantities which require reporting to a government agency; or (iv) the Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "borderzone property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.*, or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Project under any Hazardous Materials Laws. If the Lender reasonably determines that the Borrower is not adequately responding to a written directive or order from a regulatory body or court regarding a Hazardous Material Claim, the Lender shall have the right, upon ten (10) days' written notice to the Borrower, to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims and, if such claim could result in any liability or damage to the Lender, to have its reasonable attorney's fees in connection therewith paid by the Borrower.

As long as the Loan is outstanding, the Borrower shall not take, without the Lender's prior written consent, which shall not be unreasonably withheld or delayed, any remedial action in response to the presence of any Hazardous Materials on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

6.2 INDEMNITY. Without limiting the generality of the indemnification set forth in Section 5.6, the Borrower hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Lender) the Lender, the County of Santa Barbara, their board members, officers, employees and agents from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Borrower, its agents, employees, or contractors to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Project; (2) the presence in, on or under the Property of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Project; or (3) any activity carried on or undertaken on or off the Project, subsequent to the conveyance of the

Property to the Borrower, by the Borrower or any employees, agents, contractors or subcontractors of the Borrower at any time occupying or present on the Project, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Project (collectively "Indemnification Claims"). The foregoing indemnity shall further apply to any residual contamination on or under the Project, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials by the Borrower, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws.

6.3 NO LIMITATION. The Borrower hereby acknowledges and agrees that the Borrower's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 6.2 above, are in no way limited or otherwise affected by any information the Lender may have concerning the Project and/or the presence within the Project of any Hazardous Materials, whether the Lender obtained such information from the Borrower or from its own investigations.

6.4 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.

6.5 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.

6.6 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.

6.7 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.

ARTICLE 7. DEFAULT AND REMEDIES

7.1 **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 or (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;

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, 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;

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 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;

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.

7.2 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 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.

7.3 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. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete rehabilitation 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);

E. 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;

F. 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

G. 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 Deed of Trust in the Event of Default by Borrower.

ARTICLE 8. GENERAL PROVISIONS

8.1 **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 undertake the Project and to execute the Loan Documents, (3) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of Borrower, (4) that there has been no substantial adverse change in Borrower's financial condition since the date of application for this Loan such as judgment liens, tax liens, mechanic's liens, and bankruptcy, and (5) 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 this Loan.

8.2 **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.

8.3 **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 Loan Agreement 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 8.3(A) is followed.

B. The conflict of interest provisions of Section 8.3(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.

8.4 **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.

8.5 **PUBLICITY.** Any publicity produced by Borrower for the Project during the term of this Loan 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 reasonably cooperate with authorized staff and officials of Lender in any Lender-generated publicity or promotional activities undertaken with respect to the Project.

8.6 **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 this Loan specified in Section 2.5 above.

8.7 **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.

8.8 **STATUTORY REFERENCES.** All references in the Loan Documents or 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.

8.9 **TIME.** Time is of the essence in these Loan Documents.

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

8.11 **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
105 E Anapamu Street, Suite 105
Santa Barbara, CA 93101-2065
Attn: Housing and Community Development Director

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

BORROWER: Surf Development Company
815 W. Ocean Avenue
Lompoc, CA 93436
Attn: Executive Director

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

8.12 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.

8.13 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.

8.14 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.

8.15 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.

8.16 **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.

8.17 **FAIR MEANING.** This Loan Agreement shall be construed in accordance with its fair meaning, and not strictly for or against either party hereto.

8.18 **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.

8.19 **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.

8.20 **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.

SIGNATURES ON FOLLOWING PAGE

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

APPROVED AS TO FORM:

STEPHEN SHANE STARK
COUNTY COUNSEL

By: _____
Deputy County Counsel

LENDER:

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

By: _____
Brooks Firestone
Its: Chairman of the Board of Supervisors

ATTEST:

MICHAEL F. BROWN
Clerk of the Board of Supervisors

By _____
Deputy Clerk

BORROWER

SURF DEVELOPMENT COMPANY, a
California nonprofit public benefit
corporation

By: _____
Its: Executive Director
(signature must be notarized)

And
By: _____
Its: _____
(signature must be notarized)

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

By: _____

APPROVED AS TO FORM:

BOB GEIS
AUDITOR CONTROLLER

By: _____
Senior Financial Analyst

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B
PROJECT BUDGET

EXHIBIT C
DEED OF TRUST

EXHIBIT D
PROMISSORY NOTE

EXHIBIT E
REGULATORY AGREEMENT