

# SUTTER COMMUNITY AFFORDABLE HOUSING

1455 BUTTE HOUSE ROAD  
YUBA CITY, CA 95993  
(530) 671-0220

October 21, 2015


TO:

Diane Hodges, President  
Gustavo Becerra, Secretary/Treasurer  
Martha Griese, Board Member  
Richard Grant, Board Member  
Charles Epp, Board Member  
Kimberly Butcher, Board Member

Sutter County Board of Supervisors  
City Council, Yuba City  
City Council, Live Oak  
Duane Oliveira, Legal Counsel  
Appeal-Democrat

NOTICE OF REGULAR MEETING  
October 27, 2015

You are hereby notified that the Sutter Community Affordable Housing Regular Board Meeting is scheduled for **Tuesday, October 27, 2015, at 12:00 PM at Regional Housing Authority of Sutter and Nevada Counties, 1455 Butte House Road, Yuba City, CA 95993.**

for   
Gustavo Becerra  
Secretary/Treasurer



# **SUTTER COMMUNITY AFFORDABLE HOUSING**

Regular Meeting of Board of Directors  
Regional Housing Authority of Sutter and Nevada Counties  
1455 Butte House Road, Yuba City, CA 95993

Tuesday, October 27, 2015  
12:00 NOON

## AGENDA

1. Call to order
2. Roll Call
3. Public Participation: Members of the public shall be provided with an opportunity to address the Board of Directors on items of interest that are within the subject matter jurisdiction on the Board.
4. Approval of Minutes – September 22, 2015
5. Resolution 15-31, Resolution, Waiver of Notice and Unanimous Consent to Action in regards to Kristen Court Apartments in Live Oak, CA.
6. Adoption of Audit for Fiscal Year Ending March 31, 2015
7. Maintenance Update on Maple Park, Town Center and Yolo/Heiken
8. Director's Comments
9. Adjournment





SUTTER COMMUNITY AFFORDABLE HOUSING

Minutes

Regular Board Meeting

September 22, 2015

1. Call to Order: President Diane Hodges called the meeting to order at Richland Community Center, 420 Miles Avenue, Yuba City, CA 95991 at 12:00 PM.
2. Roll Call: Board Members present were President Diane Hodges, Members Gustavo Becerra, Richard Grant and Charles Epp. Board Members Sarah Becker and Martha Griese were absent. Board Member Kimberly Butcher arrived later in the meeting.
3. Public Participation: None
4. Approval of Minutes – May 26, 2015: Board Member Charles Epp made a motion to approve the minutes of the May 26, 2015 meeting as submitted. Board Member Gustavo Becerra made the second. All were in favor by voice vote. Board Member Richard Grant abstained.
5. Resolution 15-29 – Approval to Amend the Bylaws: Board Member Gustavo Becerra explained it was agreed upon to update the Bylaws. He stated the changes in the bylaws include the change in address, the number of Board members going from twelve to nine and the name change from Consolidated Area Housing Authority of Sutter County to Regional Housing Authority of Sutter and Nevada Counties.

Board Member Richard Grant made a motion to approve Resolution 15-29, Approval to Amend the Bylaws. Board Member Charles Epp made the second. The following roll call vote was taken:

Vote: Ayes: President Diane Hodges, Board Members Gustavo Becerra,  
Charles Epp, Richard Grant and Kimberly Butcher

Nays: None

Abstain: None

Absent: Board Members Martha Griese and Sarah Becker

6. Resolution 15-30 – Resolution, Waiver of Notice and Unanimous Consent to Action in Regards to Kristen Court Apartments in Live Oak, CA: Assistant Planning and Community Development Manager Beckie Flores explained this resolution is for the Kristen Court Apartments in Live Oak, CA. She stated the tax credits were awarded and those involved are hoping for a mid-November close which would mean construction could potentially start in December. Mrs. Flores said the resolution will allow President Diane Hodges to sign all necessary paperwork in regards to the project.

Board Member Charles Epp made a motion to approve Resolution 15-30, Resolution, Waiver of Notice and Unanimous Consent to Action in regards to Kristen Court



Apartments in Live Oak, CA . Board Member Kimberly Butcher made the second. The following roll call vote was taken:

Vote: Ayes: President Diane Hodges, Board Members Gustavo Becerra, Charles Epp, Richard Grant and Kimberly Butcher  
Nays: None  
Abstain: None  
Absent: Board Members Martha Griese and Sarah Becker

7. Approval of Fiscal Year Ending 2016 Operating Budget: Board Member Gustavo Becerra mentioned there are no significant changes to the budget for Town Center Senior Manor and Yolo/Heiken. He stated a rent increase was not needed at this time as the properties are running fine and there are no capital improvements needed at this time.

Board Member Richard Grant made a motion to approve the FYE 2016 operating budget. Board Member Kimberly Butcher made the second. All were in favor by voice vote.

8. Occupancy/Eligibility Update on Maple Park, Town Center and Yolo/Heiken: Director of Housing Services Jeni Chavez said all is going well. She said Town Center is fully leased with very little turn over and Yolo/Heiken is also full with a few turn overs. Board Member Richard Grant stated he walked around Town Center Senior Manor and Yolo/Heiken before they meeting and both properties look good and the tenants are happy.
9. Maintenance Update on Maple Park, Town Center and Yolo/Heiken: Interim Director of Maintenance Tom Goodwin stated Maple Park is going well. He said the storm drains at Town Center will be cleaned soon. Mr. Goodwin also mentioned the tenants at Yolo/Heiken seem to be taking care of their units and taking a sense of ownership.
10. Director's Comments: Board Member Gustavo Becerra said the \$5,000 donation from Umpqua bank was used to purchase a new TV, new furniture for the community room and to do some concrete work outside where the tenants sit. He said a thank you letter was given to the bank.

Board Member Gustavo Becerra mentioned the HOME monitoring audit came back clean with no findings. He also passed out the schematics for the Kristen Court Apartments in Live Oak, CA and confirmed there will be a swimming pool at the property.

Board Member Kimberly Butcher invited everyone to the Fall Festival scheduled for October 22, 2015 from 4:30 PM to 7:00 PM at the Bernard Child Care Center.

11. Adjournment: The meeting was adjourned.



**SUTTER COMMUNITY  
AFFORDABLE HOUSING**

**RESOLUTION 15-31**

**RESOLUTION, WAIVER OF NOTICE AND  
UNANIMOUS CONSENT TO ACTION**

The Board of Directors of Sutter Community Affordable Housing (“SCAH”) by this writing unanimously approve the following resolutions and consent to their adoption:

WHEREAS, SCAH is and is approved to be a managing general partner in Live Oak Pacific Associates, a California Limited Partnership (the “Partnership”); and

WHEREAS, the Partnership, was formed for and is authorized to acquire, develop, construct and operate a 56-unit affordable housing project in Live Oak, California (the “Project”); and

WHEREAS, it will be necessary for the Partnership to enter into numerous documents and agreements in order to facilitate the acquisition, development, construction and operation of the Project; and

WHEREAS, it will be necessary for SCAH to execute such documents and enter into such agreements on behalf of the Partnership and may be required to guarantee items including construction completion, tax credit delivery and qualification, development deficits, construction deficits and operating deficits.

NOW THEREFORE, IT IS HEREBY RESOLVED, that Diane Hodges as President or Martha Griese as Vice President are hereby authorized to negotiate, execute and deliver the following documents on behalf of SCAH for its own account, as a guarantor under the loan and partnership documents, and on behalf of the Partnership, as applicable:

- A developer agreement with Pacific West Communities, Inc., an Idaho corporation;
- A contractor agreement with Pacific West Builders, Inc., an Idaho corporation;
- Execution of an Amended and Restated Partnership Agreement installing CREA Kristen Court, LLC and CREA SLP, LLC as limited partners of the Partnership, and any and all amendments thereto and ancillary documents required in connection with the syndication of the tax credits generated by the Project;
- Construction and Permanent loan documents, security interests, trust deeds, financing statements and other documents relating to securing and closing a construction loan and/or permanent loan (if any) from Rabobank, N.A. or affiliate thereof and Bonneville Mortgage Company or affiliate thereof in the approximate amounts of \$11,250,000 and \$1,000,000 respectively;
- Agreements, easements or documents with local government entities, utilities and any other documents necessary to facilitate the development of the Project, including a land loan in the amount of \$823,000 from the Regional Housing Authority of Sutter and Nevada Counties (“RHASNC”), a capital loan in the amount of \$337,143 from RHASNC, a land loan in the amount of \$293,000 from the City of Live Oak, and a fee deferral in the amount of \$373,349 from the City of Live Oak;

BE IT FURTHER RESOLVED, that Diane Hodges as President or Martha Griese as Vice President (with or without the co-signature of any other officer of SCAH) are authorized to execute and deliver on



behalf of SCAH for its own account, as a guarantor under the loan and partnership documents, and on behalf of the Partnership.

BE IT FURTHER RESOLVED, that all acts and actions previously taken by or on behalf of SCAH are hereby authorized, ratified and approved.

