

**COUNTY LMIHAF LOAN AGREEMENT
(\$1,170,000)**

Between

County of Santa Barbara

and

Isla Vista Apartments, L.P.



COUNTY LMIHAF LOAN AGREEMENT
(6660 ABREGO AND 6650 ABREGO/6651 PICASSO)

This agreement (“County LMIHAF Loan Agreement”) is made as of this ___ day of May 2021, by and between the County of Santa Barbara, political subdivision of the State of California (“Lender”), and Isla Vista Apartments, L.P., 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 affordable rental housing to low-income persons, as documented in the County’s 2020-2025 Consolidated Plan.

C. Borrower intends to rehabilitate an affordable rental housing project consisting of fifty-six (56) units, including one (1) managers’ unit (the “Project”). The Project will be targeted to households with incomes from thirty percent (30%) of the Area Median Income (AMI) to eighty percent (80%) of the AMI as determined by HUD and published annually. The Project is located at 6660 Abrego and 6650 Abrego/6651 Picasso in Isla Vista, County of Santa Barbara, California, as more particularly described in Exhibit A (“Legal Description”).

D. As successor to the Santa Barbara County Redevelopment Agency, Lender administers the Low- and Moderate-Income Housing Asset Fund (LMIHAF), which funds have been placed in a trust for the purpose of providing affordable housing within Santa Barbara County (“LMIHAF Funds”).

E. Borrower wishes to borrow from Lender and Lender wishes to extend to Borrower a loan of One Million One Hundred Seventy Thousand Dollars (\$1,170,000) in Low- Moderate- Income Housing Asset Funds to pay for certain development costs of the Project (the “County LMIHAF Loan”). The terms of the County LMIHAF Loan are set out in this County LMIHAF Loan Agreement.

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

G. Borrower will execute a document concurrently herewith restricting rents and tenant income titled County LMIHAF Loan Regulatory Agreement and Declaration of Restrictive Covenants (“County LMIHAF Loan Regulatory Agreement”) affecting three (3) of the fifty-six (56) affordable housing units that will be designated by Borrower as the County-Assisted Units.

H. The three (3) County-Assisted Units will consist of one unit reserved for households at or below 30% AMI, and two units reserved for households at or below 60% AMI.

I. The County LMIHAF Loan will be evidenced by a promissory note in the amount of One Million One Hundred Seventy Thousand Dollars (\$1,170,000) executed by Borrower in favor of Lender, and the County LMIHAF 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 County LMIHAF 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 County LMIHAF Loan Agreement, attached Exhibits, or documents incorporated into this County LMIHAF 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 **“AFFORDABILITY PERIOD”** means the period of time during which the County-Assisted Unit(s) must meet the affordability requirements imposed under the County LMIHAF Loan Regulatory Agreement (Exhibit E), commencing upon the date of the final Certificate of Occupancy issued by the County and terminating fifty-five (55) years from the date of the issuance of a certificate of occupancy issued for the Project.

1.3 **“ANNUAL FINANCIAL STATEMENT”** means the audited 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 2.9 and 5.12 below.

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

1.5 **“BORROWER”** means Isla Vista Apartments, L.P., a California limited partnership, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

1.6 **“BUDGET”** means that budget for the construction of the Project attached hereto as Exhibit B, which is hereby incorporated into this County LMIHAF Loan Agreement by this reference and which identifies the sources and uses of funds for Project development costs, costs to be paid with LMIHAF Funds in conformance with 24 CFR 92.206, and a pro forma budget.

1.7 **“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.

1.8 **“COUNTY-ASSISTED UNIT”** means any one of the three (3) rental housing units on the Property designated by Borrower as the County-Assisted Unit(s) subject to the requirements of the County LMIHAF Loan Regulatory Agreement (Exhibit E), which is attached hereto and hereby incorporated into this County LMIHAF Loan Agreement by this reference.

1.9 **“COUNTY LMIHAF LOAN”** means the loan of LMIHAF Funds in the total amount of One Million One Hundred Seventy Thousand Dollars (\$1,170,000) as provided in this County LMIHAF Loan Agreement to finance certain development costs of the Project.

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

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

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

1.13 **“COUNTY LMIHAF LOAN NOTE”** means the promissory note executed by Borrower in favor of Lender in the amount of One Million One Hundred Seventy Thousand Dollars (\$1,170,000), to evidence the County LMIHAF Loan as well as any amendments to, modifications of, or restatements of said promissory note, substantially in the form attached hereto as Exhibit D, which is attached hereto and hereby incorporated into this County LMIHAF Loan Agreement by this reference.

1.14 **“COUNTY LMIHAF LOAN 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 three (3) County-Assisted Units in the Project.

1.15 **“COUNTY MONITORING FEE”** (Fee) means a fee, in the amount of \$2,500 increasing annually by 3% which shall be paid to the County by the Project. The Fee shall be paid to the County annually ninety (90) days following each fiscal year of the Project. The initial Fee, in the amount of \$2,500, shall be paid ninety (90) days following the end of the fiscal year of the Project that occurs on or after the date that a final Certificate of Occupancy is issued by the County of Santa Barbara Planning and Development Department. The Fee shall be paid annually for the Term defined at Section 1.20 of the County LMIHAF Regulatory Agreement executed herewith.

