

**LOAN AGREEMENT  
(\$2,410,379.91)**

Between

**County of Santa Barbara  
Department of Behavioral Wellness**

and

**The Residences at Depot Street, L.P.**

**(201 & 205 N. Depot Street)**



Mental Health Services Act Housing Program

**LOAN AGREEMENT**  
**(201 & 205 N. DEPOT STREET)**

This Loan Agreement (“Agreement”) is made as of this \_\_\_ day of August, 2018, by and between the County of Santa Barbara, political subdivision of the State of California, through its Department of Behavioral Wellness (“County”), and The Residences at Depot Street, L.P., a California limited partnership (“Borrower”).

**RECITALS**

A. County has elected to administer Mental Health Services Act (“MHSA”) Housing Program funds, as permitted under the Mental Health and Substance Use Disorder Services Information Notice No. 16-025, to be used to provide housing assistance to eligible County clients in accordance with Welfare and Institutions Code sections 5600.3 and 5892.5. Borrower will receive these funds through mortgage financing under the terms identified herein.

B. Borrower intends to construct an eighty (80) unit affordable rental housing project located at 201 & 205 N. Depot Street in the City of Santa Maria, California, as more particularly described in Exhibit A (“Property”), including on-site supportive services and thirty-five (35) housing units set-aside for County designated MHSA eligible Transition-Age Youth and Adults/Older Adults who meet the criteria for the MHSA Housing Program target population, as defined by Welfare and Institutions Code sections 5600.3 (“**Target Population**”).

C. County 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 the Target Population.

D. There is a need to provide housing and supportive services to the Target Population, as documented in the County’s 2018-2019 MHSA Plan.

E. Borrower wishes to borrow from County and County wishes to extend to Borrower a loan of MHSA Housing Program funds in the total amount of Two Million Four Hundred Ten Thousand Three Hundred Seventy-Nine Dollars and Ninety-One Cents (\$2,410,379.91) to pay for certain development costs (“**MHSA Loan**”). The terms of the MHSA Loan are set out in this Agreement.

F. Pursuant to the County’s MHSA Housing Program, funding has been designated for the Project, and Board of Supervisors approves the MHSA Loan and authorizes the Chair of the Board to execute this Agreement and related documents.

G. The County 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 “County of Santa Barbara Department of Behavioral Wellness, MHSA Regulatory Agreement (Mental Health Services Act Housing Program)” (“**MHSA Regulatory Agreement**”) affecting thirty-five (35) of the eighty (80) new affordable housing units that will be designated by Borrower as MHSA Housing Units.

I. The MHSA Loan will be evidenced by a promissory note in the amount of Two Million Four Hundred Ten Thousand Three Hundred Seventy-Nine Dollars and Ninety-One Cents (\$2,410,379.91) executed by Borrower in favor of County, and the MHSA 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 MHSA Loan, Borrower and County hereby agree as follows:

## ARTICLE 1 DEFINITIONS

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

1.1 “**AGREEMENT**” means this Agreement entered into between County and Borrower.

1.2 “**ANNUAL AUDIT**” means the financial statement of Operating Expenses and Revenue, prepared at Borrower’s expense, by an independent certified accountant acceptable to County, which shall be provided as part of Borrower’s annual reporting to County, in conformance with Section 9.3 below.

1.3 “**BORROWER**” means The Residences at Depot Street, L.P., a California Limited Partnership, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

1.4 “**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.

1.5 “**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 MHSA Loan by Borrower as trustor with County as beneficiary, as well as any amendments to, modifications of, and restatements of said Deed of Trust, which is attached hereto as Exhibit B and hereby incorporated into this Agreement by this reference. The terms of the Deed of Trust are incorporated into this Agreement.

1.6 “**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.

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

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

1.9 “**MHSA FUNDS**” means funds provided to Borrower by County pursuant to the terms of this Agreement and Welfare and Institutions Code section 5892.5.

1.10 “**MHSA HOUSING UNIT**” means any of the thirty-five (35) rental housing units in the Project designated by Borrower as units subject to the requirements of the MHSA Regulatory Agreement (Exhibit D), which is attached hereto and hereby incorporated into this Agreement by this reference.