This Resolution is presented at the Regular Meeting of the Board of Directors, passed and adopted this 27<sup>th</sup> day of October, 2015 by the following vote:

AYES:

NAYS:

ABSTAINED:

ABSENT:

ATTEST: \_\_\_\_\_  
Diane Hodges, President





**ACQUISITION AND CAPITAL FUNDS LOAN AGREEMENT**

by and between

**REGIONAL HOUSING AUTHORITY OF SUTTER AND NEVADA COUNTIES**

and

**LIVE OAK PACIFIC ASSOCIATES,  
A CALIFORNIA LIMITED PARTNERSHIP**

## ACQUISITION AND CAPITAL FUNDS LOAN AGREEMENT

THIS ACQUISITION AND CAPITAL FUNDS LOAN AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2015 ("Effective Date"), between Regional Housing Authority of Sutter and Nevada Counties ("RHASNC"), and Live Oak Pacific Associates, a California Limited Partnership ("Borrower"). Borrower and RHASNC are hereinafter collectively referred to as the "Parties."

### RECITALS

- A. There is a great demand for affordable rental homes in Live Oak, California.
- B. RHASNC therefore desires to assist in the development of up to 55 units of affordable rental housing (to include at least six very-low income units and 49 low-income units); one manager's unit; and one storm water detention basin/open space park area (collectively, the "Project").
- C. Borrower has agreed to purchase from the City of Live Oak a certain parcel of real property known as Assessor Parcel Number 06-700-212 more particularly described in Exhibit A attached hereto (the "Park Parcel") and agrees to construct a storm water detention basin and open space park area on the Park Parcel.
- D. Borrower has agreed to purchase from RHASNC a certain parcel of real property known as Assessor Parcel Number 06-700-213 more particularly described in Exhibit B attached hereto (the "Apartment Parcel") and agrees to construct the housing units described in Recital B, above, on the Apartment Parcel.
- E. Borrower has requested and RHASNC has agreed to provide to Borrower an acquisition loan in an amount \$823,000 (the "Acquisition Loan") for the purpose of financing the acquisition of the Property, for a term of 55 years.
- F. Borrower has requested and RHASNC has agreed to also make a capital funds loan to Borrower in an amount not to exceed \$337,143 (the "Capital Funds Loan"), over a term of 55 years.
- G. Concurrently herewith, Borrower shall execute: (i) a promissory note in the amount of \$823,000 to evidence the Acquisition Loan (the "Acquisition Loan Note"), (ii) a promissory note in the amount of \$337,143 to evidence the Capital Funds Loan (the "Capital Funds Loan Note"), (iii) a Deed of Trust and Security Agreement ("Deed of Trust") to provide RHASNC with a security interest in the Apartment Parcel and the improvements located thereon (collectively, the "Development"). This Agreement, the Acquisition Loan Note, the Capital Funds Loan Note and the Deed of Trust are hereinafter collectively referred to as the "Loan Documents."
- H. RHASNC has determined that the Loans are necessary to make the Development economically feasible and affordable to low- and very low-income households.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

1.1. “Acquisition Loan” is defined in Recital E of this Loan Agreement.

1.2. “Acquisition Loan Note” means the promissory note that will evidence Borrower’s obligation to repay the Acquisition Loan.

1.3. “Agreement” means this Acquisition and Capital Funds Loan Agreement.

1.4. “Annual Operating Expenses” means for each calendar year during the term of the Loans, the following costs reasonably and actually incurred for operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: all state and local property and other taxes and annual assessments imposed on the Development; premiums for property damage and liability insurance; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on loans that have been approved by RHASNC and which are secured by deeds of trust senior in priority to RHASNC’s Deed of Trust (“Approved Senior Loan”); utility services not paid for directly by tenants, including but not limited to water, sewer, trash collection, gas and electricity; maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial, supplies, and others; any annual license or certificate of occupancy fees required for operation of the Development; general administrative expenses including but not limited to advertising and marketing, security services and systems, and professional fees for legal, audit and accounting; property management fees and reimbursements including on-site manager expenses, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by RHASNC; and cash deposited into a reserve for capital replacements of Development Projects and an operating reserve in such reasonable amounts as are approved by RHASNC, Asset Management Fees (as that term is defined in the Amended and Restated Agreement of Limited Partnership of Borrower (the “Partnership Agreement”)) paid to the limited partner of Borrower pursuant to the Partnership Agreement, Partnership Management Fees (as that term is defined in the Partnership Agreement) equal to \$ \_\_\_\_\_ per year paid to the nonprofit Managing General Partner of Borrower and deferred developer fees payable out of residual receipts. Annual Operating Expenses shall not include the following: debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to RHASNC’s Deed of Trust other than the deferred developer fee loan; depreciation, amortization, depletion or other non-cash expenses; capital expenditures; expenses paid for with disbursements from any reserve account except to the extent such disbursement is accounted as Gross Revenue; any amount paid to Borrower, or any entity controlled by the persons or entities in control of Borrower (unless such payment to Borrower consists of fees paid to a property management agent or resident services agent or is specifically provided for hereinabove including, without limitation, the deferred developer fee).

- 1.5. "Capital Funds Loan" is defined in Recital F of this Loan Agreement.
- 1.6. "Capital Funds Loan Note" means the promissory note that will evidence Borrower's obligation to repay the Capital Funds Loan.
- 1.7. "Development" means the Property and the Project constructed thereon.
- 1.8. "Gross Revenue" means for each calendar year during the term of the Loans, all revenue, income, receipts and other consideration actually received by Borrower from operation and leasing of the Development. Gross Revenue includes, but is not limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development; and condemnation awards for a taking of part or all of the Development for a temporary period. Gross Revenue shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Development and the release of funds from replacement and other reserve accounts to Borrower other than for costs associated with the Development. Gross Revenue shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances.
- 1.9. "Notes" means both the Acquisition Loan Note and the Capital Funds Loan Note.
- 1.10. "Parties" means RHASNC and Borrower.
- 1.11. "Project" is defined in Recital B of this Loan Agreement.
- 1.12. "Property" means the real property located in Live Oak, California as more particularly described in the attached Exhibits A and B.
- 1.13. "Residual Receipts" means for each calendar year during the Term, the amount by which Gross Revenue (as defined above) exceeds Annual Operating Expenses (as defined above) for the Development. Residual Receipts shall also include, unless otherwise provided herein and subject to the rights of senior lenders, condemnation awards for a permanent taking of part or all of the Property or the Projects to the extent not utilized to repair or rebuild Development.
- 1.14. "RHASNC Director" means the Director or Executive Director of RHASNC or his/her designee.
- 1.15. Exhibits. The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:
- EXHIBIT A: Legal Description of the Park Parcel  
EXHIBIT B: Legal Description of the Apartment Parcel

## ARTICLE II LOAN PROVISIONS

### 2.1. Acquisition Loan.

(a) Acquisition Loan Amount. RHASNC agrees to lend to Borrower \$823,000 ("Acquisition Loan Proceeds"). The Acquisition Loan shall be evidenced by the Acquisition Loan Note executed by Borrower.

(b) Acquisition Loan Interest. Commencing on the date of initial disbursement of all or a portion of Acquisition Loan Proceeds and continuing through the date that all indebtedness and other amounts payable under the Acquisition Loan Note are paid in full, the interest on the Acquisition Loan shall accrue as follows: the outstanding principal balance of the Acquisition Loan shall bear zero percent interest (0%) from disbursement through and including the construction loan closing until the earlier of (A) the permanent loan conversion or (B) the third (3rd) anniversary of the Project's construction loan closing; thereafter, the outstanding principal balance of the Acquisition Loan shall bear interest at a simple rate of three percent (3%) per year.

(c) Term. All unpaid principal, accrued and unpaid interest, and any other amounts payable under this Agreement is due and payable 55 years from the date the Certificate of Occupancy is issued for the Project by Regional Housing Authority of Sutter and Nevada Counties (the "Acquisition Loan Maturity Date".)

(d) Payment Terms. Borrower shall pay the Acquisition Loan in accordance with the terms set forth in Section 2.3 of this Agreement.

### 2.2. Capital Funds Loan.

(a) Capital Funds Loan Amount. RHASNC agrees to lend to Borrower the amount of \$337,143 ("Capital Funds Loan Proceeds"). The Capital Funds Loan shall be evidenced by the Capital Funds Loan Note executed by Borrower.

(b) Capital Funds Loan Interest. Commencing on the date of initial disbursement of all or a portion of Capital Funds Loan Proceeds and continuing through the date that all indebtedness and other amounts payable under this Agreement and the Capital Funds Loan Note are paid in full, the interest on the Capital Funds Loan shall accrue as follows: the outstanding principal balance of the Capital Funds Loan shall bear zero percent interest (0%) from disbursement through and including the construction loan closing until the earlier of (A) the permanent loan conversion or (B) the third (3rd) anniversary of the Project's construction loan closing; thereafter, the outstanding principal balance of the Capital Funds Loan shall bear interest at a simple rate of three percent (3%) per year.

