

**LOAN AGREEMENT**  
**(\$1,642,234)**

Between

**County of Santa Barbara**

and

**Pescadero Lofts Isla Vista, LP**

**(Pescadero Lofts)**



HOME Investment Partnerships Program  
Catalog of Federal Domestic Assistance Number 14.239

**LOAN AGREEMENT  
(PESCADERO LOFTS)**

This agreement ("Loan Agreement") is made as of this \_\_\_ day of July, 2013, by and between the County of Santa Barbara, political subdivision of the State of California ("Lender"), and Pescadero Lofts Isla Vista, LP, a California Limited Partnership ("Borrower").

**RECITALS**

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

B. There is a need to provide housing and supportive services to homeless persons, as documented in the County's 2010-2015 Action Plan.

C. Borrower intends to construct a thirty three unit affordable rental housing project consisting of a 21,031 square foot structure on a .82 acre site located at 761 Camino Pescadero in the City of Goleta, California, as more particularly described in Exhibit A ("Property") to provide permanent housing targeted to homeless persons, including on-site supportive services ("Project"). The Project will consist of twenty six studio units, six 1-bedroom units and one 2-bedroom manager's unit.

D. Lender has been awarded 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. Borrower wishes to borrow from Lender and Lender wishes to extend to Borrower a loan of HOME funds in the total amount of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234) to pay for certain development costs ("HOME Loan"). The terms of the HOME Loan are set out in this Loan Agreement.

F. Pursuant to the FY 2012-2013 Annual Action Plan Substantial Amendment approved by the Board of Supervisors of the County of Santa Barbara ("Board") on June 18, 2013, HOME funding has been designated for the Project, and on July 2, 2013, the Board approved the HOME Loan and authorized the Chair of the Board to execute the Loan Agreement and related documents.

G. The Lender and Borrower reasonably expect that construction of the Project will commence within one year of execution of this Agreement.

H. Borrower will execute a document concurrently herewith restricting rents and tenant income titled HOME Regulatory Agreement and Declaration of Restrictive Covenants ("HOME Regulatory Agreement") affecting thirteen (13) of the thirty three (33) new affordable housing units that will be designated by Borrower as HOME-assisted units.

I. The HOME Loan will be evidenced by a promissory note in the amount of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234) executed by Borrower in favor of Lender, and the HOME Loan and promissory note will be 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 HOME 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 **“AFFIRMATIVE MARKETING”** means actions taken to provide information and otherwise attract eligible persons in the housing market area to the available housing that are not likely to apply without special outreach, without regard to race, color, national origin, sex, religion, familial status or disability, in conformance with 24 CFR 92.351.

1.2 **“ANNUAL FINANCIAL STATEMENT”** means the financial statement of Operating Expenses and Revenue, prepared at Borrower’s expense, by an independent certified accountant acceptable to Lender, which shall be provided as part of Borrower’s annual reporting to Lender, in conformance with Section 5.12 below.

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

1.4 **“BORROWER”** means Pescadero Lofts Isla Vista, LP, a California Limited Partnership, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

1.5 **“BUDGET”** means that budget for the construction of the Project attached hereto as Exhibit B, which is hereby incorporated into this Loan Agreement by this reference and which identifies the sources and uses of Project development costs and specifies the costs to be paid with HOME Loan proceeds in conformance with 24 CFR 92.206.

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

1.7 **“DEED OF TRUST”** means 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, which is attached hereto as Exhibit C and hereby incorporated into this Loan Agreement by this reference. The terms of the Deed of Trust are incorporated into this Loan Agreement.

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 **“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 upon project completion in conformance with 24 CFR 92.2 and 24 CFR 92.252(e).

1.10 **“HOME-ASSISTED UNIT”** means any of the thirteen (13) rental housing units on the Property designated by Borrower as units subject to the requirements of the HOME Regulatory Agreement (Exhibit E), which is attached hereto and hereby incorporated into this Loan Agreement by this reference.

1.11 **“HOME FUNDS”** means funds provided to Borrower by Lender pursuant to the terms of this Loan Agreement and as defined in 24 CFR 92.2.

1.12 **“HOME LOAN”** means the loan of HOME Funds in the amount of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234) as provided in this Loan Agreement to finance certain construction costs of the Project.

1.13 **“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 thirteen (13) HOME-Assisted Units in the Project.

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

1.15 **“INSURANCE REQUIREMENTS”** means the insurance coverages which must be in full force and effect during the term of this Loan Agreement, as specified in Exhibit F, which is attached hereto and hereby incorporated into this Loan Agreement by this reference.

1.16 **“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.

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

1.18 **“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.

1.19 **“NOTE”** means the promissory note executed by the Borrower in favor of Lender in the amount of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234), to evidence the HOME Loan as well as any amendments to, modifications of, or restatements of said promissory notes, substantially in the form attached hereto as Exhibit D, which is attached hereto and hereby incorporated into this Loan Agreement by this reference.

1.20 **“OPERATING EXPENSES”** means, 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 Loans. Operating Expenses may also include a deferred developer fee, however, the total amount of developer fees shall 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”** means the first day of April following recordation of a notice of completion issued for the Project and each April 1<sup>st</sup> thereafter until the HOME Loan is paid in full or forgiven.

1.22 **“PROJECT”** means the construction, operation and management of the Property and the improvements to be constructed thereon according to the terms of this Loan Agreement and as defined in 24 CFR 92.2.

1.23 **“PROPERTY”** means the property located at 761 Camino Pescadero in Isla Vista, California, as more particularly described in Exhibit A, which is attached hereto and hereby incorporated into this Loan Agreement by this reference.

1.24 **“QUALIFYING HOUSEHOLD”** means a household that qualifies as a Very Low-Income Household as defined in 24 CFR 92.2.

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

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

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

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

1.26 This paragraph is left intentionally blank.

1.27 **“RESIDUAL RECEIPTS”** means the excess of annual Revenue over annual Operating Expenses.

1.28 **“REVENUE”** means all income derived from the Project, including, but not limited to, rents from the units and income from laundry operations, vending machines, meeting space rental, storage, and parking.

1.29 **“SENIOR LOANS”** mean the Union Bank loans in first position, including a Four Million One Hundred Fifty Four Thousand Four Hundred Ninety Eight Dollar (\$4,154,498) construction loan and a One Million Five Hundred Twenty Six Thousand Two Hundred Thirteen Dollar (\$1,526,213)

permanent loan, which may be recorded in senior positions to the Deed of Trust securing the HOME Loan.

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

## **ARTICLE 2 TERMS OF THE HOME LOAN**

2.1 **HOME 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 HOME Loan shall be an amount not to exceed One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234) and shall be evidenced by the Note. In the event Lender is unable to secure HOME Funds for this Loan Agreement for any reason at any time during the course of construction, Lender shall not be obligated to make payments to Borrower until HOME Funds become available to Lender, and Borrower shall hold Lender harmless.

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. Interest is not compounding.

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 HOME 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 HOME Loan is repaid in full.

2.5 **TERM OF HOME LOAN.** The principal and interest of the HOME Loan shall be due and payable on the earlier of: (a) fifty five (55) years from the date of the Note evidencing the loan, or (b) the date the Property is sold or otherwise transferred, except, if Borrower is a limited partnership and the affordability covenants are maintained for the duration of the original loan period, for a transfer to the General Partner of the Borrower and the affordability covenants are maintained for the duration of the original loan period or, a Lender approved affiliate thereof and the affordability covenants are maintained for the duration of the original loan period, or (c) Borrower has failed to commence construction as set forth in Section 4.1 of this Loan Agreement, or (d) an event of default by Borrower, as defined below in Section 8.1, which has not been cured as provided for below in Section 8.2. In the event of default by Borrower, as defined below in Section 8.1, which has not been cured as provided for below in Section 8.2, the principal and all current and accrued interest shall be due and payable immediately. In any event, the principal and all current and accrued interest shall be due and payable no later than July 31, 2068.

2.6 **USE OF HOME FUNDS.** HOME Funds shall be used only for those certain construction costs specified in the Budget attached hereto as Exhibit B and shall only be disbursed in accordance with the provisions of Article 3. HOME Funds shall be utilized for costs related to residential uses only and shall not be utilized for costs related to commercial uses or any other nonresidential uses associated with the Project.

2.7 **SECURITY.** Borrower shall secure its obligation to repay the HOME 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 Loans. Upon closing, Borrower shall cause the recordation of the Deed of Trust, the HOME Regulatory Agreement, and the California Health and Safety Code Section 33334.3(f)(3)(B) Notice of Affordability attached hereto as Exhibit H with the Recorder for the County of Santa Barbara, and shall cause the delivery of conformed copies of the recorded documents to Borrower.

2.8 **REPAYMENT OF THE HOME LOAN.** All accrued interest and principal shall be due and payable in accordance with the terms set forth in Section 2.5.

No repayment is due under the HOME Loan until construction of the Project is complete. Payments shall commence on the first day of April following recordation of a notice of completion issued for the Project. Borrower shall make annual payments on the HOME 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. 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.

#### 2.8.1 Dispute Resolution

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

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

2.10 **ANNUAL OPERATING EXPENSES.** Thirty (30) days prior to the end of each calendar year, Borrower shall submit to Lender, for Lender's review and approval, a proposed operating budget for the Project, for the following calendar year. The proposed operating budget shall include scheduled payments to be made into operating and replacement reserve accounts. Actual Operating Expenses incurred by Borrower shall not exceed one hundred twenty percent (120%) of the amount approved by Lender in the approved operating budget without Lender's prior written consent.