1.11 “**MHSA LOAN**” means the loan of MHSA Funds in the amount of Two Million Four Hundred Ten Thousand Three Hundred Seventy-Nine Dollars and Ninety-One Cents (\$2,410,379.91) as provided in this Agreement to finance certain construction costs of the Project.

1.12 “**MHSA REGULATORY AGREEMENT**” means the agreement executed by Borrower and County, attached as Exhibit D, and recorded against the Property which regulates the use of the thirty-five (35) MHSA Housing Units in the Project.

1.13 “**NOTE**” means the promissory note executed by the Borrower in favor of County in the amount of Two Million Four Hundred Ten Thousand Three Hundred Seventy-Nine Dollars and Ninety-One Cents (\$2,410,379.91), to evidence the MHSA Loan as well as any amendments to, modifications of, or restatements of said promissory notes, substantially in the form attached hereto as Exhibit C, which is attached hereto and hereby incorporated into this Agreement by this reference.

1.14 “**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 County, cash deposited into an operating reserve in an amount not to exceed the amount reasonably required by any County, 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. The Operating Expenses shall be reported in the Annual Audit.

1.15 Intentionally left blank.

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

1.17 “**PROPERTY**” means the property located at 201 & 205 N. Depot Street in Santa Maria, California, as more particularly described in Exhibit A, which is attached hereto and hereby incorporated into this Agreement by this reference.

1.18 “**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.

1.19 **“SENIOR LOANS”** mean (i) certain construction loan to be made by Wells Fargo Bank, N.A. in the approximate original principal amount of Twenty-One Million Eight Hundred Eleven Thousand One Hundred Six Dollars (\$21,811,106), which will convert to a permanent loan in the approximate amount of Eleven Million Nine Hundred Thousand Dollars (\$11,900,000); (ii) that certain permanent loan to be made by the County of Santa Barbara (Home Loan) in the approximate original principal amount of Three Million One Hundred Seventy Three Thousand Four Hundred Thirty Seven Dollars (\$3,173,437.00); (iii) that certain permanent seller loan made by the Housing Authority of the County of Santa Barbara to Borrower in the approximate original amount of One Million Dollars (\$1,000,000.00); (iv) that certain permanent gap loan made by the Housing Authority of the County of Santa Barbara to Borrower in the approximate original amount of One Million One Hundred Fifty Thousand Dollars (\$1,150,000.00); and (v) any other financing to be made to the Borrower in accordance with Section 9.21 of this Loan Agreement, which financing shall be senior in priority to the Loan.

**ARTICLE 2 TERMS OF THE MHSA LOAN**

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

2.2 **AMOUNT.** The principal amount of the MHSA Loan shall be an amount not to exceed Two Million Four Hundred Ten Thousand Three Hundred Seventy-Nine Dollars and Ninety-One Cents (\$2,410,379.91) and shall be evidenced by the Note. In the event County is unable to secure MHSA Funds for this Agreement for any reason at any time during the course of construction, County shall not be obligated to make payments to Borrower until MHSA Funds become available to County, and Borrower shall hold County 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 Agreement and expiration of applicable cure periods, Borrower shall pay to County interest on the outstanding principal of the MHSA 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 MHSA Loan is repaid in full. The default interest shall be paid monthly and is due to the County on the first day of each month.

2.5 **TERM OF MHSA LOAN.** The principal and interest of the MHSA 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 or a County approved affiliate thereof or (c) Borrower has failed to commence construction as set forth in Section 4.1 of this 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.

2.6 **USE OF MHSA FUNDS.** MHSA Funds shall be used only to provide “housing assistance” to the Target Population as that term is defined in Welfare and Institutions Code section 5892.5(a)(2).

2.7 **SECURITY.** Borrower shall secure its obligation to repay the MHSA Loan by executing a Deed of Trust, in substantially the form attached hereto as Exhibit B 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, and the MHSA Regulatory Agreement with the Recorder for the County of Santa Barbara, and shall cause the delivery of conformed copies of the recorded documents to Borrower and County.

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

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

**ARTICLE 3 MHSA LOAN DISBURSEMENT**

3.1 **CONDITIONS PRECEDENT TO DISBURSEMENT.** County shall not be obligated to make any disbursements of MHSA Funds or take any other action under the Loan Documents unless the following conditions precedent are satisfied prior to the disbursement of MHSA 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 County all documents, instruments, and policies required under the County Loan Documents; and
- D. Borrower has secured all final permits, entitlements and approvals required by all permitting and regulatory authorities and jurisdictions.