(c) Term. All unpaid principal, accrued and unpaid interest, and any other amounts payable under this Agreement is due and payable 55 years from the date the Certificate of Occupancy is issued for the Project by Regional Housing Authority of Sutter and Nevada Counties (the "Capital Funds Loan Maturity Date".)

(d) Payment Terms. Borrower shall pay the Capital Funds Loan in accordance with the terms set forth in Section 2.3 of this Agreement.

### 2.3. Repayment of Loans

(a) Annual Payments. Borrower shall make payments on the outstanding principal and accrued interest on the Acquisition Loan and Capital Funds Loan in amounts equal to RHASNC Prorated Share (as defined below) of the Residual Receipts for each Loan. Such annual payments shall be due and payable in arrears no later than May 1<sup>st</sup> of each year with respect to the previous calendar year, commencing on the May 1<sup>st</sup> following conversion from the construction loan to the permanent loan, and shall be accompanied by the Borrower's report of Residual Receipts (including an independent auditor's report regarding the auditor's review of Annual Operating Expenses). The Borrower shall provide RHASNC with any documentation reasonably requested by RHASNC to substantiate the Borrower's determination of Residual Receipts. Payments made shall be credited first against accrued interest and then against outstanding principal of the Capital Funds Loan, and then against accrued interest and then against outstanding principal of the Acquisition Loan. The "RHASNC's Prorated Share" means the percentage of Residual Receipts allocated to payment of the respective loan pursuant to Section \_\_\_ of the Partnership Agreement but in no event exceeding 10% of total Residual Receipts for the relevant year.

(b) Payment in Full. All unpaid principal and interest on the Acquisition Loan and Capital Funds Loan shall be due upon the earliest of:

(i) A Transfer (as such term is defined in Section 2.4, below) of the Development other than a Transfer permitted or approved by RHASNC as provided in this Agreement;

(ii) The occurrence of an Event of Default for which either RHASNC exercises its right to cause Loan indebtedness to become immediately due and payable, or for which the Acquisition Loan indebtedness is automatically specified to become immediately due and payable pursuant to applicable subsections of this Agreement; or

(iii) The Acquisition Loan Maturity Date for the Acquisition Loan and the Capital Funds Loan Maturity Date for the Capital Funds Loan.

(c) Prepayments. The Loans or any portion of the outstanding principal balance of the Notes may be prepaid at any time and from time to time without penalty or premium. Prepayments shall be applied first to any unpaid late charges and other costs or fees then due, then to accrued but unpaid interest and then to principal.

(d) Reports and Accounting of Residual Receipts.

(i) Audited Financial Statement. In connection with the annual repayment of the Loans, within 120 days of Borrower's Fiscal Year end Borrower shall furnish to RHASNC an audited statement duly certified by an independent firm of certified public accountants approved by RHASNC, setting forth in reasonable detail the computation and amount of Residual Receipts during the preceding Development Fiscal Year.

(ii) Books and Records. Borrower shall keep and maintain on the Property or at another location, full, complete and appropriate books, record and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement which provide for the calculation of Residual Receipts on a cash basis. All such books, records, and accounts shall be open to and available for inspection by RHASNC, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Borrower may be required to furnish any governmental authority shall at all reasonable times to open for inspection by RHASNC at the place that the books, records and accounts of the Borrower are kept. The Borrower shall preserve records on which any statement of Residual Receipts is based for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (c) below then pending.

(e) RHASNC Audits.

(i) The receipt by RHASNC of any statement pursuant to subsection (a) above or any payment by Borrower or acceptance by RHASNC of any Acquisition Loan repayment for any period shall not bind RHASNC as to the correctness of such statement or such payment. Within three (3) years after the receipt of any such statement, RHASNC or any designated agent of employee of RHASNC at any time shall be entitled to audit the Residual Receipts and all books, records, and accounts pertaining thereto.

(ii) Such audit shall be conducted during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of an audit, RHASNC shall deliver a copy of the results of such audit to Borrower. If it shall be determined as a result of such audit that there has been a deficiency in a loan repayment to RHASNC, then such deficiency shall become immediately due and payable with interest at the default rate set forth in this Agreement, determined as of and accruing from the date that said payment should have been made. In addition, if Borrower's auditor's statement for any Development Fiscal Year shall be found to have understated Residual Receipts by more than five percent (5%), Borrower shall pay, in addition to the interest charges referenced hereinabove, all of RHASNC's reasonable costs and expenses connected with any audit or review of Borrower's accounts and records.

(f) Recourse Obligations. It is the intention of Borrower and RHASNC that all of Borrower's liabilities and obligations under this Agreement and the Loan Documents shall be with full recourse as against Borrower.

**2.4. Due on Sale, Refinance or Transfer of Property.** Unless RHASNC agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Loan Documents shall be due and payable upon the transfer, refinance or sale (each a "Transfer") of all or any part of, or interest in, the Property, except any Transfer after which the Property is subject to deed restrictions requiring the Property to continue to be operated as an affordable rental

housing development at least as affordable as described in Recital B, above (an “Affordable Development”), through at least the Acquisition Loan Maturity Date for the Acquisition Loan and the Capital Funds Loan Maturity Date for the Capital Funds Loan. Moreover, RHASNC hereby subordinates to the loan(s), loan documents and security interest(s) in the Property of any lender financing a Transfer which is conditioned upon the Property continuing to be operated as an Affordable Development and hereby agrees to execute any document(s) necessary to perfect such subordination(s) or to satisfy the requirements of any such lender. Notwithstanding the foregoing, following the admission of City Real Estate Advisors, Inc. (“CREA”), or an affiliate thereof, as a limited partner of Borrower, the transfer of a limited partners’ limited partnership interest in the Borrower to an affiliate of CREA shall not constitute an accelerating Transfer and shall not require the consent of RHASNC. Moreover, notwithstanding the foregoing, a limited partner of Borrower shall be permitted to remove a general partner thereof for cause in accordance with the Partnership Agreement without the consent of RHASNC.

**2.5. Security.** As security for repayment of the Notes, Borrower shall execute the Deed of Trust pursuant to which Borrower shall provide RHASNC a lien against the Apartment Parcel. The Deed of Trust shall be dated as of the Effective Date and shall be recorded in the official records of Sutter County.

**2.6. Conditions Precedent to RHASNC’s Obligation to Disburse.** The obligation of RHASNC to fund the Loans and disburse the proceeds thereof is conditioned upon the receipt by RHASNC of the following:

- (a) The executed Loan Documents, acknowledged where appropriate;
- (b) A copy of Borrower’s enabling operating agreement or enabling documents, certificate of good standing, corporate borrowing resolution and such other evidence satisfactory to RHASNC that Borrower is duly formed, validly existing, in good standing under the laws of the State of California, has the power and authority to enter into the Loan Documents, and shall be bound by their terms when executed and delivered;
- (c) Borrower’s delivery to RHASNC of each of the following:
  - (i) A copy of Borrower’s articles of organization;
  - (ii) Certificate of good standing, certified by the Secretary of State indicating that Borrower is properly organized and authorized to do business in the State of California; and
  - (iii) Partnership resolution indicating that Borrower has authorized this transaction and that the persons executing the Loan Documents on Borrower’s behalf have been duly authorized to do so;
- (d) Recordation of the Deed of Trust in the official records of Sutter County;
- (e) With respect to the Capital Funds Loan, a copy of a certificate of substantial completion issued by the architect for the Project; and



(f) Copies of such other documents related to the acquisition and financing of the Property and the Improvements as RHASNC may reasonably request.

**2.7. No Obligation to Disburse Proceeds upon Default.** Notwithstanding any other provision of this Agreement, RHASNC shall have no obligation to disburse any portion of the Acquisition Loan Proceeds or Capital Funds Loan Proceeds if Borrower's representations and warranties fail to be true and correct in all material respects.

**2.8. Use of Funds.** Borrower agrees to use the Acquisition Loan Proceeds and Capital Funds Loan Proceeds solely to finance a portion of the predevelopment, development, and construction costs of the Project. Construction costs will include the cost of all fees necessary for the issuance of building permits, notwithstanding the fact that the Loan proceeds shall be disbursed so that the building permits may be issued prior to the Project's construction loan closing.

**2.9. Disbursement of Loan Proceeds.** Upon satisfaction of the conditions set forth in Section 2.6 herein, RHASNC shall transfer the Apartment Parcel to Borrower and shall disburse an amount equal to the amount of the Capital Funds Loan Proceeds.

### **ARTICLE III BORROWER REPRESENTATIONS AND WARRANTIES**

**3.1. Duly Organized.** Borrower warrants that it is duly organized under applicable laws of the State of California, is qualified to do business in the State of California, and is in compliance in all material respects with all laws and regulations necessary to acquire the Property.

**3.2. Authority.** Borrower warrants that it has authority, and has completed all proceedings and obtained all approvals necessary to execute, deliver, and perform its obligations under the Loan Documents and the transactions contemplated thereby.

**3.3. No Contravening Agreements.** Borrower warrants that the execution, delivery, and performance of the Loan Documents will not contravene, or constitute a default under or result in a lien upon assets of Borrower pursuant to any applicable law or regulation, any charter document of Borrower, or any instrument binding upon or affecting Borrower, or any contract, agreement, judgment, order, decree, or other instrument binding upon or affecting Borrower.