2.11 **OPERATING AND REPLACEMENT RESERVE FUNDS.** Borrower shall fund a replacement reserve in the amount of not less than \$300 per unit per year and capitalize an operating reserve in an amount equal to three (3) months of estimated Operating Expenses and debt service under stabilized occupancy. Reserve balances shall be provided in the Annual Financial Statement submitted to Lender annually.

### **ARTICLE 3 HOME LOAN DISBURSEMENT**

3.1 **CONDITIONS PRECEDENT TO DISBURSEMENT.** Lender shall not be obligated to make any disbursements of HOME Funds or take any other action under the Loan Documents unless the following conditions precedent are satisfied prior to the disbursement of HOME Funds:

- A. Borrower has acquired title to the Property;
- B. There exists no Event of Default or any act, failure, omission or condition that with the giving of notice or passage of time would constitute an Event of Default;
- C. Borrower has executed and delivered to Lender all documents, instruments, and policies required under the Loan Documents, including but not limited to an ALTA Lender's policy of title insurance in the amount of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234), from a title insurance company approved by the Lender in a form reasonably acceptable to Lender;
- D. Borrower has provided to Lender certificates of insurance as specified in the insurance provisions set forth in Exhibit F;
- E. Borrower has secured all final permits, entitlements and approvals required by all permitting and regulatory authorities and jurisdictions;
- F. Borrower has complied with all reporting requirements set forth in this Loan Agreement; and

3.2 **DISBURSEMENT OF HOME FUNDS.** Lender shall provide HOME Funds to Borrower for construction costs incurred by Borrower and approved by Lender in accordance with the Budget (Exhibit B). HOME Funds shall only be disbursed after the construction costs which are to be paid have been incurred. Borrower may not request disbursement of HOME Funds until needed for payment of those certain construction costs as specified in the Budget (Exhibit B). Disbursement of HOME Funds shall not exceed a total of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234).

HOME Funds shall be disbursed through periodic payments based upon work completed, as evidenced by documentation supporting the completed work signed by the Project architect and verified by Lender. Borrower shall submit to County disbursement requests ("Written Disbursement Requests") in writing no more frequently than one time per month. Written Disbursement Requests shall include itemized invoices corresponding to the Budget (Exhibit B). Borrower shall also attach copies of receipts or other acceptable proof of payment by Borrower and that demonstrates date of payment. Borrower shall also attach copies of certified payroll reports current to within 21 calendar days of the date of the Written Disbursement Request documenting compliance with the Davis-Bacon Act, evidence of compliance with Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C., §§ 1701u et seq.) and 24 CFR Part 135 and evidence of compliance with the requirement to take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible pursuant to 24 CFR 85.36(e). Lender reserves the right to request additional documentation as necessary to comply with Federal, state and local regulations.

Written Disbursement Requests shall only be for items included in the Budget (Exhibit B). Changes in individual items comprising the Budget shall require the prior written request of Borrower and the written approval of Lender. However, Lender's obligations shall in no event exceed the amount specified above in Section 2.2. Any costs in excess of this amount that are necessary for the completion of the Project shall be the sole responsibility of Borrower.

Notwithstanding the above, as a special disbursement condition, Lender shall retain Ten Thousand Dollars (\$10,000) of HOME Funds 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.

#### **ARTICLE 4 DEVELOPMENT OF PROJECT**

4.1 **COMMENCEMENT OF CONSTRUCTION.** Borrower shall commence construction of the Project no later than 12 months from the execution of this Loan Agreement. Commencement of construction shall mean obtaining all final permits, entitlements and approvals required by all permitting and regulatory authorities and jurisdictions and commencing work on any task associated with a line item in the Budget (Exhibit B) at the Property that requires a permit, entitlement or approval. If Borrower fails to commence construction as set forth above, Lender may terminate this Loan Agreement pursuant to Article 8 below.

4.2 **COMPLETION OF CONSTRUCTION.** Borrower shall diligently pursue construction of the Project to completion, and shall complete construction of the Project no later than 18 months after commencement of construction. Borrower shall provide proof of completion as evidenced by the recording of a notice of completion and securing certificate(s) of occupancy.

4.3 **FINANCING.** Borrower shall promptly inform Lender in writing of any changes in the amount, terms, and/or sources of financing or funding for the Project.

4.4 **CONTRACTS AND SUBCONTRACTS.** All work and professional services for the Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California.

Unless otherwise approved by Lender, to ensure that all construction costs incurred are reasonable and appropriate, all contracts entered into for construction ("Construction Contract") shall be the result of either competitive or negotiated bids.

All costs incurred in development and operation of the Project shall be the responsibility and obligation solely of Borrower.

4.5 **INSPECTIONS.** Borrower shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the Project site by Lender and by public authorities during reasonable business hours for the purposes of determining compliance with this Loan Agreement. Copies of monthly construction inspection reports completed by Union Bank pursuant to their construction loan shall be provided to the County immediately upon completion of the construction inspection report throughout the course of construction.

4.6 **SITE SUPERVISION.** During the construction of the Project, Borrower shall maintain a full time site superintendent to supervise all construction work on the Property. The site superintendent shall be on-site during construction work hours.

4.7 **CONSTRUCTION RESPONSIBILITIES.** Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Project, including, but not limited to, the quality and suitability of the construction work described in the Budget (Exhibit B), the supervision of construction work, and the qualifications, financial condition, and performance of all contractors, subcontractors,

suppliers, consultants, and property managers. Any review or inspection undertaken by Lender with reference to the Project is solely for the purpose of determining whether Borrower is properly discharging its obligations to Lender, and should not be relied upon by Borrower or by any third parties as a warranty or representation by Lender as to the quality of the construction of the Project.

**4.8 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, including but not limited to 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 the Fair Housing Act (42 U.S.C. 3601-3620), implemented at 24 CFR Part 100, Subpart D. Within 30 days after Borrower has completed the construction of the Project, Borrower shall submit satisfactory documentation of compliance with these requirements, including, but not limited to, a certification from the Project architect documenting the number and type of accessible units and the accessibility features of those units.

**4.9 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 Project 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., the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X (42 U.S.C., § 4851), California O.S.H.A., California Health and Safety Code, and all other applicable Federal, state and County standards. Borrower shall incorporate or cause to be incorporated this provision in all contracts and subcontracts for work performed on the Project which involve the application of paint or removal of asbestos.

**4.10 QUALITY OF WORK AND PROPERTY STANDARDS.** Borrower shall construct the Project in conformance with, including, but not limited to:

- A. All applicable Federal, state and local statutes and regulations;
- B. All applicable Federal, state and local building codes and zoning ordinances;
- C. All permits, entitlements and approvals for the Project;
- D. International Energy Conservation Code and applicable Federal, state and local energy conservation codes; and
- E. Property standards at 24 CFR 92.251.

**4.11 MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the Property or a stop notice affecting the HOME Loan is served on Lender or any other lender or other third party in connection with the Project, Borrower shall, within sixty (60) days of such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to Lender a surety bond in sufficient form and amount, provide Lender with a lien-free endorsement or provide Lender with other assurance reasonably satisfactory to Lender that the claim of lien or stop notice will be paid or discharged.

If Borrower fails to discharge any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, Lender may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternatively, Lender may require Borrower to immediately deposit with Lender the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. Lender may use such deposit to satisfy any claim or lien that is adverse to or against Borrower.

Borrower shall record a valid notice of cessation or notice of completion upon cessation of construction work on the Project for a continuous period of 30 days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes Lender, but without any obligation on the part of Lender, to record any notices of completion or cessation of labor, or any other notice that Lender deems necessary or desirable to protect its interest in the Project and Property.

**4.12 COMPLIANCE WITH 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 CFR Part 92, and other implementing rules and regulations are incorporated herein by this reference. In the event of any conflict between this Loan Agreement and the HOME regulations, the HOME regulations shall govern.

The laws and regulations governing the use of the HOME Funds include (but are not limited to) the following:

A. 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 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. 3601-20) 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.

G. Prevailing Wages. Borrower shall comply, and cause all contractors and subcontractors to comply with (1) Davis-Bacon and Related Acts (40 U.S.C. 276(A)-7); (2) Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327-333); (3) Copeland Anti-Kickback Act (40 U.S.C. 276c); and (4) Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et. seq.).

H. 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. Borrower agrees to include the following language in all contracts and subcontracts executed under this Loan Agreement, as required pursuant to 24 CFR 135.38:

“A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract

that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).”

I. Minority and Women’s Business Enterprise. The requirements of Executive Orders 11625, 12432 and 12138 and 24 CFR 85.36(e) whereby Borrower shall take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible.

J. Conditions for Faith-Based Organizations. Borrower agrees to comply with HOME regulations pertaining to faith-based activities found at 24 CFR 92.257.

K. Debarred Contractors. All contractors, subcontractors, and consultants used by Borrower in the development of the Project shall not be debarred or otherwise prohibited from participation in a federal project pursuant to 2 CFR 2424. Borrower shall furnish Lender with evidence of compliance generated from the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov).

L. Anti-Lobbying. Borrower hereby certifies that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and (3) It will require that the language of the paragraph (M), immediately below, of this certification be included in the award documents for all awards and subawards at all tiers (including subcontracts, subgrants, contracts, and grants under grants, loans, and cooperative agreements) and that Borrower and all contractors and subcontractors shall certify and disclose accordingly.

M. Lobbying Certification. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

4.13 **RELOCATION.** If and to the extent that development 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, including but not limited to the Uniform Relocation and Real Property Acquisitions Act As Amended (“URA”), Section 104(d) of the Housing and Community Development Act of 1974, regulations at 24 CFR Part 42 and HUD Handbook 1378. 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. Without limiting

or otherwise affecting the standard indemnity and insurance provisions set forth in Article 6 and/or Exhibit F, 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.