1.16 **“FISCAL YEAR”** means the twelve (12) month accounting period, beginning January 1 and ending December 31, for which annual financial statements are regularly prepared.

1.17 **“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, constructing, 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.

1.18 This section intentionally left blank.

1.19 “**LMIHAF FUNDS**” means funds provided to Borrower by Lender pursuant to the terms of this County LMIHAF Loan Agreement.

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

1.21 This section intentionally left blank.

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

1.23 “**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.

1.24 “**LIMITED PARTNER**” means Wincopin Circle LLLP, a Maryland limited liability limited partnership, and its successors and assigns, as the entity that is providing a cash investment in the Project in return for the annual tax credits awarded to the Borrower by the California Tax Credit Allocation Committee. The Limited Partner will retain a 99.99% ownership of the Project but will have no responsibility for the daily operations of the Project. The Limited Partner has entered into the Partnership Agreement with Isla Vista Apartments, LLC (as the 0.01% general partner), and Oak Forest Apartments, Inc., as the withdrawing limited partner.

1.25 “**LOW-INCOME HOUSEHOLD**” means a household, as defined in 24 CFR 92.2 and for the purposes of this Project, whose annual income does not exceed sixty percent (60%) of Area Median Income with adjustments for household size.

1.26 “**OPERATING EXPENSES**” means, actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance, and management of the Project, including but not limited to painting, cleaning, restoration, 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, annual County Monitoring Fee as defined herein in Section 1.14, security, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, lease payments if any, cash deposited into reserves for operating expenses and capital replacements pursuant to Section 2.12 or other reasonable amounts pursuant to the terms of the Senior Loan(s) or the Partnership Agreement, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of accountants, attorneys, consultants and other professionals, and reasonable and actual costs of staff salaries for the delivery of social services and/or case management. The Operating Expenses shall be reported in the Annual Financial Statement.

1.27 “**PARTNERSHIP AGREEMENT**” means that certain First Amended and Restated Partnership Agreement dated on or about the date hereof by and among the Limited Partner, Isla Vista

Apartments LLC, a California limited liability company and Oak Forest Apartments, Inc., a California nonprofit public benefit corporation.

1.28 **“PAYMENT DATE”** means ninety (90) days after the end of each fiscal year of the Project until the County LMIHAF Loan is paid in full.

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

1.30 **“PROJECT LOANS”** means, collectively, (i) the Senior Loans, and (ii) that certain loan to be made by the seller in the approximate original principal amount of Seven Million, Four Hundred Thirty Six Thousand Two Hundred Eighty Five Dollars (\$7,436,285).

1.31 **“PROPERTY”** means the property located at 6660 Abrego and 6650 Abrego/6651 Picasso in Isla Vista, Santa Barbara County, California, as more particularly described in Exhibit A, which is attached hereto and hereby incorporated into this County LMIHAF Loan Agreement by this reference.

1.32 **“QUALIFYING HOUSEHOLD”** means a household that qualifies as a Low-Income as defined in Section 1.25 or Very Low-Income Household as defined in Section 1.38 and as set forth in the County LMIHAF Loan Regulatory Agreement. \

1.33 **“QUALIFYING RENT”** means the total monthly charges for rent, which shall not exceed the maximum rent by number of bedrooms, as published annually by the U.S.Department of Housing and Community Development (HUD) for the Santa Maria/Santa Barbara Metropolitan Statistical Area. Occupants' share of the cost of utilities must be included in the maximum rent. If the tenant pays for utilities (excluding telephone and cable/Internet) directly to the utility company(ies), then the Qualifying Rent shall be reduced by the maximum monthly allowance for utilities and using the annual HUD Utility Schedule Model or other annual utility schedule as determined by the County.

1.34 **“RESIDUAL RECEIPTS”** means the excess of annual Revenue over the sum of annual Operating Expenses as defined in Section 1.26 above, and any required debt service under the Senior Loan(s).

1.35 **“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.

1.36 **“SENIOR LOANS”** means (i) that certain construction loan to be made by Citibank, N.A., a national banking association (“Citibank”), in the approximate original principal amount of Thirteen Million Eight Hundred Twelve Thousand One Hundred and Fifty-Three and No/100 Dollars (\$13,812,153), which will convert to the permanent loan in the approximate original amount of Five Million One Hundred Eighty-One Thousand and No/100 Dollars (\$5,181,000), (ii) that certain loan made by the County to PSHHC on December 14, 1999 in the original principal amount of One Million Five Thousand One Hundred Seventy Nine Dollars (\$1,005,179) and assigned to Borrower on or about even date herewith, and (iii) that certain loan made by the County to PSHHC on December 14, 1999 in the original principal amount of One Hundred Forty Four Thousand Eight Hundred Twenty One Dollars (\$144,821) and assigned to Borrower on or about even date herewith.