**3.4. Valid and Binding Obligations.** Borrower warrants that, when duly executed by Borrower, this Agreement and the Notes shall constitute the valid and binding obligations of Borrower enforceable in accordance with their respective terms. Borrower hereby waives any defense to the enforcement of the terms of the Loan Documents related to alleged invalidity of any provisions or conditions contained therein.

**3.5. No Adverse Action.** Borrower warrants that there is no action, suit or proceeding pending or threatened against it which might adversely affect Borrower in any material respect.

## **ARTICLE IV**

### **BORROWER COVENANTS**

**4.1. Use of Proceeds.** Borrower agrees to use the Acquisition Loan Proceeds and Capital Funds Loan Proceeds solely to finance a portion of the predevelopment, development, and construction costs of the Project.

**4.2. Punctual Payment.** Borrower covenants to punctually pay the principal balance of Acquisition Loan and Capital Funds Loan, and interest accrued thereon, at the times and place and in the manner specified herein and in the Notes.

**4.3. Taxes and Other Liabilities.** Borrower shall pay and discharge when due any and all indebtedness, obligations, assessments, taxes, including federal and state income taxes, property taxes, and special taxes or assessments due to the City of Live Oak or the County of Sutter which are the obligations of Borrower in relation to the Property except those that Borrower may in good faith contest or as to which a bona fide dispute may arise, provided provision is made to the satisfaction of RHASNC for eventual payment thereof in the event that it is found that the same is an obligation of Borrower.

**4.4. Compliance with Laws.** Borrower covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property. Without limiting the generality of the foregoing, Borrower shall comply with all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled.

**4.5. Assignment.** Borrower shall not cause or permit any voluntary transfer, assignment or conveyance of this Agreement. Any transfer, assignment or conveyance shall be voidable and shall constitute a default under Article 6 of this Agreement.

**4.6. Insurance.** Borrower covenants to maintain insurance equivalent to a commercial general liability policy in the amount of One Million Dollars (\$1,000,000) combined single limit, including contractual liability coverage. Such insurance shall be written on an occurrence basis and shall name RHASNC as loss payee as its interests may appear. Borrower covenants to maintain and keep the Property insured against loss or damage by earthquake, fire and such other hazards, casualties and contingencies and by such companies on such forms and in the amount of the replacement cost of the Property and any improvements thereon, and shall deliver a copy of all such policies to RHASNC, together with receipts satisfactory to RHASNC evidencing payment of the premiums. Borrower shall provide RHASNC not less than thirty (30) days advance written notice of the cancellation, expiration or termination of any such policy or any material change in the coverage afforded by it. Renewal policies and any replacement policies, together with premium receipts satisfactory to RHASNC, shall be delivered to RHASNC at least thirty (30) calendar days prior to the expiration of existing policies. Neither Borrower nor RHASNC shall by reason of accepting, rejecting, approving or obtaining insurance incur any liability for the existence, nonexistence, form or legal sufficiency of such insurance, or solvency of any insurer for payment of losses. All insurance proceeds for such losses must be utilized for the repair or restoration of the Property and improvements thereon.

**4.7. Accounting Records; Property Inspection.** Borrower covenants to maintain accurate books and records in accordance with standard accounting principles consistently applied, and to permit RHASNC, during business hours and upon reasonable notice to inspect, audit and examine such books and records with respect to the Project, the Property and the Loan Documents and to inspect the Property and Improvements during normal business hours upon reasonable notice.

**4.8. Maintenance.** During the term of this Agreement, Borrower shall maintain the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving an RHASNC notice of such a condition (or such additional time as may be necessary provided Borrower has commenced to cure the same within such 30-day period), then in addition to any other rights available to RHASNC, RHASNC shall have the right to perform all acts necessary to cure such condition.

**4.9. Indemnification.** Borrower shall indemnify, defend (with counsel reasonably acceptable to RHASNC), and hold harmless RHASNC and its officials, officers, agents, and employees (collectively the "Indemnitees"), from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, claims, demands, penalties, fines, orders, judgments, injunctive or other relief, expenses and charges (including attorneys' fees and expenses of attorneys) (collectively "Liabilities") arising directly or indirectly in any manner in connection with or as a result of: (a) any breach of Borrower's covenants under the Loan Documents, (b) any failure of Borrower's representations and warranties to be true and correct in all material respects when made, (c) any injury or death to persons or damage to property or other loss occurring on the Property, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Loan, the Loan Documents, or any transaction contemplated thereby, or any failure of Borrower to comply with all applicable state, federal and local laws and regulations, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Borrower under this Section shall survive the expiration or termination of this Agreement.

**4.10. Notice to RHASNC.** Within three business days after any of the following shall occur, Borrower shall provide written notice thereof to RHASNC: (1) any change in name, identity, legal structure, business location, or address of Borrower; (2) any uninsured or partially uninsured loss affecting the Property or any improvements thereon through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000); and (3) Borrower's receipt of a notice of default under any mortgage or other financing document affecting the Property or any improvements thereon.

**4.11. Lease of Property.** Unless RHASNC agrees and approves tenants in writing, Borrower shall not convey all or any part of the Property by lease, except in the ordinary course of operating the Development as a residential rental project.

**4.12. Expenses of Collection or Enforcement.** If at any time Borrower defaults under any provision of the Loan Documents, Borrower shall pay to RHASNC in addition to any other sums that may be due to RHASNC, an amount equal to the costs and expenses (including without limitation, attorneys' fees and expenses) RHASNC incurs in connection with the collection, enforcement, or correction of the default, and such amounts shall be a part of the indebtedness secured by the Deed of Trust.

**4.13. Non-Discrimination.** Borrower covenants by and for itself, and any successors in interest, that there shall be no discrimination against or segregation of, any person, or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Borrower itself or any person claiming under or through it establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of Borrower. The foregoing covenants shall run with the land.

Notwithstanding the foregoing, with respect to familial status, nothing herein shall be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor shall be construed to affect Section 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this Section 4.13.

## **ARTICLE V**

### **ENVIRONMENTAL REQUIREMENTS**

**5.1. Hazardous Materials.** Borrower shall not cause or permit any Hazardous Materials (as defined in below) to be brought upon, kept, stored or used in, on, or about the Property by Borrower, or the agents, employees, contractors or invitees of Borrower except for materials commonly used in construction activities similar to those related to the Improvements, or in the operation and maintenance of the Property and the Improvements, in each case in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Property. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Property and results in any contamination of the Property or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Property, Borrower shall promptly take all actions at Borrower's sole expense as are necessary to comply with all Hazardous Materials Laws (as defined below).

#### **5.2. Definitions.**

(a) Hazardous Materials. As used in this Agreement, "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, city or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," or any other terms comparable to the

foregoing terms under any provision of California law or federal law as any such statutes and regulations now exist or may hereafter be amended, (ii) petroleum or petroleum products; (iii) asbestos; (iv) polychlorinated biphenyls, (v) radioactive chemicals, (vi) any material determined to hazardous based on deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity or toxicity, (vii) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (viii) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); (ix) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq; or (x) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

(b) Hazardous Materials Laws. As used in this Agreement, “Hazardous Materials Laws” means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 5.2(a), as they may be amended from time to time.

**5.3. Indemnification.** Borrower shall indemnify, defend (with counsel reasonably acceptable to RHASNC), and hold the Indemnitees harmless from and against liabilities arising directly or indirectly in any manner in connection with or as a result of the breach of Borrower’s covenants set forth in Section 5.1 or the actual or alleged release or presence of any Hazardous Materials on, under, in or about the Property, whether known or unknown, foreseeable or unforeseeable, regardless of the source of such release or when such release occurred or such presence is discovered. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of such Hazardous Materials, all costs of determining whether the Property is in compliance with Hazardous Materials Laws, all costs associated with bringing the Property into compliance with all applicable Hazardous Materials Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources. The indemnity described in this Section shall survive the expiration or termination of this Agreement, the making and repayment of the Loan, the release or reconveyance of the Deed of Trust, and any foreclosure proceeding, foreclosure sale or delivery of deed in lieu of foreclosure. Borrower’s indemnity obligations under this Section will not extend to claims resulting solely from Indemnitees’ gross negligence or willful misconduct.

## **ARTICLE VI**

### **DEFAULT AND REMEDIES**

**6.1. Events of Default.** Each of the following events will constitute an event of default (“Event of Default”) under this Agreement:

(a) Failure to Make Payments. If Borrower fails to pay when due the principal and interest payable under the Notes and such failure continues for ten (10) calendar days after RHASNC notifies Borrower thereof in writing.

(b) Noncompliance with Loan Documents. Borrower's failure, neglect or refusal to perform any promise, agreement, covenant or obligation contained in the Loan Documents after any applicable cure periods.

(c) Noncompliance with Governmental Requirements. Borrower's failure to timely comply with any governmental requirements, including but not limited to obtaining licenses and permits.