**4.14 UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of this Loan Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this Loan Agreement which is caused by: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; quarantine restrictions; or freight embargoes or other events beyond the reasonable control of the party claiming the delay. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause, and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any unavoidable delay notwithstanding. Times of performance under this Loan Agreement may also be extended for any cause for any period of time by the mutual written agreement of Lender and Borrower.

## **ARTICLE 5 OPERATION**

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

Borrower shall agree to maintain and operate the HOME-Assisted Units so as to provide decent, safe, and sanitary housing and provide the HOME-Assisted Units with the same level of services (including security), amenities, and maintenance as are applied to the other dwelling units in the Project. 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 request material changes to the Management Plan as described in Section 5.2, below, and Exhibit G attached hereto and incorporated herein, operation of the Project and property management entity, in order to preserve the affordability, physical appearance and condition of the Project. Any changes not disapproved by Borrower within thirty (30) days after receipt of such changes shall be deemed approved.

**5.2 MANAGEMENT PLAN.** In the leasing and operation of the Project, Borrower shall comply with the Management Plan attached hereto as Exhibit G and incorporated herein. Any changes to the Management Plan require prior written approval from Lender.

**5.3 AFFIRMATIVE MARKETING PLAN.** In the marketing of the Project, Borrower shall comply with the affirmative marketing provisions of the Management Plan attached hereto as Exhibit G and incorporated herein. The Management Plan includes information on affirmative marketing efforts and compliance with fair housing laws. Any changes to the Management Plan require prior written approval from Lender. At a minimum the Project must meet the affirmative marketing requirements set forth in 24 CFR 92.351 and any modifications thereto.

**5.4 TENANT SELECTION.** In the selection of tenants, Borrower shall comply with the written tenant selection provisions of the Management Plan attached hereto as Exhibit G and incorporated herein. Tenant selection must, at a minimum, meet the requirements for tenant selection set out in 24

C.F.R. 92.253(d) and any modifications thereto. Any changes to the Management Plan require prior written approval from Lender.

Borrower shall rent the HOME-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 in the HOME Regulatory Agreement.

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

**5.6 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 thereto, and must be preceded by not less than 30 days written notice to the tenant by the Borrower specifying the grounds for the action. 30 days prior to leasing the HOME-Assisted Units in the Project, Borrower shall submit its proposed HOME rents and utility allowance schedule to Lender for review and approval. Within six (6) months of completion of construction as defined in Section 4.2, Borrower shall lease all thirteen (13) HOME-Assisted Units and provide Lender with detailed occupancy data and demographic information on the tenants of the HOME-Assisted Units.

**5.7 AFFORDABILITY RESTRICTIONS.** Thirteen (13) units in the Project shall be designated by Borrower as HOME-Assisted Units. All of the HOME-Assisted Units shall be occupied by Qualifying Households, as set forth in the HOME Regulatory Agreement and shall meet the following standards:

- A. The 13 HOME-Assisted Units shall be designated as "floating" units, so that the units that are designated as HOME-Assisted under the HOME Regulatory Agreement may change over time, as long as the total number of HOME-assisted Units in the Project remains constant and as long as the HOME-Assisted Units consist of no less than three (3) one-bedroom units and no more than ten (10) studio units.
- B. Generally reflect the average number of bedrooms per dwelling unit in the Project;
- C. Be similarly constructed and of comparable quality to all other units in the Project;
- D. Be dispersed throughout the Project; and
- E. Provide tenants access and enjoyment of all common areas and facilities of the Project on the same basis as tenants of other units.

**5.8 HOME-ASSISTED UNIT RENTS.** Rents for HOME-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 HOME 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 basis prohibited by law. Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination and equal opportunity in housing.

5.11 **RECORDS AND REPORTS.** Borrower shall be accountable to Lender for all HOME 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 for construction costs drawn from HOME Funds, and to keep all invoices, receipts, and other documents related to expenditures for construction costs for said HOME Funds for the duration of the Loan Agreement. Commencing on the first day of April following recordation of a notice of completion issued for the Project, Borrower shall submit reports annually to Lender with information regarding tenant income, rent and unit inspection information. Tenant income, rent, unit inspection information, and all records related to any revenue received by the Project must be kept until five years after the affordability period ends. Records must be kept accurate and current.

Borrower shall promptly comply with all requirements and 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.

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

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

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

Data on the initial lease-up of the thirteen (13) HOME-Assisted Units sufficient to close-out the Project in the federal Integrated Disbursement and Information System shall be submitted by Borrower to Lender within 10 days following the execution of the 13<sup>th</sup> lease for a HOME-Assisted Unit.

5.12 **AUDITS.** Borrower shall conduct annual audits in accordance with 24 CFR Part 44, and OMB Circular A-133 and submit to Lender an Annual Financial Statement. Borrower shall make available to Lender for examination at reasonable intervals and during normal business hours all books, accounts, reports, files, and other papers or property with respect to all matters covered by 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 HOME Loan.

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 submit a written request to Lender for an extension. Lender shall respond to extension

request within fifteen (15) days. Borrower shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

**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 PARTNERSHIP INTEREST.** Borrower has not made or created, and shall not make or permit any sale, assignment, conveyance, or other transfer of this Loan Agreement, including the sale or transfer of any general partnership interests, without the prior written consent of Lender. Notwithstanding the foregoing, if Borrower is a limited partnership and fails to perform any of its obligations, duties or covenants under any Loan Documents or a default by Borrower's general partner occurs pursuant to the terms of the agreement of limited partnership, the Borrower shall be entitled to remove Borrower's general partner and substitute a new general partner upon approval in writing by Lender. Such removal and substitution with Lender's written approval shall not constitute a default under the Loan Documents or cause the acceleration of the HOME Loan or entitle Lender to exercise its other remedies under the Loan Documents. Lender's approval of the installation of the substitute general partner shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary contained herein, a transfer of a limited partner interest as defined in the agreement of limited partnership shall not be deemed a transfer under this Loan Agreement.

**5.15 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.

**5.16 DAMAGE TO PROPERTY.** If any building or improvement erected by Borrower on the Property is damaged or destroyed by an insurable cause, Borrower shall, at its sole cost and expense, diligently undertake to repair or restore said buildings or 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 completed within one year thereafter, subject to any extensions of time granted pursuant to the provisions of Section 4.14. 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.

If Borrower determines that restoration or repair is not economically feasible, then Lender may declare an event of default pursuant to Section 8.1.G below. Upon request by Lender to repay principal and interest, Borrower shall apply insurance proceeds thereto.

5.17 **EQUAL EMPLOYMENT OPPORTUNITY.** Borrower and all contractors, subcontractors, and professional service providers for the Project shall comply with all requirements concerning equal employment opportunity. Borrower and all 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 the Section 3 clause of the HUD Act of 1968, 12 U.S.C.).

## **ARTICLE 6 INDEMNITY AND INSURANCE**

6.1 **INDEMNITY.** Borrower shall comply with the indemnification provisions set forth in Exhibit F “Standard Indemnification and Insurance Provisions” attached hereto and incorporated herein.

6.2 **INSURANCE.** Borrower shall comply with the insurance provisions set forth in Exhibit F “Standard Indemnification and Insurance Provisions” attached hereto and incorporated herein.

6.3 **NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No officials, employees and agents of Lender shall be personally liable to Borrower for any obligation created under the terms of these 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 “buffer zone property” under California Health and Safety Code Sections 25100, 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 Lender’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 “buffer zone property” under California Health and Safety Code Sections 25100, 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.** Without limiting or otherwise affecting the standard indemnity and insurance provisions set forth in Article 6 and/or Exhibit F, 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 HOME Funds for costs other than approved construction 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. Construction. (1) Borrower's substantial deviation from the budget specified in Exhibit B (Budget), without Lender's prior written consent; (2) Borrower's use of defective or

unauthorized materials or defective workmanship in constructing the Project; (3) Borrower's failure to commence or complete construction pursuant to Sections 4.1 and 4.2 herein; (4) the cessation of construction prior to completion of the Project for a period of more than twenty-one (21) consecutive calendar days without proper written approval from Lender; (5) Borrower's failure to remedy any deficiencies in recordkeeping or failure to provide records to Lender upon Lender's reasonable request; (6) Borrower's failure to substantially comply with any applicable federal, state, or local laws or Lender policies governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and women-owned business enterprises, disabled access, lead paint, Hazardous Materials, and provision or relocation benefits and assistance;

C. Operation. (1) Discrimination by Borrower on any basis 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;

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

E. 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;

F. 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;

G. 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 Project as required by the Loan Documents or if Borrower fails to maintain the Property pursuant to Section 5.1 above;

H. 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.

I. Program compliance. Any non-compliance with HOME Program requirements including, but not limited to, the provisions of Section 4.12 and the HOME Regulatory Agreement pursuant to the HOME Investment Partnerships Program Final Rule at 24 CFR Part 92, and 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 Event of Default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days from the date of 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 notice to cure. The Lender has the sole discretion to determine whatever additional reasonable time is needed to cure. Notwithstanding anything to the contrary contained in the Loan Documents, Lender hereby agrees that any cure of any default made or tendered by Borrower's Limited Partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

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

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

F. Order immediate stoppage of construction work and demand that any condition leading to the Event of Default be corrected before construction work may continue;

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

H. 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 HOME Loan or any advances made under the Loan Documents, as provided for by the Deed of Trust;

I. 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;

J. 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

K. 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 HOME 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 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 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 HOME 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 HOME Loan.

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: Deputy Director

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

**BORROWER:** Pescadero Lofts Isla Vista, LP  
917 W Ocean Avenue  
Lompoc, CA 93436  
Attn: Managing General Partner

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 HOME 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 voidable at the sole discretion of Lender.