1.37 **“TERM”** means the period of time commencing with the date of the County LMIHAF Loan Note and terminating fifty-five (55) years from the date of the final Certificate of Occupancy issued for the Project.

1.38 **“VERY LOW-INCOME HOUSEHOLD”** means a household whose annual income does not exceed thirty percent (30%) of Area Median Income with adjustments for household size.

ARTICLE 2 TERMS OF THE COUNTY LMIHAF LOAN

2.1 **COUNTY LMIHAF LOAN.** On and subject to the terms and conditions of the County LMIHAF 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 County LMIHAF Loan shall be an amount not to exceed One Million One Hundred Seventy Thousand Dollars (\$1,170,000) and shall be evidenced by the County LMIHAF Loan Note. In the event Lender is unable to secure LMIHAF Funds for this County LMIHAF Loan Agreement for any reason at any time during the course of construction, Lender shall not be obligated to make payments to Borrower until LMIHAF Funds become available to Lender, and Borrower shall hold Lender harmless.

2.3 **INTEREST.** Subject to the provisions of Section 2.4, the County LMIHAF Loan Note shall bear simple interest at a rate of three percent (3%) per annum on the outstanding balance from the date of the first disbursement under the County LMIHAF Loan Note. Interest is not compounding.

2.4 **DEFAULT INTEREST.** In the event of a default by Borrower of any of its obligations under this County LMIHAF Loan Agreement and expiration of applicable cure periods, Borrower shall pay to Lender interest on the outstanding principal of the County LMIHAF Loan, at an annual rate equal to the lesser of (i) ten percent (10%) or (ii) the highest interest allowed by law, in addition to the interest rate in Section 2.3 above, from the date of the default until the date that the default is cured or the County LMIHAF 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 COUNTY LMIHAF LOAN.** The principal and interest of the County LMIHAF Loan shall be due and payable on the earlier of: (a) fifty-five (55) years from the date of the recordation of a final Certificate of Occupancy issued for the Project, 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 County Affordability Period, for transfers permitted pursuant to the terms of the County LMIHAF Loan Documents, or (c) Borrower has failed to commence construction as set forth in Section 4.1 of this County LMIHAF Loan Agreement, (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, or (e) in any event, the principal and all current and accrued interest shall be due and payable no later than May ____, 2076. Annual loan payments on the County LMIHAF Loan equal to the lesser of (a) an amount sufficient to fully amortize the County LMIHAF Loan over fifty-five (55) years or (b) the amount due pursuant to Section 2.9 hereof shall be made in accordance with Section 2.9 hereof. Upon the occurrence of 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, the principal and all current and accrued interest shall be due and payable in accordance with Section 8.3.

2.6 **USE OF LMIHAF FUNDS.** LMIHAF Funds shall be used only for those certain development costs specified in the Budget attached hereto as Exhibit B and shall only be disbursed in accordance with the provisions of Article 3. Budget modifications may be approved in accordance with Section 9.3 of this Agreement; provided that costs are eligible under 24 CFR 92.206, and that the appropriate level of Environmental Review completed under the National Environmental Policy Act of 1969 (NEPA) (42 USC 4321, et seq.), and applicable related environmental authorities at 24 CFR 50.4, and HUD's implementing regulations at 24 CFR Parts 50 and 58 remains applicable. LMIHAF 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 This section intentionally left blank.

2.8 **SECURITY.** Borrower shall secure its obligation to repay the County LMIHAF Loan by executing a County LMIHAF Loan 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 County LMIHAF Loan Deed of Trust, and the County LMIHAF Loan Regulatory Agreement with the Recorder for the County of Santa Barbara, and shall cause the delivery of conformed copies of the recorded documents to Lender.

2.9 **REPAYMENT OF THE COUNTY LMIHAF LOAN.** All accrued interest and principal shall be due and payable in accordance with the terms set forth in Section 2.5 and this Section 2.9.

No repayment is due under the County LMIHAF Loan until construction of the Project is complete. Payments shall be made ninety (90) days following the end of each calendar year of the Project until the County LMIHAF Loan is paid in full. Annual payments on the County LMIHAF Loan shall be made from Residual Receipts to the extent that they are available. Residual receipts shall be paid in the following order: first, to the limited partner for any unpaid tax credit adjuster amount; second, to the limited partner an amount sufficient to pay federal income taxes on taxable income allocated to the limited partner for such fiscal year by the Borrower; third, to pay any accrued but unpaid asset management fees payable to the Limited Partner in the annual amount of \$5,000 and increasing three percent (3%) annually; fourth, to replenish operating reserves in accordance with the terms of the Partnership Agreement; fifth, to pay any deferred portion of the Property Management Fee; sixth, to the payment of outstanding deferred developer fee; seventh, to Borrower's general partners for the repayment of any operating deficit loans made to the Borrower pursuant to the Partnership Agreement; eighth, to the payment of any management fees deferred pursuant to the terms of the Partnership Agreement; ninth, to Borrower's general partner an annual partnership management fee in an amount not to exceed \$19,000 per year, (plus any accrued fees from prior years) increasing three percent (3%) annually; eighth, Fifty-percent (50%) of remaining residual receipts to the County LMIHAF Loan pursuant to this County LMIHAF Loan Agreement and County LMIHAF Loan Promissory Note, executed herewith and fifty percent (50%) of the remaining residual receipts to repayment of sponsor loans, as set forth in the Partnership Agreement. On or before each Payment Date the Borrower shall submit the Annual Financial Statement to Lender for the preceding fiscal year. All payments made on the County LMIHAF Loan 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 County LMIHAF Loan.