(d) False Representations. If any material representation or disclosure made to RHASNC by Borrower in connection with the Loan Documents proves to be false or misleading in any material adverse respect when made.

(e) Bankruptcy. The filing by or against Borrower of a voluntary or involuntary petition in bankruptcy or the adjudication of Borrower as bankrupt or insolvent, or the filing of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or the seeking or consenting to or acquiescing in the appointment of any trustee, receiver, liquidator of Borrower or any substantial part of or all of the property of Borrower, and if any such proceeding is not dismissed within sixty (60) days; Borrower is named in any such proceeding and the same is not dismissed within one hundred twenty (120) days.

(f) Lease. Conveyance of all or a portion of the Property by lease without the prior written consent of RHASNC to such conveyance, except in the ordinary course of operating the Development as a residential rental project.

(g) Transfer. The occurrence of a Transfer in violation of Section 2.4 of this Agreement.

(h) Occurrence of an Event of Default in Other Loan Documents. An event of default under any Loan Document, or any other loan agreement and related documents by and between Borrower and RHASNC other than the Loan Documents, subject to the expiration of any applicable cure period set forth in such documents.

**6.2. Declaring Default.** Whenever any Event of Default has occurred RHASNC shall give written notice of default to Borrower, and each limited partner of Borrower at the time of such notice. RHASNC agrees to accept cure from any limited partner of Borrower. If the default is not cured by any of the noticed parties within thirty (30) business days after the Date of Default (defined herein), or any extension approved in writing by RHASNC, RHASNC may enforce its rights and remedies under Section 6.3 below. Any default that has occurred shall be deemed to commence on the date that written notice of default is effective per Section 7.4 of this Agreement (the "Date of Default"). If Default is of a nature that will reasonably take longer to cure than thirty (30) days, Borrower shall have such additional time as may be reasonably necessary to cure any condition provided that Borrower commences to cure within 30 days of notice of default and diligently pursues to cure.

**6.3. Remedies.** Upon the occurrence of any Event of Default, in addition to its other rights in this Agreement, and the Notes, at law, or in equity, RHASNC may exercise any one or more of the following rights and remedies:

(a) Accelerate and declare the entire unpaid principal balance of the Notes together with all accrued interest thereon, and all other sums owing to RHASNC immediately due and payable; and

(b) Proceed at law, or in equity, to require Borrower to perform its obligations and covenants under the Loan Documents; and

(c) Proceed as authorized at law or in equity with respect to the Event of Default, and in connection with that, pursue any and all other remedies available under law to enforce the terms of this Agreement or any other Loan Document.

The remedies provided herein are cumulative and not exclusive of, and shall not prejudice any other remedy provided in any Loan Document.

## **ARTICLE VII**

### **MISCELLANEOUS**

**7.1. Relationship of Parties.** Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee or principal and agent between RHASNC and Borrower or Borrower's agents or employees, and Borrower shall at all times be deemed a borrower and shall be wholly responsible for the manner in which it or its agents, or both, perform under this Agreement.

**7.2. No Third Party Claims.** Nothing contained in this Agreement shall create or justify any claim against RHASNC by any third person whom Borrower may have employed or contracted or may employ or contract relative to the purchase of any material, supplies or equipment, or the furnishing or the performance of any work or services with respect to any programs or projects being undertaken by Borrower.

**7.3. Conflict of Interest.** Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of RHASNC or Borrower who exercises or has exercised any function or responsibilities with respect to activities assisted by tax increment funds in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities assisted under this Agreement, may obtain a personal or financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter.

**7.4. Notices.** Any notice, request or consent required pursuant to this Agreement shall be deemed delivered upon receipt when delivered personally or by facsimile transmission, provided that a transmission report is generated reflecting the accurate transmission thereof, or three (3) business days after being deposited in the U.S. mail, first class postage prepaid, return

receipt requested, or one (1) day after deposit with a nationally recognized overnight carrier addressed as follows:

RHASNC: Regional Housing Authority  
of Sutter and Nevada Counties  
1455 Butte House Road  
Yuba City, CA 95993  
Attn: RHASNC Executive Director

Borrower: Live Oak Pacific Associates,  
A California Limited Partnership  
430 E. State Street, Ste.100  
Eagle, ID 83616  
Attn: Caleb Roope

CREA Kristen Court, LLC  
CREA SLP, LLC  
30 South Meridian Street, Ste.400  
Indianapolis, IN 46204  
Attn: Asset Management

Applegate & Thorne-Thomsen, P.C.  
626 West Jackson Blvd., Ste.400  
Chicago, IL 60661  
Warren P. Wenzloff

or to such other addresses as the parties may designate by notice as set forth above.

**7.5. Successors and Assigns.** All of the terms of this Agreement shall apply to and be binding upon, and inure to the benefit of, the successors and permitted assigns of RHASNC and Borrower, respectively, and all persons claiming under or through them.

**7.6. Attorneys' Fees.** If any action is instituted by any Party to this Agreement to enforce this Agreement, the Loan or the Notes, or to collect any sums due hereunder or pursuant to the Loan or the Notes, the prevailing Party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in that action.

**7.7. Severability.** If one or more provisions of this Agreement are found invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall not in any way be affected, prejudiced, disturbed or impaired thereby, and all other provisions of this Agreement shall remain in full force and effect.

**7.8. Amendments/Entire Agreement.** RHASNC and Borrower reserve the right to amend this Agreement by mutual consent. It is mutually understood and agreed that no amendment, modification, alteration or variation of the terms of this Agreement shall be valid unless in writing and signed and acknowledged and approved by both parties. This Agreement



constitutes the entire agreement of the parties and no oral understandings or agreement not incorporated herein shall be binding on either Party.

**7.9. Joint and Several Liability.** If Borrower consists of more than one person or entity, each shall be jointly and severally liable to RHASNC for the performance of this Agreement.

**7.10. Time.** Time is of the essence in the performance of the terms and conditions of this Agreement.

**7.11. Governing Law.** The laws of the State of California shall govern this Agreement.

**7.12. Non-Liability of RHASNC and RHASNC Officials, Employees and Agents.** No member, official, employee or agent of RHASNC or RHASNC shall be personally liable to Borrower, or any successor in interest to Borrower, in the event of any default or breach by RHASNC or for any amount which may become due to Borrower or any successor under the terms of this Agreement.

**7.13. RHASNC's Rights and Consent.** No forbearance, failure or delay by RHASNC in exercising any right, power or remedy, nor any single or partial exercise by RHASNC of any right or remedy hereunder shall preclude the further exercise of such right, power or remedy.

RHASNC's consent to any act or omission by Borrower may not be construed as RHASNC's consent to any other or subsequent act or omission or as a waiver of the requirement to obtain RHASNC's consent in any other instance. All of RHASNC's rights, powers and remedies are cumulative and shall continue in full force and effect until specifically waived in writing by RHASNC.

**7.14. Duration/Survival.** This Agreement shall continue in full force and effect until the obligations due under this Agreement and the Notes have been paid in full. Notwithstanding the foregoing, the indemnification provisions of Section 4.9 and Section 5.3 of this Agreement shall survive the expiration of this Agreement and the making and repayment of the Loan.

**7.15. Assignment or Assumption.** This Agreement and the Loan Documents may not be assigned to, or assumed by, a third party. Any attempt to assign or assume the Loan Documents shall be void.

**7.16. Headings.** The headings within this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Agreement.

**7.17. Counterparts, Facsimile Copies.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This Agreement shall be effective upon transmission by any Party to the other parties of a fully signed facsimile copy of the Agreement after the formal approval by the governing body of RHASNC, so long as a copy of the Agreement signed by the transmitting Party is delivered to the other parties within five (5) business days thereafter. In case of any conflict, the counterpart maintained by RHASNC shall be deemed to be determinative.

7.18. Indemnity. All indemnification provision in the Loan Documents in favor of RHASNC shall apply only to losses, claims, liabilities and/or damages actually incurred and shall not include any claim or liability resulting from RHASNC's gross negligence or willful misconduct.

7.19. Consent Standard. In any approval, consent or other determination by RHASNC required under any of the Loan Documents, RHASNC shall act reasonably and in good faith.

IN WITNESS WHEREOF, RHASNC and Borrower have executed this Agreement as of the date first above written.

RHASNC

REGIONAL HOUSING AUTHORITY OF  
SUTTER AND NEVADA COUNTIES

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

APPROVED AS TO FORM

By: \_\_\_\_\_  
RHASNC Attorney

BORROWER:

Live Oak Pacific Associates, a California  
Limited Partnership

TPC Idaho Holdings V, LLC,  
its Administrative General Partner

By: \_\_\_\_\_  
Name: Caleb Roope  
Title: Manager

Sutter Community Affordable Housing,  
its Managing General Partner

By: \_\_\_\_\_  
Name: ~~Diane Hodges~~ Martha Griese  
Title: Vice President

EXHIBIT A  
Legal Description of the Park Parcel

**EXHIBIT B**  
**Legal Description of the Apartment Parcel**

Recording Requested by  
and when Recorded, return to:

Regional Housing Authority  
of Sutter and Nevada Counties  
1455 Butte House Road  
Yuba City, CA 95993  
Attn.: RHASNC Director

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

### DEED OF TRUST AND SECURITY AGREEMENT

THIS DEED OF TRUST AND SECURITY AGREEMENT ("**Deed of Trust**") is made as of \_\_\_\_\_, 2015 by Live Oak Pacific Associates, a California Limited Partnership ("**Trustor**") to First American Title Company as trustee ("**Trustee**") for the benefit of Regional Housing Authority of Sutter and Nevada Counties ("**Beneficiary**").