3.2 **DISBURSEMENT OF MHSA FUNDS.** Upon satisfying the conditions precedent to disbursement, County shall disburse the Loan proceeds to Borrower. Disbursement of Loan proceeds shall not exceed Two Million Four Hundred Ten Thousand Three Hundred Seventy-Nine Dollars and Ninety-One Cents (\$2,410,379.91).

**ARTICLE 4 DEVELOPMENT OF PROJECT**

4.1 **COMMENCEMENT OF CONSTRUCTION.** Borrower shall commence construction of the Project no later than twelve (12) months from the execution of this 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 at the Property that requires a permit, entitlement or approval. If Borrower fails to commence construction as set forth above, County may terminate this Agreement pursuant to Article 8 below.

4.2 **COMPLETION OF CONSTRUCTION.** Borrower shall diligently pursue construction of the Project to completion. 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 County 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 County, 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 County and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement. Copies of monthly construction inspection reports completed by Wells Fargo 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, 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 County with reference to the Project is solely for the purpose of determining whether Borrower is properly discharging its obligations to County, and should not be relied upon by Borrower or by any third parties as a warranty or representation by County 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 to County Department of Behavioral Wellness 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 **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; and
- D. International Energy Conservation Code and applicable Federal, state and local energy conservation codes.

4.10 **MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the Property or a stop notice affecting the MHSA Loan is served on County or any other County 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 County a surety bond in sufficient form and amount, provide County with a lien-free endorsement or provide County with other assurance reasonably satisfactory to County 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, County may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternatively, County may require Borrower to immediately deposit with County the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. County 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 County, but without any obligation on the part of County, to record any notices of completion or cessation of labor, or any other notice that County deems necessary or desirable to protect its interest in the Project and Property.

4.11 **COMPLIANCE WITH MHSA.** All requirements imposed on properties assisted under the MHSA as contained in Division 5 of the Welfare and Institutions Code, and other implementing rules and regulations are incorporated herein by this reference. In the event of any conflict between this Agreement and the MHSA, the MHSA shall govern.

4.12 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this 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 Agreement may also be extended for any cause for any period of time by the mutual written agreement of County 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 MHSA Regulatory Agreement. Borrower shall agree to maintain and operate the MHSA Housing Units so as to provide decent, safe, and sanitary housing and provide the MHSA Housing 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.

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

**5.3 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.

**5.4 ENCUMBRANCE OF PROPERTY.** Except as otherwise provided in this 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 County. Borrower shall notify County 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.

**5.5 SUBORDINATION.** County shall subordinate the obligations of this Agreement and the Deed of Trust to be recorded on the Property to the Senior Loans and any regulatory agreement required by the State of California. Borrower and County shall cooperate in the execution of any such subordination agreement required to perfect such subordinations.

**5.6 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 Agreement, including the sale or transfer of any general partnership interests, without the prior written consent of County. Notwithstanding the above, County hereby agrees that a transfer of the interests of Borrower's limited partners is permitted without prior written consent and shall not constitute a default of this Loan Agreement. In addition, notwithstanding the foregoing, a removal and replacement of a general partner of the Borrower for cause by the limited partners, pursuant to the terms of the Borrower's Partnership Agreement is permitted without prior written consent and does not constitute a default of this Loan Agreement.

**5.7 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 County, Borrower deposits with County any funds or other forms of assurance County in good faith from time to time determines appropriate to protect County from the consequences of the contest being unsuccessful.

5.8 **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 4.12. 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 County may declare an event of default pursuant to Section 8.1.G below. Upon request by County to repay principal and interest, Borrower shall apply insurance proceeds thereto, subject to the terms and conditions of the Senior Loans.

5.9 **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.