2.9.1 **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.

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

2.11 ANNUAL OPERATING EXPENSES. Thirty (30) days prior to the end of each fiscal year, Borrower shall submit to Lender, for Lender's review and approval, a proposed operating budget for the Project, for the following fiscal year. The proposed operating budget shall include scheduled payments to be made into operating and reserve accounts. If the amount of the proposed budget for the following fiscal year does not exceed the budget for the prior fiscal year by greater than five percent (5%), or any one line item has not increased by greater than ten percent (10%), the proposed budget shall be approved by Lender. In all other events, the Lender shall approve the budget in its reasonable discretion. 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; except as necessary in order to correct defects or effectuate repairs which pose a risk to the health or safety of occupants of the Property.

2.12 OPERATING AND CAPITAL REPLACEMENT RESERVE FUNDS. Beginning the second full month after completion of construction, Borrower shall fund a capital replacement reserve in the amount of not less than Three Hundred Dollars (\$300) per unit per year and concurrently with the funding of the "Fourth Installment" of the Limited Partner's capital contributions pursuant to the terms of the Partnership Agreement shall capitalize an operating reserve in the amount equal to three months of operating expenses, estimated to be Three Hundred Seventy-Seven Thousand Three Hundred Sixty (\$377,360), or other amounts reasonably imposed by any lender or the Limited Partner. These reserve funds shall be held by CitiBank pursuant to the loan documents executed in connection with the Senior Loans. The amount of Operating and Capital Replacement Reserve Funds required hereunder shall be deemed satisfied on a dollar-for-dollar basis by any such reserves required by and held with senior lenders. Reserve balances shall be provided in the Annual Financial Statement submitted to Lender annually.

ARTICLE 3 COUNTY LMIHAF LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. Lender shall not be obligated to make any disbursements of LMIHAF Funds or take any other action under the County LMIHAF Loan Documents unless the following conditions precedent are satisfied prior to the disbursement of LMIHAF 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 County LMIHAF Loan Documents, including but not limited to an ALTA

Lender's policy of title insurance in the amount of One Million Four Hundred Thousand Four Hundred Dollars (\$1,400,000), 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; and

F. Borrower has complied with all reporting requirements set forth in this County LMIHAF Loan Agreement in accordance with Section 3.2 and Section 5.11 as applicable.

3.2 DISBURSEMENT OF FUNDS. Lender shall provide the LMIHAF Funds to Borrower for development costs incurred by Borrower and approved by Lender in accordance with the Budget (Exhibit B). LMIHAF Funds shall only be disbursed after the costs which are to be paid have been incurred. Borrower may not request disbursement of LMIHAF Funds until needed for payment of those certain development costs as specified in the Budget (Exhibit B). Disbursement of LMIHAF Funds shall not exceed a total of One Million One Hundred Seventy Thousand Dollars (\$1,170,000).

LMIHAF Funds shall be disbursed through periodic payments based upon development costs incurred and work completed, as evidenced by documentation supporting the completed work signed by the Project architect and verified by Lender. Borrower shall submit to Lender 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.

Written Disbursement Requests shall only be for items included in the Budget (Exhibit B). Changes in individual items comprising the Budget which exceed \$25,000 in any single instance or exceed \$75,000 in the aggregate 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 LMIHAF Funds until thirty (30) days after Borrower has completed the construction of the Project and provided beneficiary data for the three (3) County-Assisted Unit(s) of the Project; and any and all liens (except those otherwise approved in the Loan Documents) 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 twelve (12) months from the execution of this County LMIHAF 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 County LMIHAF 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 and have the County-Assisted Units occupied by eligible tenants, no later than eighteen (18) months after completion of construction in conformance with 24 CFR 92.252, subject to force majeure delays. 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. Lender hereby approves the Senior Loans and the Project Loans.

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.

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 upon reasonable notice for the purposes of determining compliance with this County LMIHAF Loan Agreement. Copies of monthly construction inspection reports completed by the construction lender 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 USC 794), as amended, and with implementing regulations at 24 CFR Part 8, and the Fair Housing Act (42 USC 3601-3619), implemented at 24 CFR Part 100, Subpart D. Within thirty (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 unit numbers and type of 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 CFR, 40 CFR, the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X (42 USC, 4851, et seq.), the Lead-Based Paint Poisoning Paint Provision Act (42 USC 4821, et seq.), California OSHA, 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 the following, 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 County LMIHAF 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 thirty (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.