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 the Borrower's 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, 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: Note
- E: HOME Regulatory Agreement
- F: Standard Indemnification and Insurance Provisions
- G: Management Plan
- H: Notice of Affordability

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

IN WITNESS WHEREOF, County and Pescadero Lofts Isla Vista, LP have caused this Agreement to be executed by their respective duly authorized officers.

**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: \_\_\_\_\_  
Salud Carbajal, Chair  
Board of Supervisors

**APPROVED AS TO ACCOUNTING  
FORM:**

ROBERT W. GEIS  
AUDITOR-CONTROLLER

**BORROWER:**

Pescadero Lofts Isla Vista LP,  
a California Limited Partnership

By: \_\_\_\_\_  
Gregory Eric Levin  
Advanced and Specialty Accounting

By: \_\_\_\_\_  
Name:  
Title:

AND

**APPROVED AS TO FORM**

DENNIS A. MARSHALL  
COUNTY COUNSEL

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Deputy County Counsel

**APPROVED AS TO FORM:  
RISK MANAGEMENT**

By: \_\_\_\_\_  
Ray Aromatorio, ARM, AIC  
Risk Manager

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

## EXHIBIT A

### LEGAL DESCRIPTION

#### Parcel One:

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

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

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

thence, West 303.96 feet;

thence North 140.50 feet to the true point of beginning.

#### Parcel Two:

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

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

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

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

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

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

APN: 075-020-005

**EXHIBIT B**  
**BUDGET**

Proprietary Information / Proprietary Information / Proprietary Information  
Exhibit B

Pescadero Lofts  
Isla Vista  
Units: 33  
SF: 21,000  
(Inc. Community Bldgs & Laundry)  
Davis Bacon Prevailing Wage

		ESTIMATE	HOME FUNDED	EQUITY / CONST. LOAN
	<b>01 GENERAL REQUIREMENTS</b>	\$ 111,880.00	\$ -	\$ 111,880.00
1000	SUPERVISION			
1100	EXPENSES			
1510	TEMP. POWER/PHONE			
1520	TEMP. TOILETS			
1521	TEMP. FENCE			
1590	FIELD OFFICE ( RENTAL)			
1591	MISC MATERIALS			
	<b>02 SITE WORK/GRADING</b>	\$ 202,883.00	\$ 202,883.00	
2011	OFF-SITE WORK			
2020	DEBRIS BOX/WASTE DISPOSAL			
2100	LABOR (1)			
2110	SITE SECURITY			
2150	EQUIPMENT RENTAL			
2180	DEMOLITION			
2184	CLEAR AND GRUB			
2200	EARTHWORK ON SITE			
2205	PAVING & BASE			
2210	CONSTRUCTION WATER			
2270	EROSION CONTROL			
2280	SWPPP MONITORING & REPORTS			
2580	LINE STRIPING/WHEEL STOPS			
2660	DOMESTIC WATER/FIRE			
2720	STORM DRAINAGE			
2730	SANITARY SEWER			
2780	DRY UTILITY DISTRIBUTION			
2900	LANDSCAPING			
	<b>03 CONCRETE</b>	\$ 143,495.00	\$ 143,495.00	
3050	PRETREAT			
3110	CONCRETE SLAB			
3210	CURB, GUTTER & WALK			
3330	TRASH ENCLOSURE CONC.			
3340	GYPCRETE			
	<b>04 MASONRY</b>	\$ 41,282.00	\$ 41,282.00	
4150	TRASH ENCLOSURES			
4160	RETAINING WALL			
4170	ALLAN BLOCK MEANDERING WALL			
	<b>05 METALS</b>	\$ 144,443.00	\$ 144,443.00	
5510	STAIRWAYS			
5520	STAIRWAY RAILING			
5531	W. I. PERIMETER FENCE			
5540	GATES FOR TRASH ENCL.			
5542	TUBE STEEL WINDOW AWNINGS			
5550	CARPORTS			
	<b>06 WOOD &amp; PLASTICS</b>	\$ 563,840.00	\$ 563,840.00	
6110	LUMBER			
6111	FRAMING HARDWARE			
6112	WET ANCHORS			
6113	PATIO DECKS			
6115	FRAMING LABOR			
6190	WOOD TRUSSES			
6200	FINISH CARPENTRY/INTERIOR			
6600	COUNTERTOPS (SOLID SURFACE)			
	<b>07 MOIST &amp; THERMAL</b>	\$ 247,396.00	\$ 247,396.00	
7200	INSULATION			
7300	ROOFING (CONC. FLAT TILE)			
7620	SHEET METAL & FLASHING			
7720	GUTTERS/DOWNSPOUTS (FULL WRAP)			
	<b>08 DOORS/WINDOWS</b>	\$ 55,968.00	\$ 55,968.00	
8000	DOORS			
8600	WINDOWS			
8710	HARDWARE			
	<b>09 FINISHES</b>	\$ 409,013.00	\$ 242,929.00	\$ 166,084.00
9200	STUCCO			

9210	CEMENTITIOUS PLANK SIDING				
9250	DRYWALL				
9310	CERAMIC TILE				
9510	ACOUSTICAL CEILING SYSTEM				
9680	FLOORING				
9790	DECK COATING				
9900	PAINTING				
9990	FINAL CLEANING				
	10 SPECIALTIES	\$	9,515.00		\$ 9,515.00
10430	SIGNAGE				
10522	FIRE EXTINGUISHERS				
10552	MAILBOXES				
10820	SHOWER CURTAIN ROD & MIRRORS				
	11 EQUIPMENT	\$	26,787.00		\$ 26,787.00
11025	KNOX BOX				
11452	APPLIANCES				
	12 FURNISHINGS	\$	180,850.00		\$ 180,850.00
12300	CABINETS (WOOD-THERMOFOIL)				
12510	WINDOW COVERINGS				
	13 SPECIAL CONSTRUCTION	\$	300,000.00		\$ 300,000.00
	SOLAR				
13100	BENCHES				
	15 MECHANICAL	\$	370,005.00		\$ 370,005.00
15300	FIRE SPRINKLERS				
15400	PLUMBING				
15500	H.V.A.C.				
	16 ELECTRICAL	\$	152,525.00		\$ 152,525.00
16000	ELECTRICAL				
16100	LIGHTING FIXTURE				
16520	SITE LIGHTING/INCL. POLES				
16710	SECURITY ALARM				
16721	FIRE ALARM PREWIRE				
16740	TELEPHONE PREWIRE				
16780	TELEVISION PREWIRE				
16800	TELEPHONE PUNCHDOWN				
	17 CONTINGENCY	\$	225,800.00		\$ 225,800.00
17000	CONTRACTOR CONTINGENCY				
	TOTAL HARD COSTS (W/O GEN REQS)	\$	3,073,800.00	\$ 1,642,234.00	\$ 1,431,566.00
17001	GENERAL REQUIREMENTS (DIV 1 ABOVE)	\$	111,880.00		\$ 111,880.00
17010	CONTRACTOR OVERHEAD	\$	92,503.00		\$ 92,503.00
17020	CONTRACTOR PROFIT	\$	123,337.00		\$ 123,337.00
17030	ESTIMATED BUILDERS RISK INSURANCE	\$	50,000.00		\$ 50,000.00
	Grand Total	\$	3,451,520.00	\$ 1,642,234.00	\$ 1,809,286.00

**EXHIBIT C**  
**DEED OF TRUST**

NO FEE DOCUMENT

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

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

NO FEE DOCUMENT PURSUANT TO  
CALIFORNIA GOVERNMENT CODE SECTION 27383

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**DEED OF TRUST,  
ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT ("Deed of Trust") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2013, by Pescadero Lofts Isla Vista, LP, a California Limited Partnership ("Trustor"), to Fidelity National Title, as trustee ("Trustee"), for the benefit of the County of Santa Barbara, a political subdivision of the State of California ("Beneficiary").

**GRANT IN TRUST**

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

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property; all buildings, structures, fixtures, improvements, signs, and landscaping now or hereafter erected or located on the Property, including all equipment and machinery used for supplying or distributing heating, cooling, electricity, gas, water, air, and light, all kitchen and laundry appliances such as washers, dryers, refrigerators, garbage disposals, ovens, ranges, dishwashers, all plumbing and bathroom fixtures, all security and access control equipment, fire prevention and extinguishment equipment, elevators, floor coverings, window coverings, panelling, cabinets, (provided, however, that Trustor shall have the right to remove, if necessary, such fixtures, furnishings, and equipment for the purpose of replacement with similar items of the same quality performing the same functions, which replacements shall themselves become part of this grant); all building material and

equipment either now or hereafter delivered to the Property and intended to be installed therein or any such material and equipment purchased in whole or in part with HOME Funds whether or not located on the Property; all reserves, accounts, deferred payments, and refunds relating to development on the Property; all Revenue, including rents and income generated by or derived from the Property or improvements thereon (subject however to the assignment of rents to Beneficiary contained herein); all leases, subleases, rental agreements and licenses covering the Property or any portion thereof now existing or hereafter entered into, and all interests of Trustor in security deposits, advance rentals, accounts, payments, and receivables of similar nature with respect to such leases, subleases, rental agreements and licenses; all easements and rights-of-way appurtenant to the Property, including parking and recreational easements, and all interests of Trustor in any land lying within the right-of-way of any streets, sidewalks, and areas of land adjacent to or used in connection with the Property; all development rights and credits, air rights, water rights, and oil, gas or mineral rights with respect to the Property; all claims or demands with respect to insurance proceeds, bonds, warranties, guarantees and sureties, and all awards made for a taking by eminent domain; all interests and rights in any private or government grants, subsidies, loans, or other financing with respect to development on the Property; all interests in personal property used in and about the Property (except furniture and other personal property of occupants of dwelling units on the Property); all intangible Property and rights relating to the Property or operations on the Property, including copyrights, patents, trade names, goodwill, trademarks, and service marks; all government permits, approvals, and map rights related to construction on the Property; all architectural, structural, and mechanical plans, specifications, designs, studies, and data with respect to construction or improvements on the Property; all environmental tests, studies and reports with respect to the Property; all current and future claims and rights of action of Trustor against prior owners and operators of the Property, neighboring property owners and operators, tenants and former tenants, consultants, advisors, and other third parties with respect to environmental or Hazardous Materials contamination and cleanup of the Property under any federal, state, or local ordinances, statutes, regulations, or administrative decisions or common law.