## **ARTICLE 6 INDEMNITY AND INSURANCE**

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

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

6.3 **NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No officials, employees and agents of County 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 Agreement and except as previously disclosed and acknowledged in writing by County or as disclosed by the reports based on environmental audit(s) performed on the Property and submitted to County, 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 COUNTY.** Borrower shall promptly notify County 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 County'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 County, 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 County, Borrower deposits with County any funds or other forms of assurance County in good faith from time to time determines appropriate to protect County 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 E, Borrower shall defend, indemnify, and hold County 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 County 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 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 Agreement:

A. Monetary. (1) Borrower's failure to pay when due any sums payable under the Note or any advances made by County under the Deed of Trust or this Agreement; (2) Borrower's use of MHSA Funds for costs or for uses inconsistent with the terms and restrictions in the Loan Documents; (3) Borrower's failure to obtain and maintain the insurance coverage required under this Agreement; (4) Borrower's failure to make any other payment or assessment due under the Loan Documents; (5) Borrower's failure to pay taxes, subject to the right to contest set forth in this Agreement; (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 use of defective or unauthorized materials or defective workmanship in constructing the Project; (2) Borrower's failure to commence or complete construction pursuant to Sections 4.1 and 4.2 herein; (3) 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 County subject to the terms of Section 4.12; (4) Borrower's failure to remedy any deficiencies in recordkeeping or failure to provide records to County upon County's reasonable request; (5) Borrower's failure to substantially comply with any applicable federal, state, or local laws or County policies governing construction, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, disabled access, and Hazardous Materials;

C. Operation. (1) Discrimination by Borrower on any basis prohibited by this Agreement or applicable law or (2) the imposition of any encumbrances or liens on the Property without County's prior written approval that are prohibited under this Agreement or that have the effect of reducing the priority of or invalidating the Deed of Trust;

D. General performance of MHSA 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 County is a party to such agreement which may materially impair County's security;

F. Representations and warranties. A reasonable determination by County 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 County by Borrower were untrue in any material respect when made, or that Borrower concealed or failed to disclose a material fact from County;

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. MHSA compliance. Any non-compliance with MHSA requirements including, but not limited to, the MHSA Regulatory Agreement.

8.2 **NOTICE OF DEFAULT AND OPPORTUNITY TO CURE.** For all Events of Default, County shall give written notice to Borrower (with copy to Borrower's Limited Partners) 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 County has the sole discretion to determine whatever additional reasonable time is needed to cure. Notwithstanding anything to the contrary contained in the Loan Documents, County 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 **COUNTY'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, County's obligation to disburse MHSA Funds shall terminate, and County 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 County may choose in its sole discretion:

A. Terminate this 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 County under the Loan Documents including administrative costs, shall immediately become due and payable at the option of County;

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 MHSA 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 County 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 work or materials with respect to the Project, (2) entering into, modifying, or terminating any contractual arrangements (subject to County's right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that County 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 County'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 County 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 MHSA 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 MHSA 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 County 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 MHSA 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 MHSA 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 County to make the MHSA Loan.

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

9.3 **FINANCIAL COVENANTS.** In addition to, but not by way of limitation of, all other duties of the Borrower set forth herein, the Borrower shall provide County with the following:

A. Annual Audit. The Borrower shall provide to the County not later than ninety (90) days following the end of each County Fiscal Year (June 30), a complete annual financial statement for the Project based upon an examination of the books and records of the Project prepared in accordance with the requirements of the County, in compliance with the requirements of the MHSA Loan Agreement. The Annual Audit shall be certified, at the Borrower's expense, by an independent certified public accountant

licensed in California and acceptable to the County. Each such Annual Audit shall be subject to the approval by the County; and

B. Any other financial report as may be required by the County, pursuant to the Loan Documents.

9.4 **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 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 9.4(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.

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

9.6 **PUBLICITY.** Any publicity produced by Borrower for the Project during the term of the MHSA Loan and for one year thereafter shall make reference to the contribution of County in making the Project possible. The words "The County of Santa Barbara Department of Behavioral Wellness" 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 County in any County-generated publicity or promotional activities undertaken with respect to the Project.

9.7 **TERM OF THIS AGREEMENT.** This Agreement shall commence on the date set forth above and remain in full force and effect throughout the term of the MHSA Loan.

9.8 **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.

9.9 **STATUTORY REFERENCES.** All references in the Loan Documents or MHSA 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.

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

9.11 **CONSENTS AND APPROVALS.** Any consent or approval of County 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.