4.13 **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 (42 USC 4601, et seq.) ("URA"), Section 104(d) of the Housing and Community Development Act of 1974 (42 USC 5304(d)), regulations at 24 CFR

Part 42 and 49 CFR Part 24, 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. If, upon audit review by Lender or by any Federal agency, it is determined that additional relocation payments are due, then Borrower consents to make such payments. In the event Borrower does not make payments as requested by Lender, then this shall constitute an Event of Default, and be subject to Borrower's cure rights. Lender may require repayment of the County LMIHAF Loan plus any and all relocation payments due. 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 County LMIHAF Loan Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this County LMIHAF 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 in Exhibit B, attached hereto and incorporated herein, any unavoidable delay notwithstanding. Times of performance under this County LMIHAF 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 County LMIHAF Loan Regulatory Agreement.

Borrower shall agree to maintain and operate the County-Assisted Unit(s) so as to provide decent, safe, and sanitary housing and provide the County-Assisted Unit(s) 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 LMIHAF Regulatory Agreement, Lender shall have the right to review, approve and request reasonable 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. Lender hereby approves that certain Form of Management Plan as incorporated herein and attached hereto as Exhibit G. Notwithstanding the above, County reserves the right to require changes necessary to conform to applicable regulatory requirements.

5.2 MANAGEMENT PLAN. In the leasing and operation of the Project, Borrower shall submit its Management Plan for the Project, in a format substantially similar to the outline attached hereto as Exhibit G and incorporated herein, for approval by Lender upon Project completion, as defined herein at Section 4.2. Any material 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 as defined herein at Section 5.2. The Management Plan shall include information on affirmative marketing efforts and compliance with fair housing laws. Any material 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 incorporate written tenant selection provisions in the Management Plan which, at a minimum, meet the requirements for tenant selection set out in 24 CFR 92.253(d) and any modifications thereto. Any material changes to the Management Plan require prior written approval from Lender.

Borrower shall rent the County-Assisted Unit(s) 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 County LMIHAF Loan Regulatory Agreement.

5.5 **INCOME CERTIFICATION.** The Annual Income levels and other qualifications of applicants for County-Assisted Units shall be certified by Borrower no earlier than six (6) months prior to the Qualifying Household's occupancy of a County-Assisted Unit, and recertified annually thereafter by Borrower. If the size of a Qualifying Household occupying a County-Assisted Unit changes, Borrower must request additional information and documentation to determine eligibility.

A. Initial Annual Income Verification. Before the Qualifying Household occupies a County-Assisted Unit, the Borrower shall verify that the Annual Income provided in an Annual Income certification in accordance with 24 CFR 5.609-612 is accurate by taking both of the following steps as a part of the verification process:

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

B. Annual Income Recertification. At the time of lease renewal or pursuant to an annual schedule adopted by the Borrower, and no later than the one-year anniversary of the initial Annual Income verification and annually thereafter, Borrower shall recertify the Annual Income of each Tenant occupying a County-Assisted Unit either by using the method as described in Section 5.5.A above or by collecting a self-certification of income from the tenants, under penalty of perjury. Notwithstanding the foregoing, at least every three (3) years of occupancy, Borrower shall recertify the Annual Income of each Tenant occupying a County-Assisted unit using the method as described in Section 5.5.A above.

5.6 **INITIAL LEASING OF 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 initial lease shall be for no less than one year unless a shorter term is requested by the tenant occupying a County-Assisted Unit, and shall not contain any provision which is prohibited by 24 CFR 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 CFR 92.253(c), and any

modifications thereto, and must be preceded by not less than thirty (30) days written notice to the tenant by the Borrower specifying the grounds for the action. Borrower shall submit its proposed rents and utility allowance schedule to Lender for review and approval at least thirty (30) days prior to leasing the County-Assisted Unit(s) in the Project. Within eighteen (18) months of completion of construction as defined in Section 4.2, Borrower shall lease the three (3) County-Assisted Unit(s) and provide Lender with detailed occupancy data and demographic information on the tenant(s) of the County-Assisted Unit(s).

5.7 AFFORDABILITY RESTRICTIONS. Three (3) units in the Project shall be designated by Borrower as County-Assisted Unit(s). One of the County-Assisted Units shall be occupied by a household at or below 30% AMI and two of the County-Assisted Units shall be occupied by a household at or below 60% AMI as set forth in the County LMIHAF Loan Regulatory Agreement, and shall meet the following standards:

- A. The County-Assisted Unit(s) shall be designated as “floating” so that the unit(s) designated as County-Assisted under the County LMIHAF Loan Regulatory Agreement may change over time, as long as the total number and type of County-Assisted Units in the Project remains constant.
- B. Be similarly constructed and of comparable quality to all other units in the Project;
- C. Be dispersed throughout the Project; and
- D. 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 RENTS FOR COUNTY-ASSISTED UNITS. Rents for County-Assisted Units shall be limited to Qualifying Rents as set forth in the County LMIHAF Loan Regulatory Agreement.