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

### **OBLIGATIONS SECURED**

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

A. Repayment of the indebtedness of Trustor to Beneficiary in the principal sum of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234) with interest thereon, evidenced by the promissory note executed by Trustor, in the amount of \$1,642,234 (the "Note"), on file at the offices of Beneficiary and hereby incorporated by reference into this Deed of Trust, or as much as has been disbursed to Trustor therewith; and

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

C. Payment of any sums advanced by Beneficiary following a breach of Trustor's obligation for payment of said sums, such as Trustor's obligation to pay fees, assessments, taxes, charges, and levies imposed by any public authority or utility company and/or Trustor's obligation to pay any sums payable under the Note and the expiration of any applicable cure period, with interest thereon as provided herein; and

D. Performance of every obligation, covenant or agreement of Trustor contained in this Deed of Trust, the Note, and the Loan Agreement executed between Trustor and Beneficiary on file at the offices of Beneficiary and hereby incorporated into this Deed of Trust by this reference (the "Loan Agreement"), and the HOME Regulatory Agreement executed between Trustor and Beneficiary of even date herewith (the "HOME Regulatory Agreement"), including all modifications, extensions and renewals of these obligations; and

E. Performance of any other obligation or repayment of any other indebtedness of Trustor to Beneficiary, where such evidence of obligation or indebtedness specifically recites that it is secured by this Deed of Trust; and

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

### **ABSOLUTE ASSIGNMENT OF RENTS AND RIGHT TO POSSESSION**

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

4. **ENFORCEMENT.** Upon the happening of an Event of Default which remains uncured after expiration of the applicable cure period pursuant to the terms of the Loan Agreement or other Loan Documents, Beneficiary may, in addition to other rights and remedies permitted by the Loan Agreement, this Deed of Trust, or applicable law: (a) enter upon, take possession of, and manage the Security, either in person as a mortgagee-in-possession, by agent, or by a receiver appointed by a court, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Security, (b) collect all Rents, including those past due and unpaid, and apply the same to pay for the Project Related Costs, costs and expenses of operation of the Security, including attorneys' fees, and pay off any indebtedness secured by this Deed of Trust, all in such order as Beneficiary may determine, (c) enter upon and

take possession of the Security, and complete construction of any improvements on the Security as provided for in the plans and specifications approved under the Loan Agreement or any modifications to the plans and specifications or the development of the Security that Beneficiary in its sole discretion believes is appropriate, and/or (d) Beneficiary may make, cancel, enforce, and modify leases and rental agreements, obtain and evict tenants, set and modify rent terms, sue for rents due, enter into, modify, or terminate any contracts or agreements, or take any legal action, as it deems necessary with respect to the Rents or to development or operation of the Security, subject to the rent restrictions imposed against the Property by the HOME Regulatory Agreement.

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

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

### **COMMERCIAL CODE SECURITY AGREEMENT**

**7. GRANT.** This Deed of Trust is intended to be a security agreement and financing statement pursuant to the California Commercial Code for any of the items specified above as part of the Security which under applicable law may be subject to a security interest pursuant to the California Commercial Code, and Trustor hereby grants Beneficiary a security interest in the Security. Beneficiary may file a copy of this Deed of Trust in the real estate records or other appropriate index as a financing statement for any of the items specified as part of the Security. Trustor shall execute and deliver to Beneficiary at Beneficiary's request any financing statements, as well as extensions, renewals, and amendments thereof, and copies of this instrument in such form as Beneficiary may require to perfect a security interest with respect to the Security. Trustor shall pay all costs of filing such financing statements and shall pay all reasonable costs of any record searches for financing statements and releases. Without the prior written consent of Beneficiary, Trustor shall not create or permit any other security interest in the Security. This Deed of Trust constitutes a fixture filing under Division 9 of the California Commercial Code.

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

### **RIGHTS AND OBLIGATIONS OF TRUSTOR**

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

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

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

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

13. **LIENS, ENCUMBRANCES, AND CHARGES.** Trustor shall discharge any lien or encumbrance not approved by Beneficiary in writing that may attain priority over this Deed of Trust, as provided for in the Loan Agreement.

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

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

**16. DAMAGE TO SECURITY.** Trustor shall give Beneficiary and Trustee prompt notice in writing of any damage to or destruction of the Security. If any Security is damaged or destroyed, Trustor shall, at its cost and expense, repair or restore said Security consistent with the original plans and specifications. Such work or repair shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Trustor shall make up the deficiency.

**17. TITLE.** Trustor warrants that Trustor lawfully has legal title to the Security without any limitation on the right to encumber other than those limitations set forth in the HOME Promissory Loan Document, Home Loan Agreement, Deed of Trust with Assignment of Rents and Security Agreement and HOME Regulatory Agreement approved by Beneficiary.

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

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

**20. INSURANCE.** Trustor shall provide such insurance as required under the Loan Documents. In the event Trustor fails to maintain the full insurance coverage required by this Deed of Trust and the Loan Documents, Beneficiary, after at least seven business days prior

notice to Trustor, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

**21. CONDEMNATION.** Subject to the rights of any senior lienholders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of taking all or any part of or interest in the Security under assertion of the power of eminent domain ("Condemnation Funds") are hereby assigned to and shall be paid to Beneficiary. Beneficiary is authorized (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as Beneficiary shall determine at its sole option. All or any part of the Funds so collected and recovered by Beneficiary may be released to Trustor upon such conditions as Beneficiary may impose in Beneficiary's sole discretion. Application of all or any part of the Funds collected and received by Beneficiary or the release thereof shall not cure or waive any Event of Default under this Deed of Trust or the Loan Documents.

Notwithstanding anything to the contrary set forth herein, Beneficiary shall, prior to the application of the Funds or any portion thereof to the indebtedness or other obligations, apply such portion of the Funds as is reasonable and necessary to repair and preserve the value, marketability and rentability of the Security. Trustor shall have the right to rebuild repair or restore the Security and to use all available Funds therefor, provided that (a) such Funds are sufficient to keep the all loans encumbering the Property in balance and rebuild repair or restore the Security in a manner that provides adequate security to Beneficiary for repayment of the HOME Loan or, if such Funds are insufficient or such security is inadequate, then Trustor shall have funded any deficiency and/or provided additional security; (b) Beneficiary shall have the right to approve plans and specifications for any rebuild, repair or restoration and the right to require that disbursement of insurance proceeds and Funds for rebuilding repairing or restoring be placed in a construction escrow or similar arrangement subject to Beneficiary's approval ; and (c) no Event of Default then exists under the Loan Documents other than any default which is a direct result of the condemnation.

**22. ACCELERATION ON TRANSFER OF SECURITY; ASSUMPTION.** In the event that Trustor, without the prior written consent of the Beneficiary, sells, transfers, or conveys, or agrees to sell, transfer or convey, its interest in the Security or any part thereof or interest therein, Beneficiary may at its option declare all sums secured by this Deed of Trust to be immediately due and payable. This option shall not apply in case of:

A. The grant of a leasehold interest to tenants who will occupy units in the Project as provided for under the Loan Agreement;

B. Sale or transfer of personal property pursuant to the grant provisions in this Deed of Trust. Consent to one sale or transfer shall not be deemed to be a waiver of the right to require such consent to future or successive transactions;

C. If Trustor is a partnership, removal of the general partner and substitution of a new general partner in accordance with the limited partnership agreement and upon Beneficiary's written approval;

D. If Trustor is a partnership, transfers of a limited partner's interests in accordance with the limited partnership agreement; or

E. If Trustor is a partnership, transfer to the General Partner of the Trustor or a Beneficiary-approved affiliate thereof.

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

### **DEFAULT AND REMEDIES**

**24. EVENTS OF DEFAULT.** Any of the events listed in the Loan Agreement as an Event of Default shall also constitute an Event of Default under this Deed of Trust.

**25. ACCELERATION OF MATURITY.** Upon the happening of an Event of Default which has not been cured within the time and in the manner provided in the Loan Agreement, Beneficiary may declare all sums advanced to Trustor under the Note and this Deed of Trust immediately due and payable.

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

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

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

C. Advance any amount necessary to cure any monetary Event of Default under this Deed of Trust, the Loan Agreement, or the Note;

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

E. Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold and exercise its power of sale as provided for below; and/or

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

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

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

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

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

**29. REMEDIES CUMULATIVE.** No right, power or remedy conferred upon or reserved to Beneficiary by this Deed of Trust is intended to be exclusive of any other rights, powers or remedies, but each such right, power and remedy shall be cumulative and concurrent

and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

### **GENERAL PROVISIONS**

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

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

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

33. **TIME.** Time is of the essence in this Deed of Trust.

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

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

**TRUSTOR:** Pescadero Lofts Isla Vista, LP  
917 W Ocean Avenue  
Lompoc, CA 93436  
Attn: Managing General Partner

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

36. **WAIVER.** Any waiver by Beneficiary of any obligation of Trustor in this Deed of Trust must be in writing. No waiver will be implied from any delay or failure by Beneficiary to take action on any breach or Event of Default of Trustor or to pursue any remedy allowed under the Deed of Trust, the Loan Documents or applicable law. Any extension of time granted to Trustor to perform any obligation under this Deed of Trust shall not operate as a waiver or release Trustor from any of its obligations under this Deed of Trust. Consent by Beneficiary to

any act or omission by Trustor shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's written consent to future waivers.