9.12 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between Borrower and County 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 County as follows:

**COUNTY:** County of Santa Barbara Department of Behavioral Wellness  
300 Camino Del Remedio, Bldg 3  
Santa Barbara, CA 93110  
Attn: Director

**BORROWER:** The Residences at Depot Street, L.P.  
c/o Surf Development Company  
815 West Ocean Avenue  
Lompoc, CA 93436  
Attn: President

With a copy to: Wells Fargo Affordable Housing Community Development Corporation  
301 S. College Street, MAC D1053-170  
Charlotte, NC 28288  
Attn: Director of Tax Credit Asset Management

9.13 **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 Agreement by Borrower without County's consent.

9.14 **RELATIONSHIP OF PARTIES.** The relationship of Borrower and County for this Project under this 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. County 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 MHSA Loan.

9.15 **ASSIGNMENT AND ASSUMPTION.** Borrower shall not assign any of its interests under this 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 County. Any unauthorized assignment shall be voidable at the sole discretion of County.

9.16 **WAIVER.** Any waiver by County of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by County 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 County 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 County's written consent to future waivers.



9.17 **INTEGRATION.** This 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.

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

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

9.20 **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.

9.21 **PERMITTED REFINANCING.** Borrower may refinance the Senior Loans without the prior consent of the County (the "Refinanced Indebtedness"), County hereby agrees to subordinate the Loan and all documents securing or evidencing the Loan, including, but not limited to, the Deed of Trust, to the Refinanced Indebtedness and the lien of any deed of trust or mortgage securing the Refinanced Indebtedness, provided that the principal balance of the Refinanced Indebtedness does not exceed the then outstanding principal balance of the Senior Indebtedness plus the costs of refinancing the Senior Indebtedness. Notwithstanding the foregoing, County approval shall be required for any Refinanced Indebtedness that increases the total principal of the Senior Loans (i.e., "cash-out" refinance) or significantly increases Borrower's monthly debt service for this Project.

(signatures appear on next page)

Exhibits

- A: Property Description
- B: Deed of Trust
- C: Note
- D: MHSA Regulatory Agreement
- E: Standard Indemnification and Insurance Provisions

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

**ATTEST:**

Mona Miyasato  
Clerk of the Board

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

**APPROVED AS TO ACCOUNTING FORM:**

Theodore A. Fallati, CPA  
Auditor-Controller

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

**APPROVED AS TO FORM:**

MICHAEL GHIZZONI  
COUNTY COUNSEL

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

**APPROVED AS TO FORM:**

RISK MANAGEMENT

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

**COUNTY:**

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

By: \_\_\_\_\_  
Das Williams, Chair

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Alice Gleghorn, Ph.D., Director  
Department of Behavioral Wellness

**BORROWER:**

**THE RESIDENCES AT DEPOT  
STREET, L.P.**

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

\_\_\_\_\_  
Raymond F. Down, President

By: RDSGP LLC, a California limited liability  
company, its administrative general partner

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

\_\_\_\_\_  
Robert P. Havlicek Jr., Executive Director

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

*See Attached*

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL A:

PARCELS 1 AND 2 OF PARCEL MAP 6009, IN THE CITY OF SANTA MARIA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK \_\_\_\_\_, PAGES \_\_\_\_ TO \_\_\_\_\_, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B:

NON-EXCLUSIVE AND EXCLUSIVE EASEMENTS APPURTENANT TO PARCELS 1 AND 2 OF PARCEL MAP 6009, IN THE CITY OF SANTA MARIA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK \_\_\_\_\_, PAGES \_\_\_\_ TO \_\_\_\_\_, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, ABOVE, OVER AND ACROSS PARCELS 3 OF PARCEL MAP 6009 AND PARCEL 1 OF PARCEL MAP 5967, FOR PURPOSES OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS, EGRESS, PARKING, DRAINAGE, UTILITIES AND OTHER EASEMENTS AS SET FORTH IN THAT CERTAIN GREAT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS AND MAINTENANCE DATED \_\_\_\_\_, 2018 AND RECORDED IN THE OFFICIAL RECORDS ON \_\_\_\_\_, 2018 AS INSTRUMENT NO. 2018-\_\_\_\_\_.

APN: \_\_\_\_\_