5.9 CONFLICTS BETWEEN COVENANTS OR RESTRICTIONS AFFECTING THE PROPERTY. Any conflicts between the restrictive provisions contained in this County LMIHAF Loan Agreement, County LMIHAF Loan Note, County LMIHAF Loan Deed of Trust, County LMIHAF Loan Regulatory Agreement, and any other agreements in connection with the County LMIHAF 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, gender, gender identity or expression, sexual preference or orientation, age, marital status, family status, source of income, military or veteran status, physical or mental disability, medical condition, genetic information, 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 LMIHAF Funds disbursed to Borrower pursuant to the County LMIHAF 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 LMIHAF Funds, and to keep all invoices, receipts, and other documents related to expenditures for construction costs for said LMIHAF Funds for five (5) years after recordation of a notice of completion issued for the Project. Tenant income, rent, unit inspection information, and all records related to any revenue received by the Project must be kept for the most recent five (5) years, until

five (5) years after the affordability period ends as set forth in the LMIHAF Loan Regulatory Agreement. Records must be kept accurate and current.

Borrower shall promptly comply with all requirements and conditions of the County LMIHAF 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 to Lender:

- Monthly written Project construction progress reports and updated construction schedule within ten (10) calendar days following the end of each month, commencing with the execution of this County LMIHAF 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 within thirty (30) days following the recordation of the notice of completion.
- Copies of the certificate(s) of occupancy upon receipt.
- Data on the initial lease-up of the three (3) County-Assisted Unit(s) sufficient to close out the Project in the federal Integrated Disbursement and Information System within ten (10) days following the execution of the third (3rd) lease for a County-Assisted Unit.

5.12 **AUDITS.** Borrower shall conduct annual audits in accordance with 2 CFR Part 200 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 County LMIHAF 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 County LMIHAF 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 requests 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 County LMIHAF Loan Agreement or the Loan Documents, 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 **TRANSFERS.** Borrower has not made or created and shall not make or permit any sale, assignment, conveyance, or other transfer of this County LMIHAF Loan Agreement, including the sale or transfer of any general partnership interests, without the prior written consent of Lender. Notwithstanding the foregoing, the execution of and transfer of the Property and/or Project to the Borrower's general

partner(s) pursuant to a purchase option and/or right of first refusal agreement following the expiration of the tax credit compliance period shall be expressly permitted hereunder.

5.15 REMOVAL OF GENERAL PARTNER(S); TRANSFER OF LIMITED PARTNERSHIP INTERESTS. Notwithstanding anything to the contrary contained in this County LMIHAF Loan Agreement, the County Promissory Note or the County Regulatory Agreement, no consent shall be required from the Lender if the: (i) Limited Partner removes Isla Vista Apartments LLC (“General Partner”) for cause in accordance with the Borrower’s Partnership Agreement and replaces it with an entity related to or affiliated with the Limited Partner (the “Related Entity”); or (ii) Limited Partner transfers or assigns its interest in Borrower; provided, however, if the replacement General Partner(s) is an entity other than a Related Entity, then the consent, which shall not be unreasonably withheld or unduly delayed, of the Lender shall be required.

5.16 FEES, TAXES, AND OTHER LEVIES. Borrower shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Project and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by Lender, Borrower deposits with Lender any funds or other forms of assurance Lender determines, in good faith from time to time, appropriate to protect Lender from the consequences of the contest being unsuccessful.

5.17 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 one hundred twenty (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 to the extent such insurance proceeds are available and permitted for such use by all lenders.

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, subject to the rights of Senior Lenders.

5.18 EQUAL EMPLOYMENT OPPORTUNITY. Borrower and all contractors, subcontractors, and professional service providers for the Project shall comply with all requirements concerning equal employment opportunity. If applicable, 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 USC 1701u).

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 County LMIHAF 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 County LMIHAF Loan Agreement and except as previously disclosed and acknowledged in writing by Lender or as disclosed by the environmental reports regarding 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 that 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 County LMIHAF 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 County LMIHAF Loan Agreement:

A. Monetary. (1) Borrower's failure to pay when due any sums payable under the County LMIHAF Loan Note or any advances made by Lender under the County LMIHAF Loan Deed of Trust or this County LMIHAF Loan Agreement; (2) Borrower's use of LMIHAF Funds for costs other than approved construction costs or for uses inconsistent with other terms and restrictions in the County LMIHAF Loan Documents; (3) Borrower's failure to obtain and maintain the insurance coverage required under this County LMIHAF Loan Agreement; (4) Borrower's failure to make any other payment or assessment due under the County LMIHAF 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 substantial deviation from the budget specified in Exhibit B (Budget), without Lender's prior written consent (to the extent Lender's consent is required hereunder); (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, subject to force majeure delays; (4) the cessation of construction prior to completion of the Project for a period of more than thirty (30) consecutive calendar days without proper written approval from Lender, subject to force majeure delays; (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 County LMIHAF Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and women-owned business enterprises, disabled access, lead-based paint, Hazardous Materials, and provision or relocation benefits and assistance;