**37. AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Deed of Trust must be in writing, and shall be made only if mutually agreed upon by Beneficiary and Trustor.

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

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

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

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

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

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

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

TRUSTOR:

**Pescadero Lofts Isla Vista, LP,**  
a California Limited Partnership

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

[TRUSTOR'S SIGNATURE MUST BE ACKNOWLEDGED]

EXHIBIT A

Legal Description

(See Attached)

## **EXHIBIT D**

### **NOTE**

PROMISSORY NOTE  
(HOME Loan)

Santa Barbara, California

\$1,642,234

\_\_\_\_\_, 2013

FOR VALUE RECEIVED, Pescadero Lofts Isla Vista, LP, a California Limited Partnership ("Borrower"), whose address is 917 W Ocean Avenue, Lompoc, California, 93436, hereby promises to pay to the order of the County of Santa Barbara, a political subdivision of the State of California ("Lender"), whose address is 105 E. Anapamu Street, Room 105, Santa Barbara, California 93101, the principal amount equal to One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234), or so much thereof as may be advanced by Lender to Borrower, together with interest thereon, as set forth below.

1. **PURPOSE.** In order to assist Borrower in developing thirty three (33) units of affordable housing, Lender loaned the amount of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234) to Borrower, all of which is derived from funds received by the Lender from the United States Department of Housing and Urban Development through the HOME Investment Partnerships Program.

2. **BORROWER'S OBLIGATION.** This promissory note ("Note") evidences Borrower's obligation to pay Lender the principal amount of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234), (the "HOME Loan") for the HOME Funds loaned to Borrower by Lender for the specific uses designated in a loan agreement between Borrower and Lender dated July \_\_\_, 2013 (the "Loan Agreement").

3. **INTEREST.** Subject to Section 4, this Note shall bear simple interest at the rate of three percent (3%) per annum from the date of the Note. Interest is not compounding.

4. **DEFAULT INTEREST.** In the Event of Default by Borrower of any of its obligations under this Note or the Loan Documents, Borrower shall pay to Lender interest on the outstanding principal of this Note, at an annual rate equal to the lesser of (i) ten percent (10%) or (ii) the highest interest allowed by law, from the date of the Event of Default until the date that the Event of Default is cured or the HOME Loan is repaid in full.

5. **AMOUNT AND TIME OF PAYMENT.** The principal and interest of the HOME Loan shall be due and payable on the earlier of: (a) fifty-five (55) years from the date of the Note, or (b) the date the Property is sold or otherwise transferred, except, if Borrower is a limited partnership and the affordability covenants are maintained for the duration of the original loan period, for a transfer to the general partner of the Borrower and the affordability covenants are maintained for the duration of the original loan period or, a Lender approved affiliate thereof and the affordability covenants are maintained for the duration of the original loan period, or (c) Borrower has failed to commence construction as set forth in Section 4.1 of the Loan Agreement, or (d) an event of default by Borrower, as defined in Section 8.1 of the Loan Agreement, which has not been cured as provided for in Section 8.2 of the Loan Agreement. In the event of default

by Borrower, as defined in Section 8.1 of the Loan Agreement, which has not been cured as provided for in Section 8.2 of the Loan Agreement, the principal and all current and accrued interest shall be due and payable immediately. In any event, the principal and all current and accrued interest shall be due and payable no later than July 31, 2068.

**6. DEFINITIONS.** All initially capitalized terms in this Note shall have the definition ascribed to such terms in the Loan Agreement. The following terms are defined in the Loan Agreement and repeated here for convenience of reference:

- a. “Annual Financial Statement” means the financial statement of Operating Expenses and Revenue, prepared at the Borrower’s expense, by an independent certified accountant reasonably acceptable to Lender, which shall be provided as part of Borrower’s annual reporting to Lender.
- b. “Deed of Trust” means 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, which is attached hereto as Exhibit C and hereby incorporated into this Loan Agreement by this reference. The terms of the Deed of Trust are incorporated into this Loan Agreement.
- c. “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 thirteen (13) HOME-Assisted Units in the Project.
- d. “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.
- e. “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 Loans. Operating Expenses may also include a deferred developer fee, however, the total amount of developer fees shall not exceed 10% of the total development budget. The Operating Expenses shall be reported in the Annual Financial Statement.

- f. "Payment Date" means the first day of April following recordation of a notice of completion for the Project and each April 1<sup>st</sup> thereafter until the Loan is paid in full or forgiven.
- g. "Project" means the construction, operation and management of the Property and the improvements to be constructed thereon according to the terms of the Loan Agreement and as defined in 24 CFR 92.2.
- h. "Property" means the property located at 761 Camino Pescadero in Isla Vista, California.
- i. "Residual Receipts" shall mean the excess of annual Revenues over annual Operating Expenses.
- j. "Revenue" means all income derived from the Project, including but not limited to rents from the units and income from laundry operations, vending machines, meeting space rental, storage, and parking.
- k. "Senior Loans" shall mean the Union Bank loans in first position, including a Four Million One Hundred Fifty Four Thousand Four Hundred Ninety Eight Dollar (\$4,154,498) construction loan and a One Million Five Hundred Twenty Six Thousand Two Hundred Thirteen Dollar (\$1,526,213) permanent loan, which may be recorded in senior positions to the Deed of Trust securing the HOME Loan.

**7. PAYMENTS.** All accrued interest and principal shall be due and payable in accordance with the terms set forth in Section 5. No repayment is due under the HOME Loan during the construction of the Project. Payments shall commence on the first day of April following recordation of a notice of completion issued for the Project. Borrower shall make annual payments on the HOME 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.

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

**8. PLACE AND MANNER OF PAYMENT.** All amounts due and payable under this Note are payable at the office of Lender at the address set forth above, or at such other place as Lender may designate to Borrower in writing from time to time, in any coin or currency of the

United States which on the respective Payment Dates thereof shall be legal tender for the payment of public and private debts.

**9. DEFAULT AND ACCELERATION.** This Note is secured by a Deed of Trust. All covenants, conditions and agreements contained in the Deed of Trust and the Loan Agreement are hereby made a part of this Note. Borrower agrees that the principal and all current and accrued interest, shall, at the option of Lender, be immediately due and payable upon any event of default as defined in the Loan Agreement which has not been cured pursuant to that Loan Agreement, including without limitation the failure of Borrower to make any payment when due. Upon any event of default, Lender may exercise any other right or remedy permitted under this Note and the Loan Documents. Notwithstanding anything to the contrary contained in the Loan Documents, Lender hereby agrees that any cure of any event of default made or tendered by Borrower's limited partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

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

**11. NO OFFSET.** Borrower hereby waives any rights of offset it now has or may hereafter have against Lender, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this Note.

**12. WAIVERS.** All presentments, notices of dishonor, and protests are waived by all makers, sureties, guarantors, and endorsers of this Note, if any.

**13. CONSENTS AND APPROVALS.** Any consent or approval of Lender required under this Note shall not be unreasonably withheld or delayed.

**14. NOTICES.** Except as may be otherwise specifically provided herein, any approval, notice, direction, consent request or other action by Lender shall be in writing and may be communicated to Borrower at the principal office of Borrower set forth above, or at such other place or places as Borrower shall designate in writing, from time to time, for the receipt of communications from Lender. Copies of all notices which are sent to Borrower under the terms of the Loan Documents shall also be sent to Borrower's Managing General Partner at the address to be provided by Borrower.

**15. BINDING UPON SUCCESSORS.** All provisions of this Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of Borrower and Lender.

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

**17. SEVERABILITY.** Every provision of this Note is intended to be severable. If any provision of this Note shall be held invalid, illegal, or unenforceable by a court of competent

jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

18. **TIME.** Time is of the essence in this Note.

19. **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 the Borrower's 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.

20. **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Note must be in writing, and shall be made only if executed by both Borrower and Lender.

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

**BORROWER:**

**Pescadero Lofts Isla Vista, LP, a California Limited Partnership**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title

**EXHIBIT E**

**HOME REGULATORY AGREEMENT**

NO FEE DOCUMENT

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

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

NO FEE DOCUMENT PURSUANT TO  
CALIFORNIA GOVERNMENT CODE SECTION 27383

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**HOME REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

This HOME Regulatory Agreement and Declaration of Restrictive Covenants (this “Agreement”) is made as of this \_\_\_\_ day of July, 2013 by and between the County of Santa Barbara, a political subdivision of the State of California (the “Lender”), and Pescadero Lofts Isla Vista, LP, a California Limited Partnership, (the “Owner”).

**RECITALS**

A. The Owner owns a parcel of real property located at 761 Camino Pescadero, Isla Vista, California as more particularly described in Exhibit A (the “Property”) upon which the Owner intends to construct thirty three (33) units of permanent multi-family rental housing targeted to low and very-low income homeless persons (the “Project”).

B. The 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.

C. Owner has received a loan from Lender of HOME Funds in the amount of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234) to provide financing for the Project (the “HOME Loan”).

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

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

## **1. DEFINITIONS**

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

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

1.2 **“HOME-ASSISTED UNIT”** means any of the thirteen (13) Units on the Property designated by the Owner as units with restricted occupancy and rents pursuant to and subject to the requirements of this Agreement. A unit shall not be considered a HOME-Assisted Unit until the Unit has been constructed and made available for occupancy.

1.3 **“AREA MEDIAN INCOME”** means the area 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.