#### RECITALS

- A. Trustor owns fee simple title to the real property known as APN 06-700-213 as more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("**Land**").
- B. Trustor has agreed to and will construct 56 units of affordable rental housing to include six very-low income units, 49 low-income units and one manager's unit (the "**Project**") on the Land and certain open space and drainage facilities for the Project on an adjoining parcel bearing APN 06-700-212.
- C. Trustor and Beneficiary have entered into Acquisition and Capital Funds Loan Agreement dated on even date herewith ("**Loan Agreement**") pursuant to which Beneficiary will provide an acquisition loan in an amount not to exceed \$823,000 (the "**Acquisition Loan**") for the purchase of the Land, and will provide a capital funds loan in an amount not to exceed \$337,143 (the "**Capital Funds Loan**," and together with the Acquisition Loan the "**Loans**").
- D. As a condition to making the Loans, Beneficiary has required that Trustor enter into this Deed of Trust and grant to Trustee for the benefit of Beneficiary, a lien and security interest in the Property (as defined below) to secure repayment of the Loan.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustee agrees as follows:

1. Grant in Trust. Trustor irrevocably grants and conveys the Land to Trustee, in trust, with power of sale, together with all improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Beneficiary to collect and apply such rents), all of which shall be deemed to be and remain a part of the Property secured by this Deed of Trust; and all of the foregoing, together with the Land are hereinafter referred to as the "**Property**".

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said Property and intended to be installed herein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Paragraph 4.1 herein; and

TOGETHER WITH all Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution

therefore, whether or not the same are, or shall be attached to said building or buildings in any manner.

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs, and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the "**Security.**" To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING (collectively the "**Secured Obligations**"):

(a) Payment of just indebtedness of Trustor to Beneficiary as set forth in the Acquisition Loan Note and the Capital Funds Loan Note (as defined in Article 1 below) until paid or cancelled. Said principal and other payments shall be due and payable as provided in the Notes. Said Notes and all their terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced; and

(b) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

(c) Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents (defined in Section 1.2 below).

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

## ARTICLE I DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust;

**1.1.** The term "**Acquisition Loan Note**" means the promissory note in the principal amount of \$823,000 dated of even date herewith executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Deed of Trust. (A copy of the Acquisition

Loan Note is on file with the Beneficiary and terms and provisions of the Acquisition Loan Note are incorporated herein by reference).

**1.2.** The term “**Capital Funds Loan Note**” means the promissory note in the principal amount of \$337,143 dated of even date herewith executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Deed of Trust. (A copy of the Capital Funds Loan Note is on file with the Beneficiary and terms and provisions of the Capital Funds Loan Note are incorporated herein by reference).

**1.3.** The term “**Loan Agreement**” means that certain Acquisition and Capital Funds Loan Agreement between Trustor and Beneficiary, dated of even date herewith providing for the Beneficiary to provide to the Trustor: (a) an Acquisition Loan in an amount not to exceed \$823,000; and (b) a Capital Funds Loan in an amount not to exceed \$337,143 to the Trustor made to provide partial financing for the acquisition and development of the Property.

**1.4.** The term “**Loan Documents**” means this Deed of Trust, the Notes, the Loan Agreement, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

**1.5.** The term “**Notes**” shall refer, collectively, to the Capital Funds Loan Note and the Acquisition Loan Note.

**1.6.** The term “**Principal**” means the amount required to be paid under the Note.

## **ARTICLE II MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY**

### **2.1. Maintenance and Modification of the Property by Trustor.**

(a) The Trustor agrees that at all times prior to full payment of the sum owed under the Notes, the Trustor will, at the Trustor’s own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

(b) Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.



(c) Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the office of the recorder of the County of Sutter, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

**2.2. Granting of Easements.** Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law. As to these exceptions, Beneficiary will grant and/or direct the Trustee to grant such easements.

### **ARTICLE III TAXES AND INSURANCE; ADVANCES**

#### **3.1. Taxes, Other Governmental Charges and Utility Charges.**

(a) Trustor shall pay, or cause to be paid, at least fifteen (15) days prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided however, the Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefore on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments charges and levies.

(b) In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefore by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, shall become an additional obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay all such amounts.

#### **3.2. Provisions Respecting Insurance.**

(a) Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all other obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

(b) All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefore at any time prior to the Beneficiary's receipt of the entire Principal and all amounts secured by this Deed of Trust.

**3.3. Advances.** In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Beneficiary, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefore by the Beneficiary shall become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of eight percent (8%) per annum or the maximum rate permitted by law.

#### **ARTICLE IV DAMAGE, DESTRUCTION OR CONDEMNATION**

**4.1. Awards and Damages.** All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (b) any damage to or destruction of the Property or in any part thereof by insured casualty, and (c) any other injury or damage to all or any part of the Property ("**funds**") shall be used by Trustor to restore the Property and, to the extent such funds cannot be used for such purpose, they are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. The rights of the Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender.

**ARTICLE V**  
**AGREEMENTS AFFECTING THE PROPERTY; FURTHER ASSURANCES;**  
**PAYMENT OF PRINCIPAL AND INTEREST**

**5.1. Other Agreements Affecting Property.** The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

**5.2. Agreement to Pay Attorneys' Fees and Expenses.** In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of any obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of eight percent (8%) per annum or the maximum rate permitted by law.

**5.3. Payment of the Principal.** The Trustor shall pay to the Beneficiary the principal and any other payments including interest as set forth in the Note in the amounts and by the times set out therein.

**5.4. Personal Property.** To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of trust shall constitute a security agreement under the California Commercial Code.

**5.5. Financing Statement.** The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with their terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

**5.6. Operation of the Security.** The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

**5.7. Inspection of the Security.** At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers,

accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

**5.8. Nondiscrimination.** The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, age, sex, sexual orientation marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

## ARTICLE VI HAZARDOUS MATERIALS

**6.1.** Trustor shall not cause or permit any Hazardous Materials (as defined below) to be brought upon, kept, stored or used in, on, or about the Property by Trustor, or the agents, employees, contractors or invitees of Trustor except for materials commonly used in construction activities similar to those related to the Project, or in the operation and maintenance of the Property and the Improvements, in each case in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Property. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Property and results in any contamination of the Property or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Property, Trustor shall promptly take all actions at Trustor's sole expense as are necessary to comply with all Environmental Laws (as defined below).

**6.2.** "Hazardous Materials" means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation:

- (a) petroleum or oil or gas or any direct or indirect product or by-product thereof;
- (b) asbestos and any material containing asbestos;
- (c) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act (15 U.S.C. 2601, et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Authorization Act (49 U.S.C. Section 5101, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251), the Clean Air Act (42 U.S.C. Section 7401, et seq.), the California Underground Storage of Hazardous Substances Act (California Health and Safety Code Section

25280, et seq.), the California Hazardous Substances Account Act (California Health and Safety Code Section 25300, et seq.), the California Hazardous Waste Act (California Health and Safety Code Section 25100, et seq.), the California Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5, et seq.), and the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), as they now exist or are hereafter amended, together with any regulations promulgated thereunder;

(d) any substance, material or waste which is defined as such or regulated by any “Superfund” or “Superlien” law, or any Environmental Law; or

(e) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

**6.3. “Environmental Law”** means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning:

(a) pollution or protection of the environment, including natural resources;

(b) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances;

(c) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities;

(d) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or

(e) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act (15 U.S.C. 2601, et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Authorization Act (49 U.S.C. Section 5101, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251), the Clean Air Act (42 U.S.C. Section 7401, et seq.), the California Underground Storage of Hazardous Substances Act (California Health and Safety Code Section 25280, et seq.), the California Hazardous Substances Account Act (California Health and Safety Code Section 25300, et seq.), the California Hazardous Waste Act (California Health and Safety Code Section 25100, et seq.), the California Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5, et seq.), and the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

6.4. Trustor shall immediately advise the Beneficiary in writing if at any time it receives written notice of

(a) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Development pursuant to any applicable Environmental Law;

(b) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (a) and (b) above are hereinafter referred to as "**Hazardous Materials Claims**"); and

(c) Trustor's discovery of any occurrence of condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "**border-zone property**" under the provision of California Health and Safety Code, Sections 25220 et seq. or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Development under any Environmental Law.

6.5. The Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor. Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary) and hold harmless the Beneficiary and its council-members, board-members, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Development including without limitation:

(a) all foreseeable consequential damages;

(b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and

(c) all reasonable costs and expenses incurred by the Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees. This obligation to indemnify shall survive termination of this Agreement.