C. Operation. (1) Discrimination by Borrower on any basis prohibited by this County LMIHAF 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 County LMIHAF Loan

Agreement or that have the effect of reducing the priority of or invalidating the County LMIHAF Loan Deed of Trust;

D. General performance of County LMIHAF Loan obligations. Any substantial breach by Borrower beyond applicable notice and cure periods of any material obligations on Borrower imposed in the County LMIHAF 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, only if Lender is a party to such agreement and such breach materially impairs Lender's security;

F. Representations and warranties. A determination by Lender that its security has been or will be materially impaired due to the fact that any of Borrower's representations or warranties made in the County LMIHAF 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 County LMIHAF 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 LMIHAF Program requirements including, but not limited to, the provisions of Section 4.12 and the County LMIHAF Loan Regulatory Agreement.

J. Tax Credit Compliance. The Project shall comply with the rent and income restrictions and other terms of the Tax Credit Regulatory Agreement. Non-compliance under the terms of the Tax Credit Regulatory Agreement shall constitute an Event of Default under the County LMIHAF Loan Agreement, subject to applicable cure periods.

K. Relocation Benefits. Failure to make any payments requested by Lender pursuant to Section 4.13 above.

8.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For all Events of Default, Lender shall give written notice to Borrower (with copy to the Limited Partner) 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 one hundred eighty (180) days from the date of notice to cure. The Lender has the sole but reasonable discretion to determine whatever additional reasonable time is needed to cure. Notwithstanding anything to the contrary contained in the County LMIHAF Loan Documents, Lender hereby agrees that any cure of any default made or tendered by Borrower's Limited Partner 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 timeframe specified in Section 8.2 above, Lender's obligation to disburse LMIHAF Funds shall terminate, and Lender may also, in addition to other rights and remedies permitted by the County LMIHAF 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 County LMIHAF Loan Agreement, in which event the entire principal amount outstanding and all accrued interest under the County LMIHAF Loan Note, as well as any other monies advanced to Borrower by Lender under the County LMIHAF 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 County LMIHAF 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 County LMIHAF Loan and demand immediate full payment of the principal amount outstanding and all accrued interest under the County LMIHAF Loan Note, as well as any other monies advanced to Borrower by Lender under the County LMIHAF Loan Documents plus associated amounts due, such as relocation benefits described in Section 4.13 above;

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 County LMIHAF Loan proceeds any amount necessary to cure any monetary default;

H. Enter upon, take possession of, and manage the Property, either in person, via agent, or by a receiver appointed by a court, and collect rents and other amounts specified in the assignment of rents in the County LMIHAF Loan Deed of Trust and apply them to operate the Property or to pay off the County LMIHAF Loan or any advances made under the County LMIHAF Loan Documents, as provided for by the County LMIHAF Loan 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 County LMIHAF Loan 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 non-judicial foreclosure under the power of sale contained in the County LMIHAF Loan 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 that (1) it has access to professional advice and support to the extent necessary to enable Borrower to fully comply with the terms of these County LMIHAF Loan Documents and to otherwise carry out the Project, (2) it is duly organized, validly existing, and in good standing under the laws of the State of California, (3) it has the full power and authority to undertake the Project and to execute the County LMIHAF Loan Documents, (4) the persons executing and delivering the County LMIHAF Loan Documents are authorized to execute and deliver such documents on behalf of Borrower, (5) there has been no substantial adverse change in Borrower's financial condition since the date of application for the County LMIHAF Loan such as judgment liens, tax liens, mechanic's liens, bankruptcy, etc., and (6) 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 County LMIHAF Loan.

9.2 **CONTRACT ADMINISTRATION.** The County's Community Services Department (CSD) will serve as the County's (or Lender's) administrator of the Project and the County LMIHAF Loan Documents. CSD is authorized to approve budget revisions as authorized under Section 2.6 of this Agreement, collect loan repayments, and perform loan and Project monitoring functions and other administrative duties.

9.3 **CHANGES OR AMENDMENTS.** Any changes to this Agreement may only be made through a written amendment to this Agreement executed by Lender and Borrower. Such amendments shall make specific reference to this Agreement, and be signed by a duly authorized representative of each party. Such amendments shall not invalidate any parts of this Agreement that are not changed by the amendment, nor relieve or release Lender or Borrower from its obligations under this Agreement that are not changed by the amendment. Borrower agrees to not unreasonably withhold its approval of any amendments proposed by Lender that are necessary in order to conform with federal, state or local governmental laws, regulations, ordinances, orders, rules, directives, circulars, bulletins, notices, guidelines, policies and available funding amounts.

The Director of the County Community Services Department or designee is authorized to approve at his or her discretion and execute amendments on behalf of County to make any one or more of the following changes:

9.3.1 Changes to the Agreement that are necessary in order to conform with federal, state or local governmental laws, regulations, ordinances, orders, rules, directives, circulars, bulletins, notices, guidelines, policies and available funding amounts.