1.4 **“DEED OF TRUST”** means that certain deed of trust, assignment of rents, and security placed on the Property and the improvements to be constructed thereon as security for the HOME Loan with the Owner as trustor and the Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust.

1.5 **“PROJECT”** means the construction, operation and management of the Property and the improvements to be constructed thereon according to the terms of the Loan Agreement.

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

1.7 **“HOME LOAN”** means the Loan of HOME funds in the amount of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234) made by the Lender to the Owner to finance certain development costs of the Project pursuant to the Loan Agreement and the Note.

1.8 **“LOAN AGREEMENT”** is the Loan Agreement executed by and between the Owner and the Lender, setting forth the terms and conditions governing the HOME Loan.

1.9 **“LOAN DOCUMENTS”** are collectively the Loan Agreement, the Note evidencing the HOME Loan, the Deed of Trust securing the Note, and this Agreement as they

may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.11 **“NOTE”** means the promissory note executed by the Owner in favor of the Lender in the amount of One Million Six Hundred Forty Two Thousand Two Hundred Thirty Four Dollars (\$1,642,234), evidencing the HOME Loan, which is secured by the Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory note.

1.12 **“OWNER”** means Pescadero Lofts Isla Vista, LP, a California Limited Partnership.

1.13 **“PROPERTY”** means the real property located at 761 Camino Pescadero in Isla Vista, California, as more particularly described in Exhibit A attached hereto and incorporated herein, including the improvements constructed thereon pursuant to the Loan Agreement.

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

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

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

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

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

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

1.18 **“TERM”** means the fifty five (55) year term of this Agreement during which the HOME-Assisted Units must meet the affordability requirements imposed under the HOME Program, commencing with the date of the Note.

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

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

## **2. TERM AND COMPLIANCE**

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

**2.2 TERM OF AGREEMENT.** This Agreement shall commence upon execution and shall remain in full force and effect until fifty five (55) years following the date of the Note. The requirements of this Agreement shall apply throughout the Term without regard to the term of any loan or mortgage or any transfer of ownership of the Property.

**2.3 COMPLIANCE WITH PROGRAM REQUIREMENTS.** The Owner shall comply with all requirements imposed on projects assisted under the HOME Program in effect on the date the HOME Loan is executed by all parties, and as may be amended from time to time.

### **3. PROJECT OCCUPANCY AND RENTS**

**3.1 OCCUPANCY OF PROJECT.** A total of thirteen (13) Units in the Project shall be designated as HOME-Assisted Units. The HOME-Assisted Units must be occupied, or reserved for occupancy by, Qualifying Households.

**3.2 HOME-ASSISTED UNITS.** The Owner shall limit for the full Term of this Agreement the rental of thirteen (13) HOME-Assisted Units to Qualifying Households at Qualifying Rents that do not exceed the maximum rental charges for each HOME-Assisted Unit as set forth in Section 1.15 above. The thirteen (13) HOME-Assisted Units shall be designated as "floating" units, so that the Units that are designated as HOME-Assisted Units may change over time as long as the total number of HOME-Assisted Units in the Project remains constant, and as long as the HOME-Assisted Units consist of no less than three (3) one-bedroom units and no more than ten (10) studio units.

The thirteen (13) HOME-Assisted Units shall meet the following standards:

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

### **3.3 MAXIMUM RENTAL CHARGES.**

A. Maximum rental charges shall not exceed the Qualifying Rent as defined above in Section 1.15.

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

prior to any increase in Qualifying Rents, consistent with state law. Lender shall approve such request if the increased Qualifying Rents will comply with all applicable HOME Program requirements.

### **3.4 INCOME CERTIFICATION.**

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

A. Initial Annual Income Verification. Before the Qualifying Household occupies a HOME-Assisted Unit, the Owner shall verify that the Annual Income provided in an Annual Income certification is accurate by taking both of the following steps as a part of the verification process:

- (1) Third Party Verification: All third parties (e.g., employer, Social Security Administration, public assistance agency, etc.) are contacted to provide information to verify Annual Income. Written requests and responses are required; and
- (2) Review of Documents: The Qualifying Household provides documents verifying their Annual Income (e.g., pay stubs, tax returns, etc.). These documents must then be retained in the Project files.

B. Annual Income Recertification. At the time of lease renewal or pursuant to an annual schedule adopted by the Owner, and no later than the one-year anniversary of the initial Annual Income verification and annually thereafter, Owner shall recertify the Annual Income of each Tenant occupying a HOME-Assisted Unit using the method as described in Section 3.4.A, above.

### **3.5 INCREASES IN QUALIFYING HOUSEHOLD INCOMES.**

A. In the event that recertification of a previously-Qualifying Household's Annual Income indicates that the Annual Income exceeds the maximum designated for a Very Low-Income Household, the Owner may increase rents on such Unit as permitted by HUD. In such event, the Owner must rent the next available Unit ("Comparable Unit") to a Qualifying Household at no more than the Qualifying Rent allowed for such Qualifying Household pursuant to Section 3.3 A. When the Comparable Unit is rented to the next Qualifying Household then that Comparable Unit will become a HOME-Assisted Unit for the purposes of this Agreement including the Qualifying Rent restrictions provided herein. Upon such occurrence, the original Unit with the non-Qualifying Household will no longer be designated a HOME-Assisted Unit.

#### **4. LEASING THE PROJECT.**

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

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

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

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

1. *Agreement to be sued.* Agreement by the Tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;

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

3. *Excusing Owner from responsibility.* Agreement by the Tenant not to hold the Owner or the Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

4. *Waiver of notice.* Agreement of the Tenant that the Owner may institute a lawsuit without notice to the Tenant;

5. *Waiver of legal proceedings.* Agreement by the Tenant that the Owner may evict the Tenant or Qualifying Household members without instituting a civil court proceeding in which the Tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

6. *Waiver of a jury trial.* Agreement by the Tenant to waive any right to a trial by jury;

7. *Waiver of right to appeal court decision.* Agreement by the Tenant to waive the Tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

8. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the Tenant to pay attorney's fees or other legal costs even if the Tenant wins in a court proceeding by the Owner against the Tenant. The Tenant, however, may be obligated to pay costs if the Tenant loses.

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

4.2 **TENANT SELECTION.** Before leasing the Project, the Owner must provide Lender for its review and approval the Owner's written tenant selection plan.

4.3 **SECTION 8 CERTIFICATE HOLDERS.** The Owner will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Units by such prospective Tenants.

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

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

4.6 **MARKETING PLAN.** Prior to occupancy, Owner shall submit to the Lender for approval its plan for marketing the Units, including information on affirmative marketing efforts and compliance with fair housing laws and the Lender's affirmative fair marketing guidelines. Upon receipt of the marketing plan, the Lender shall promptly review the marketing plan and shall approve or disapprove it within thirty (30) days after submission. If the marketing plan is not approved, Lender shall specify its reasons for disapproval. The Owner shall submit a revised marketing plan within thirty (30) days of Lender's notice of disapproval. The Lender's disapproval of the revised marketing plan shall constitute an Event of Default under Sections 8.1.D, 8.1.E, and/or 8.1.I of the Loan Agreement.

## **5. PROPERTY MANAGEMENT**

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

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

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

**5.4 COMPLIANCE MONITORING.** The Owner shall operate the Property in full compliance with this Agreement and the HOME Program regulations at 24 CFR Part 92 in effect on the date the HOME Loan is executed by all parties, and as may be amended from time to time, and shall remain in compliance therewith throughout the Term of this Agreement. The Owner shall permit the Lender to conduct annual compliance monitoring, including performing on-site records review and inspections of the Property, as required by regulation or reasonably requested by Lender.

**5.5 ANNUAL REPORT.** The Owner shall submit to the Lender a report in a form approved by Lender for the preceding period of January 1st through December 31st, containing the information requested by Lender so as to allow the Lender to determine the Owner's compliance with this Agreement. The report shall be submitted annually no later than March 1<sup>st</sup>, and shall include, at a minimum: (i) an Annual Financial Statement as defined in Section 1.2 of the Loan Agreement, (ii) a report on the occupancy of the Project, (iii) a report on the physical condition of the Project, (iv) a report on the general management of the Project, (v) for each HOME-Assisted Unit, the rent, Annual Income, and household size of the household in occupancy. The report shall also state the date the tenancy commenced for each HOME-Assisted Unit and such other information as the Lender may be request.

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

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

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

**5.8 MAINTENANCE OF EXISTING STRUCTURES.** Owner shall maintain all buildings on the Property in good condition, in good repair and in a decent, safe, sanitary, habitable and tenantable condition. All Units in the Project must meet HUD housing quality standards set out in 24 CFR 882.109 throughout the Term of this Agreement. Owner shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitudes as they pertain to improvements, alterations, maintenance or demolition on the Property. Lender shall have no responsibility over maintenance of the Property.

## **6. GENERAL PROVISIONS**

**6.1 SUBORDINATION.** This Agreement shall be senior and not be subordinate to any deed of trust, note, agreement and/or to any other obligations of Lender concerning the Property and may be subordinated in priority only as to liens and encumbrances otherwise approved in writing by the Lender in its sole and absolute discretion.

**6.2 DEFAULT AND REMEDIES** In the event of any breach of any agreement or obligation under this Agreement by the Owner, the Lender shall provide written notice to the Owner of such breach. The Owner shall have an opportunity to cure such breach within thirty (30) days from the Owner's receipt of such written notice or such longer period of time as the Lender determines is necessary to cure the breach if the Owner diligently undertakes to cure such breach. If the Owner fails to perform a timely cure of the specified breach, the Lender may proceed with any or all of the following remedies upon the Owner's failure to cure:

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

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

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

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

**6.3 EVENT OF DEFAULT.** In the event that the Project fails to meet the HOME affordability requirements included in this Agreement for the Term of the Agreement, this shall constitute an Event of Default under Sections 8.1.D, 8.1.E, and/or 8.1.I of the Loan Agreement.