6.6. Without the Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the Beneficiary's reasonable judgment, impair the value of the Beneficiary's security hereunder; provided, however, that the Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is

necessary and it is not reasonably possible to obtain the Beneficiary's consent before taking such action, provided that in such event Trustor shall notify the Beneficiary as soon as practicable of any action so taken. The Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if either:

- (a) a particular remedial action is ordered by a court of competent jurisdiction,
- (b) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action;
- (c) Trustor establishes to the reasonable satisfaction of the Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of the Beneficiary's security hereunder; or
- (d) the action has been agreed to by the Beneficiary.

**6.7.** Trustor hereby acknowledges and agrees that

(a) this Section is intended as the Beneficiary's written request for information (and Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and

(b) each representation and warranty in this Deed of Trust (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

## **ARTICLE VII EVENTS OF DEFAULT AND REMEDIES**

### **7.1. Events of Default.**

(a) The following shall constitute Events of Default following the expiration of any applicable notice and cure periods:

(i) failure to make any payment to be paid by Trustor under the Loan Documents;

(ii) failure to observe or perform any of Trustor's other covenants, agreement or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination;

(iii) failure to make any payment or perform any of Trustor's other covenants, agreements, or obligations under any other debt instruments secured by the Property, which default shall not be cured within the times and in the manner provided therein.

### **7.2. Acceleration of Maturity.**

(a) If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and the unpaid principal of the Note shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

### **7.3. The Beneficiary's Right to Enter and Take Possession.**

(a) If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(i) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Default (as defined below) hereunder or invalidate any act done in response to such Default or pursuant to such Notice of Default and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(ii) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(iii) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("**Notice of Default and Election to Sell**"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Sutter County; or

(iv) Exercise all other right and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

### **7.4. Foreclosure by Power of Sale.**

(a) Should the Beneficiary elect to foreclose by exercise of power of sale herein contained, the Beneficiary shall give notice to the Trustee (the "**Notice of Sale**") and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the unpaid principal amount of the Note is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.



(b) Upon receipt of such notice from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then required by law and after recordation of such Notice of Default and Election to Sell and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(c) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other amounts owed to Beneficiary under the Loan Documents, (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

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

**7.5. Receiver.** If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereto), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefore. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

**7.6. Remedies Cumulative.** No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

**7.7. No Waiver.**

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. No consent or waiver, expressed or implied, by the Beneficiary to or any breach by the Trustor in the performance of the obligations hereunder shall be deemed or construed to be a consent to or waiver of obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (iv) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, cosigner, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

**7.8. Suits to Protect the Security.** The Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

**7.9. Trustee May File Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

**7.10. Waiver.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the

Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

**ARTICLE VIII  
MISCELLANEOUS**

**8.1. Amendments.** This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

**8.2. Reconveyance by Trustee.** Upon written request of Beneficiary stating that all of the Secured Obligations have been performed in full, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

**8.3. Notices.** If at any time after the execution of this Deed of Trust it shall become necessary to convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and

(a) If intended for Beneficiary shall be addressed to:

Regional Housing Authority  
of Sutter and Nevada Counties  
1455 Butte House Road  
Yuba City, CA 95993  
Attn.: RHASNC Executive Director

(b) If intended for Trustor shall be addressed to:

Live Oak Pacific Associates,  
A California Limited Partnership  
430 E. State Street, Ste.100  
Eagle, ID 83616  
Attn: Caleb Roope

CREA Kristen Court, LLC  
CREA SLP, LLC  
30 South Meridian Street, Ste.400  
Indianapolis, IN 46204  
Attn: Asset Management

Applegate & Thorne-Thomsen, P.C.  
626 West Jackson Blvd., Ste.400  
Chicago, IL 60661

Warren P. Wenzloff

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

**8.4. Successors and Joint Trustors.** Where an obligation is created herein binding upon Trustor, obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor shall be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

**8.5. Captions.** The Captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

**8.6. Invalidity of Certain Provisions.** Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

**8.7. Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

**8.8. Gender and Number.** In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

**8.9. Deed of Trust, Mortgage.** Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

**8.10. Actions.** Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

**8.11. Substitution of Trustee.** Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting

hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, continuing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

**8.12. Statute of Limitations.** The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

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

**8.14. Limited Partner's Right to Cure.** Any limited partner of Trustor shall have the right (but not the obligation) to cure an Event of Default by Trustor. Beneficiary shall provide notice of Default by Trustor only to such limited partners that have requested notice hereunder, at the same time, and in the same manner, as notice is provided to Trustor. Limited partner's right to cure shall not extend any cure provision hereunder. Beneficiary agrees to accept a cure by any limited partner of Trustor.

**8.15 Extended Use Agreement.** Notwithstanding anything contained in the Loan Documents, Beneficiary hereby acknowledges and agrees that the State of California, acting through the Tax Credit Allocating Body, intends to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the "Code"). As of the date hereof, Code Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Code Section 42 for a period of three (3) years after the date the Property is acquired by foreclosure or by instrument in lieu of foreclosure, even though such foreclosure or instrument in lieu of foreclosure would cause the termination of any such extended use agreement required by the Tax Credit Allocating Body. In the event the extended use agreement required by the Tax Credit Allocating Body is recorded against the Property, Beneficiary agrees to comply with the provisions set forth in Code Section 42(h)(6)(E)(ii).

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first above written.

**TRUSTOR**

Live Oak Pacific Associates, a California  
Limited Partnership

TPC Idaho Holdings V, LLC,  
its Administrative General Partner

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

Name: Caleb Roope

Title: Manager

Sutter Community Affordable Housing,  
its Managing General Partner

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

Name: ~~Diane Hodges~~ Martha Griese

Title: Vice President

EXHIBIT A  
Legal Description





## ACQUISITION LOAN PROMISSORY NOTE

\$823,000.00

\_\_\_\_\_, 2015

FOR VALUE RECEIVED and pursuant to that certain Acquisition and Capital Funds Loan Agreement (the "Loan Agreement") dated as of even date herewith entered by Live Oak Pacific Associates, a California Limited Partnership ("Maker") and Regional Housing Authority of Sutter and Nevada Counties ("Holder"), Maker hereby promises to pay Holder the sum of \$823,000.00 (the "Acquisition Loan") or so much thereof as may be advanced by Holder pursuant to the Loan Agreement, together with interest on the outstanding principal balance in accordance with and on the terms set forth herein below. Capitalized terms used but not defined herein shall have the same meaning as set forth in the Loan Agreement.

Section 1. Purpose. Pursuant to the Loan Agreement, Holder agreed to fund the purchase of certain land being sold by Holder to Maker (the "Property") in connection with development and construction of that certain 56-unit affordable apartment complex (the "Project") being developed by Maker in Live Oak, California.

Section 2. Interest. The outstanding principal balance of this Note shall bear simple interest at the rate of three percent (3%) per annum commencing on the earlier of (A) permanent loan conversion or (B) the 3<sup>rd</sup> anniversary of the Project's construction loan closing (the "Interest Commencement Date") until this Note is paid in full.

Section 3. Term and Repayment Requirements. The term of this Note (the "Term") shall commence upon the date of issuance of certificates of occupancy for the Project and shall expire upon the fifty-fifth anniversary of such date (the "Maturity Date"). The repayment of this Note shall be recourse to Maker and shall be secured by that certain Deed of Trust and Security Agreement executed by Maker for the benefit of Holder on even date herewith.

Section 4. Repayment. This Note shall be repaid as follows:

a. Annual Payments. Until the original principal amount of this Note and interest accrued thereon is repaid in full, Maker shall make annual payments to Holder of a sum equal to the amount of Residual Receipts (as defined in the Loan Agreement) to which Holder is entitled in accordance with Section 2.3(a) of the Loan Agreement. All annual payments shall be made in arrears no later than May 1st of each year with respect to the previous calendar year. Payments made hereunder shall be credited first against accrued interest and then against outstanding principal. Notwithstanding anything herein to the contrary, Maker's obligation to make payments hereunder shall be only to the extent of Residual Receipts from the calendar year preceding such payment (and specifically, without limitation, not from proceeds of any sale or refinancing transaction) such that to the extent any payment required hereunder exceeds the amount of such Residual Receipts, any amounts that cannot be paid from Residual Receipts shall accrue and be paid from future year(s) Residual Receipts until paid.

b. Prepayments. Maker shall have the right to make full or partial prepayments under this Note without premium or penalty. Any prepayments shall be applied to reduce the principal balance of the Note.

Section 5. Acceleration. All obligations evidenced by this Note, irrespective of the maturity dates expressed herein, at the option of Holder thereof and without demand or notice, shall immediately become due and payable, if at any time during the Term of this Note, Maker fails to make any payment as required hereunder and such failure continues for ten (10) days following written notice thereof to Maker from Holder, subject to the notice and cure rights set forth in the Loan Agreement.

Section 6. Attorney's Fees. Maker agrees to pay all costs of collection when incurred, including without limitation, reasonable attorney's fees and expenses (whether or not suit is filed hereon) and court costs. Such costs shall be added to the balance of principal then due.