9.3.2 Amendments to this County LMIHAF Loan Agreement which are deemed to be minor by the Director of the Community Services Department and County Counsel and which do not adversely affect the County's rights, responsibilities, or interests in this County LMIHAF Loan Agreement.

9.4 **MONITORING AND EVALUATION.** Except as otherwise provided for in this County LMIHAF 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 County LMIHAF Loan Documents.

9.5 **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 County LMIHAF 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. Any conflict of interest must be reported to the County in accordance with 2 CFR 200.113.

B. The conflict of interest provisions of Section 9.5(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.

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

9.7 **PUBLICITY.** Any publicity produced by Borrower for the Project during the term of the County LMIHAF 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.

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

9.9 **GOVERNING LAW.** The County LMIHAF 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.

9.10 **STATUTORY REFERENCES.** All references in the County LMIHAF Loan Documents or County LMIHAF Loan 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.

9.11 **TIME.** Time is of the essence in these County LMIHAF Loan Documents.

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

9.13 **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
123 E Anapamu Street, 2nd Floor
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: Isla Vista Apartments, L.P.
c/o Peoples' Self-Help Housing Corporation
3533 Empleo Street
San Luis Obispo, California 93401
Attention: Chief Executive Officer

With copy to: Gubb & Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attention: Sarah C. Perez, Esq.

And With a Copy to: Enterprise Community
Asset Management, Inc.

70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044
Attention: Asset Management

And With a Copy to: Email: sshack@enterprisecommunity.com
Attention: General Counsel

9.14 **BINDING UPON SUCCESSORS.** All provisions of these County LMIHAF 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 County LMIHAF Loan Agreement by Borrower without Lender's consent.

9.15 **RELATIONSHIP OF PARTIES.** The relationship of Borrower and Lender for this Project under this County LMIHAF 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 County LMIHAF Loan.

9.16 **ASSIGNMENT AND ASSUMPTION.** Except as otherwise permitted hereunder, Borrower shall not assign any of its interests under this County LMIHAF Loan Agreement or the County LMIHAF Loan Documents to any other party, except as specifically permitted under the terms of the County LMIHAF Loan Documents, without the prior written consent of Lender. Any unauthorized assignment shall be voidable at the sole discretion of Lender.

9.17 **WAIVER.** Any waiver by Lender of any obligation in these County LMIHAF 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 County LMIHAF Loan Documents or applicable law. Any extension of time granted to Borrower to perform any obligation under the County LMIHAF Loan Documents shall not operate as a waiver or release from any of Borrower's obligations under the County LMIHAF Loan Documents. Consent by Lender to any act or omission by Borrower shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for Lender's written consent to future waivers.

9.18 **INTEGRATION.** This County LMIHAF Loan Agreement and the other County LMIHAF Loan Documents, including exhibits, executed by Borrower for the Property, contain the entire agreement of the parties and supersede any and all prior negotiations.

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

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

9.21 **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together form one single document.

Exhibits

- A: Legal Description of the Property
- B: Budget
- C: County LMIHAF Loan Deed of Trust
- D: County LMIHAF Loan Promissory Note
- E: County LMIHAF Loan Regulatory Agreement
- F: Standard Indemnification and Insurance Provisions
- G: Management Plan

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

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: *Sheila Guerrero*
Deputy Clerk of the Board

COUNTY:

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

By: *Bob Nelson*
Bob Nelson, Chair
Board of Supervisors

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA
AUDITOR-CONTROLLER

By: *Betsy M. Schaffer*
DocuSigned by:
E198503A4304B7...
Deputy

By: *Dinahi Lockhart*
DocuSigned by:
EE2374563EF9ACE...
George Chapjian, Director
Community Services Dept.

APPROVED AS TO FORM:

Michael C. Ghizzoni
COUNTY COUNSEL

By: *Michael C. Ghizzoni*
DocuSigned by:
D0A627A89DD6A5...
Deputy County Counsel

BORROWER:

ISLA VISTA APRTMENTS, L.P.,
A California limited partnership

By: Isla Vista Apartments LLC, a California
limited liability company, its general partner

APPROVED AS TO FORM:

Ray Aromatorio, ARM, AIC
RISK MANAGEMENT

By: *Ray Aromatorio*
DocuSigned by:
D3DB8526E16F47F...
Risk Manager

By: People's Self-Help Housing Corporation, a
California nonprofit public benefit corporation,
its sole member/manager

By: *Ken Trigueiro*
Ken Trigueiro, CEO & President

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

See Attached

EXHIBIT B

BUDGET

See Attached

EXHIBIT C

COUNTY LMIHAF LOAN DEED OF TRUST

See Attached

EXHIBIT D

COUNTY LMIHAF LOAN PROMISSORY NOTE

See Attached

EXHIBIT E

COUNTY LMIHAF LOAN REGULATORY AGREEMENT

See Attached

EXHIBIT F

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS

See Attached

EXHIBIT G
FORM OF MANAGEMENT PLAN

See Attached