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

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

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

**6.7 AGREEMENT CONTROLS.** In the event that any provision of this Agreement and that contained in any other Loan Document conflict, the terms of this Agreement shall control.

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

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

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

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

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

**Owner:** Pescadero Lofts Isla Vista, LP  
917 W Ocean Avenue  
Lompoc, CA 93436  
Attn: Managing General Partner

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

reconveyance of the Deed of Trust, or any conveyance or transfer of the Property or portion thereof.

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

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

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

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

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

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

**APPROVED AS TO FORM:**  
DENNIS A. MARSHALL  
COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy County Counsel  
Deputy County Counsel

**APPROVED AS TO FORM**  
RISK MANAGEMENT

By: \_\_\_\_\_  
Ray Aromatorio  
Risk Manager

**APPROVED AS TO**

**ACCOUNTING FORM:**  
ROBERT W. GEIS  
AUDITOR-CONTROLLER

By: \_\_\_\_\_

**LENDER:**

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

By: \_\_\_\_\_  
Salud Carbajal  
Chair of the Board of Supervisors  
(Signature must be notarized)

**OWNER:**

Pescadero Lofts Isla Vista, LP, a California Limited Partnership

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

State of California  
County of Santa Barbara

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Exhibit A

Legal Description of the Property

**EXHIBIT F**

**STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS**

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

**INDEMNIFICATION**

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

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

**INSURANCE**

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

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all SUBRECIPIENT's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event SUBRECIPIENT is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if SUBRECIPIENT has no employees as defined in California Labor Code Section 3350 et seq. during the entire period of this Agreement and SUBRECIPIENT submits a written statement to the COUNTY stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of SUBRECIPIENT and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the SUBRECIPIENT in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and SUBRECIPIENT. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of SUBRECIPIENT pursuant to SUBRECIPIENT's activities hereunder. SUBRECIPIENT shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officials, officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be

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

less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

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

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

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

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

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

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

**EXHIBIT G**

**MANAGEMENT PLAN**

## **MANAGEMENT PLAN**

PROJECT: PESCADERO LOFTS, 761 Camino Pescadero, Isla Vista, CA 93117

OWNER: Pescadero Lofts Isla Vista, L.P.

MANAGING AGENT: Housing Authority of the County of Santa Barbara (“Agent”)

Management of Pescadero Lofts will be guided by consistent policies and procedures that serve to ensure the project's physical and fiscal integrity and soundness.

### **ON-SITE AND INDIRECT MANAGEMENT**

Indirect management will be provided out of Agent office in Goleta, California. These managerial services are more specifically detailed in this Management Plan.

Agent will also provide direct, on-site management by employing a management staff member who will reside on the property.

Management staff, including their duties and responsibilities, are identified and discussed in greater detail under the various sections of this plan. Management positions and project expense relationships are presented as part of the Project's Operating Budget.

Agent's Goleta Area Housing Manager and Area Maintenance Manager are responsible for making and carrying out the daily decisions necessary to provide the project with the management services identified in this plan.

Typical activities are as follows:

### **INITIAL RENT-UP AND CONTINUED OCCUPANCY**

- Marketing
- Publications, as required
- Tenant Screening and Selection
- Tenant Eligibility Certification and Recertification
- Tenant Orientation
- Rental Agreements
- Move-In and Move-Out Inspections

## **RENT COLLECTION**

- Rent Roll and Service Charge Collection Management
- Rent Delinquencies
- Security Deposit Collection and Refunds
- Eviction

## **MAINTENANCE**

- Routine repairs and replacements
- Non-Routine repairs and replacements
- Extraordinary Maintenance
- Property Betterments and Additions
- Preventive Maintenance

## **TENANT RELATIONS AND SERVICES**

- Tenant Services
- Tenant Grievances and Problems
- House Rules and Policies

*More detailed descriptions of the above-listed typical activities are as follows:*

### **AFFIRMATIVE MARKETING, TENANT SELECTION, RENT-UP AND OCCUPANCY**

Appropriate Agent staff will:

- 1) Determine and certify eligibility of all new residents, including screening, selection and orientation of residents and establishment of a waiting list in accordance with Agent's Affirmative Fair Housing Marketing Plan and appropriate eligibility criteria as established by Agent in compliance with local, State and Federal regulations. Tenant selection and assignment will be made based on the relevant sections in Agent's Statement of Policies.
- 2) Annually re-determine and certify eligibility and rent payments for all tenants, based on the relevant sections in Agent's Statement of Policies.
- 3) Conduct all move-in and move-out inspections.

### **RENT COLLECTION**

- 1) Agent will collect all rents and service charges. Residents may pay rent by mail or direct payment at Agent-designated locations. All rents will be due and payable on the first day of each month. Residents will have five days to make rent payments, after which time the Goleta Area Housing Manager will initiate appropriate delinquency procedures. As necessary, residents will be contacted in person regarding payment of delinquent accounts. A \$10.00 late charge will be assessed for delinquent rents and a \$25.00 charge or current bank charge (whichever is higher) for returned checks.
- 2) Agent will collect and disburse resident security deposits in accordance with current procedures.

### **MAINTENANCE**

Maintenance employees will perform all property maintenance. Maintenance personnel will schedule time on a weekly basis to perform maintenance as required. The Goleta Area Maintenance Manager is responsible for the following maintenance-related activities:

- 1) Recommending personnel administration actions relating to Maintenance employees.
- 2) Supervision and training of Maintenance employees.
- 3) Monitoring of service order requests for efficient and timely processing.

Availability and response to emergency maintenance requests are routine duties of maintenance employees. However, in those instances where extraordinary repairs are required or when maintenance employees are unavailable, Agent will execute "stand-by" contracts with licensed contractors for completion of such repairs. Agent will follow its procurement policies and procedures in contracting for such work.

### **TENANT RELATIONS AND SERVICES**

Agent will maintain good-faith communication with the tenants so that problems may be avoided or solved on the basis of mutual self-interest. Grievances will be heard in accordance with Agent's established grievance procedures for its public housing program. Agent will counsel tenants and make referrals to available community social service agencies in cases of financial hardship or under similar circumstances to avoid involuntary termination of tenancies.

## **AFFIRMATIVE FAIR MARKETING HOUSING PLAN**

As a Public Housing Agency, Agent is acutely aware of the need to Affirmatively Fair Market the project's units. Agent will make outreach efforts through various community organizations and newspapers. Statistical reports will be reviewed on a regular basis to target outreach to specific groups where representation is weakest.

An Outreach Program will be maintained to ensure that public notices and other information about the availability and nature of the housing will reach qualified individuals with handicaps, and organizations serving such individuals. The outreach will include, but not be limited to:

- The advertisement of the availability of accessible units in local newspapers;
- Regular notices to organizations serving handicapped individuals;
- Public posting of information about the availability of accessible units;
- Individual counseling to assist applicants being placed in suitable, accessible units; and
- All advertisements, brochures, etc., will feature Equal Opportunity and Fair Housing logos and information.

## **GENERAL ADMINISTRATION AND MANAGEMENT**

Agent has various standard operating procedures and policies in place that it follows in the normal course of all its business operations. Where relevant and appropriate, these procedures and policies will be followed in the general administration and management of project operations.

**EXHIBIT H**

**NOTICE OF AFFORDABILITY**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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

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APN(s):075-020-005

**NOTICE OF AFFORDABILITY RESTRICTIONS ON  
TRANSFER OF PROPERTY**

This Notice of Affordability Restrictions on Transfer of Property ("Notice"), dated as of September \_\_\_\_\_, 2013 provides notice that the real property located generally at 761 Camino Pescadero in Isla Vista, Santa Barbara County, California, and more particularly described in Exhibit A (the "Property") is subject to certain affordability and use restrictions ("Restrictions") which are contained in that certain Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement") by and between the Redevelopment Agency of the County of Santa Barbara, a public body corporate and politic ("Agency"), and Pscadero Lofts Isal Vista, L.P., a California limited partnership ("Borrower") and recorded in the Official Records of Santa Barbara County on \_\_\_\_\_, 2013 as Instrument Number 2013 - \_\_\_\_\_.

The Regulatory Agreement limits the rent that may be charged for each of the twenty units in the Property ("Units") to not more than thirty percent (30%) of sixty percent (60%) of the median income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area with adjustments for household size, as determined by the United States Department of Housing and Urban Development ("Area Median Income"). The Regulatory Agreement also requires each Unit to be occupied by a household whose annual income does not exceed sixty percent (60%) of the Area Median Income. For a complete understanding of all of the terms of the Restictions please review the Regulatory Agreement.

Pursuant to Health and Safety Code Section 33334.3(f)(2)(B) the following additional information is provided regarding the Regulatory Agreement.

- A. Date of Expiration of the Restrictions: September \_\_\_\_ 2068
- B. Property Address: 761 Camino Pescadero in Isla Vista, California
- C. The Assessor's Parcel Number(s) 075-020-005
- D. Legal Description of Property: see Exhibit A

IN WITNESS WHEREOF, this Notice is executed by Borrower as of the date first written above.

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

By: Surf Affordable Housing Enterprises,  
Inc., a California, its general partner

By: \_\_\_\_\_  
Raymond Down, President

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

By: \_\_\_\_\_  
Raymond Down, President

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

By: \_\_\_\_\_  
Frederick C. Lamont,  
Executive Director

State of \_\_\_\_\_ )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 200\_\_, before me \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_ (Seal)

State of \_\_\_\_\_ )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 200\_\_, before me \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_ (Seal)

EXHIBIT A  
Property Description