

**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

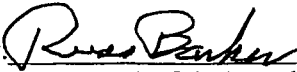
- A: Property Description
- B: Budget
- C: Deed of Trust
- D: Note
- E: HOME Regulatory Agreement
- F: Standard Indemnification and Insurance Provisions
- G: Management Plan
- H: Notice of Affordability

*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.

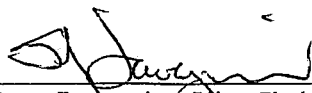
**ATTEST:**

CHANDRA L. WALLAR  
Clerk of the Board

By:   
Deputy Clerk of the Board

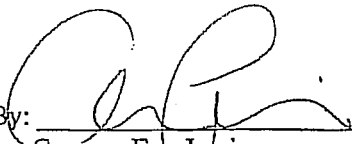
**COUNTY:**

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

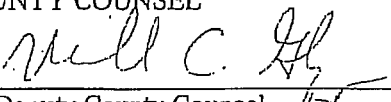
By:   
Steve Lavagnino, Vice Chair  
Board of Supervisors

**APPROVED AS TO ACCOUNTING  
FORM:**

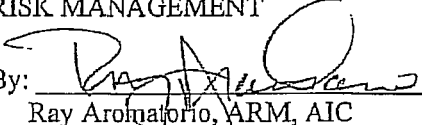
ROBERT W. GEIS  
AUDITOR-CONTROLLER

By:   
Gregory Eric Levin  
Advanced Audit Controller Accounting  
Deputy  
Gregory Eric Levin  
Advanced and Specialty Accounting

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

By:   
Deputy County Counsel

**APPROVED AS TO FORM:  
RISK MANAGEMENT**

By:   
Ray Aromatorio, ARM, AIC  
Risk Manager

**BORROWER:**

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

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

By: \_\_\_\_\_  
Alfred Holzeu  
President

**AND**

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

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

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: \_\_\_\_\_  
Steve Lavagnino, Vice Chair  
Board of Supervisors

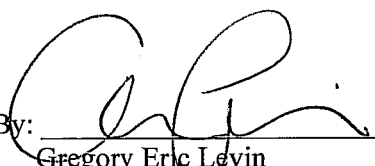
**APPROVED AS TO ACCOUNTING  
FORM:**

ROBERT W. GEIS  
AUDITOR-CONTROLLER

**BORROWER:**

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

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

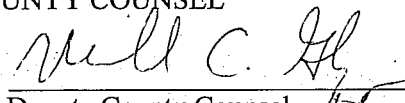
By:   
\_\_\_\_\_  
Gregory Eric Levin  
~~Deputy Auditor-Controller~~  
Deputy Auditor-Controller  
Advanced and Specialty Accounting

By: \_\_\_\_\_  
Alfred Holzeu  
President

AND

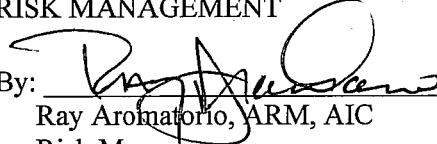
By: Housing Authority of the County of Santa Barbara,  
a public body, corporate and politic, its  
administrative general partner

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

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

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

**APPROVED AS TO FORM:**  
RISK MANAGEMENT

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

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

By: \_\_\_\_\_  
Deputy Clerk of the Board

**COUNTY:**

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

By: \_\_\_\_\_  
Steve Lavagnino, Vice Chair  
Board of Supervisors

**APPROVED AS TO ACCOUNTING  
FORM:**

ROBERT W. GEIS  
AUDITOR-CONTROLLER

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

**BORROWER:**

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a California Limited Partnership

By: Surf Development Company, a California nonprofit  
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By: \_\_\_\_\_  
Alfred Holzer  
President

AND

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

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

**APPROVED AS TO FORM**

DENNIS A. MARSHALL  
COUNTY COUNSEL

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

**APPROVED AS TO FORM:  
RISK MANAGEMENT**

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