Section 7. Holder's Rights. Failure of Holder to assert any right under this Note shall not be deemed a waiver of such right.

Section 8. California Law. This Note and the legality, validity and performance of the terms hereof shall be governed by, enforced, determined, and construed in accordance with the laws of the State of California.

Section 9. Waivers. Maker waives presentment, demand for payment, notice of dishonor, notice of protest, protest, and all other notices or demands in connection with the delivery, acceptance, performance, default, endorsement, or guaranty of this Note, and to the extent authorized by law, any and all homestead or other exemption rights which would apply to the debt evidenced by this Note.

Section 10. Binding Obligation. This Note shall be binding upon Maker and Maker's heirs, legal representatives, successors, and assigns.

Section 11. Amendment or Modification. The terms of this Note may only be amended or modified by a written agreement executed by Maker and Holder.

Section 12. Notices. All notices given under this Note shall be made in writing and shall be deemed received when delivered in accordance with the Loan Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]  
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Maker has executed this Note as of the date first written hereinabove.

MAKER:

Live Oak Pacific Associates, a California  
Limited Partnership

TPC Idaho Holdings V, LLC, its Administrative General Partner

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

Name: Caleb Roope

Title: Manager

Sutter Community Affordable Housing, its Managing General Partner

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

Name: ~~Diane Hodges~~ Martha Griese

Title: Vice President



## CAPITAL FUNDS LOAN PROMISSORY NOTE

\$337,143.00

\_\_\_\_\_, 2015

FOR VALUE RECEIVED and pursuant to that certain Acquisition and Capital Funds Loan Agreement (the "Loan Agreement") dated as of even date herewith entered by Live Oak Pacific Associates, a California Limited Partnership ("Maker") and Regional Housing Authority of Sutter and Nevada Counties ("Holder"), Maker hereby promises to pay Holder the sum of \$337,143.00 (the "Capital Funds Loan") or so much thereof as may be advanced by Holder pursuant to the Loan Agreement, together with interest on the outstanding principal balance in accordance with and on the terms set forth herein below. Capitalized terms used but not defined herein shall have the same meaning as set forth in the Loan Agreement.

Section 1. Purpose. Pursuant to the Loan Agreement, Holder agreed to make the Capital Funds Loan in connection with development and construction of that certain 56-unit affordable apartment complex (the "Project") being developed by Maker in the City of Live Oak, California.

Section 2. Interest. The outstanding principal balance of this Note shall bear simple interest at the rate of three percent (3%) per annum commencing on the earlier of (A) permanent loan conversion or (B) the 3<sup>rd</sup> anniversary of the Project's construction loan closing (the "Interest Commencement Date") until this Note is paid in full.

Section 3. Term and Repayment Requirements. The term of this Note (the "Term") shall commence upon the date of issuance of certificates of occupancy for the Project and shall expire upon the fifty-fifth anniversary of such date (the "Maturity Date"). The repayment of this Note shall be recourse to Maker and shall be secured by that certain Deed of Trust and Security Agreement executed by Maker for the benefit of Holder on even date herewith.

Section 4. Repayment. This Note shall be repaid as follows:

a. Annual Payments. Until the original principal amount of this Note and interest accrued thereon is repaid in full, Maker shall make annual payments to Holder of a sum equal to the amount of Residual Receipts (as defined in the Loan Agreement) to which Holder is entitled in accordance with Section 2.3(a) of the Loan Agreement. All annual payments shall be made in arrears no later than May 1st of each year with respect to the previous calendar year. Payments made hereunder shall be credited first against accrued interest and then against outstanding principal. Notwithstanding anything herein to the contrary, Maker's obligation to make payments hereunder shall be only to the extent of Residual Receipts from the calendar year preceding such payment (and specifically, without limitation, not from proceeds of any sale or refinancing transaction) such that to the extent any payment required hereunder exceeds the amount of such Residual Receipts, any amounts that cannot be paid from Residual Receipts shall accrue and be paid from future year(s) Residual Receipts until paid.

b. Prepayments. Maker shall have the right to make full or partial prepayments under this Note without premium or penalty. Any prepayments shall be applied to reduce the principal balance of the Note.

Section 5. Acceleration. All obligations evidenced by this Note, irrespective of the maturity dates expressed herein, at the option of Holder thereof and without demand or notice, shall immediately become due and payable, if at any time during the Term of this Note, Maker fails to make any payment as required hereunder and such failure continues for ten (10) days following written notice thereof to Maker from Holder, subject to the notice and cure rights set forth in the Loan Agreement.

Section 6. Attorney's Fees. Maker agrees to pay all costs of collection when incurred, including without limitation, reasonable attorney's fees and expenses (whether or not suit is filed hereon) and court costs. Such costs shall be added to the balance of principal then due.

Section 7. Holder's Rights. Failure of Holder to assert any right under this Note shall not be deemed a waiver of such right.

Section 8. California Law. This Note and the legality, validity and performance of the terms hereof shall be governed by, enforced, determined, and construed in accordance with the laws of the State of California.

Section 9. Waivers. Maker waives presentment, demand for payment, notice of dishonor, notice of protest, protest, and all other notices or demands in connection with the delivery, acceptance, performance, default, endorsement, or guaranty of this Note, and to the extent authorized by law, any and all homestead or other exemption rights which would apply to the debt evidenced by this Note.

Section 10. Binding Obligation. This Note shall be binding upon Maker and Maker's heirs, legal representatives, successors, and assigns.

Section 11. Amendment or Modification. The terms of this Note may only be amended or modified by a written agreement executed by Maker and Holder.

Section 12. Notices. All notices given under this Note shall be made in writing and shall be deemed received when delivered in accordance with the Loan Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]  
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Maker has executed this Note as of the date first written hereinabove.

MAKER:

Live Oak Pacific Associates, a California  
Limited Partnership

TPC Idaho Holdings V, LLC, its Administrative General Partner

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

Name: Caleb Roope

Title: Manager

Sutter Community Affordable Housing, its Managing General Partner

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

Name: ~~Diane Hodges~~ Martha Griese

Title: Vice President





## CONSTRUCTION LOAN AGREEMENT

This Construction Loan Agreement (the "Agreement") is dated for reference purposes as of November \_\_, 2015, by and between **RABOBANK, N.A.**, and its successors and assigns ("Bank"), and **LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP**, a California limited partnership (the "Borrower").

*Unless defined elsewhere in this Agreement, defined terms used herein have the meanings given them in the Definitions Section hereof.*

### **Factual Background**

**A.** Bank has agreed to make a construction loan (the "Loan") to Borrower in the principal amount of up to \$10,700,000.00 (the "Loan Amount"). Borrower will use the Loan to construct certain Improvements on real property (the "Land") owned by Borrower and located in Sutter County, California (the "State"), as described in **Exhibit A**. Borrower will also use the Loan to pay other costs and expenses related to the construction of the Land. Borrower intends to complete construction of the Improvements on or before the date that is \_\_\_\_ ( ) months after the date of recordation of the Deed of Trust (the "Completion Date").

**B.** The Improvements are described in plans and specifications (the "Plans and Specifications") which were prepared by the Architect under the Architecture Contract. The Improvements will be constructed by the Contractor in accordance with the Construction Contract. When completed, the Improvements will consist of a 56-unit (inclusive of 1 manager's unit) low-income multi-family apartment project, as shown in the Plans and Specifications. Borrower has engaged the Architect in connection with the design and/or construction of the Improvements pursuant to the terms of the Architecture Contract. Borrower has agreed to pledge and assign to Bank, and create a *first-priority* security interest in favor of Bank, in and to Borrower's rights and interests in, among other things: (1) the Construction Contract, (2) the Architecture Contract, (3) the Plans and Specifications, and (4) all other agreements now or hereafter entered into by Borrower with any contractor, architect, engineer, or other consultant or third party in connection with the design, engineering, construction of or on the Property, or the management, maintenance, operation, marketing, or leasing of the Property, or any development of or improvement to the Property, in accordance with the Assignment of Contracts. The contracting parties under each contract being assigned shall consent to the Assignment of Contracts and the pledge and assignment by Borrower thereunder.

**C.** Borrower is executing that certain Promissory Note Secured by Deed of Trust (the "Note") payable to Bank evidencing the Loan, which is secured by a Construction Deed of Trust, with Assignment of Leases and Rents, Security Agreement, and Fixture Filing (the "Deed of Trust") covering the Land, the Improvements, and certain other property. In this Agreement, the "Property" means all or any part of the property affected by the Deed of Trust, or any interest in all or any part of it, as the context requires, and "Project" means the affordable housing project consisting of the Land and all improvements existing or to be constructed thereon, including the Improvements.

**D.** The Loan is due and payable on November \_\_, 2017 (the "Maturity Date"), subject to two (2) possible ninety (90) day extension periods pursuant to **Section 2.9** of this Agreement to February \_\_, 2018 (as so extended, the "First Extended Maturity Date") and May \_\_, 2018 (as so extended, the "Second Extended Maturity Date").

**E.** A material inducement to Bank to provide funds to facilitate the making of the Loan is the availability of federal and state low-income housing tax credits (the "Tax Credits") reserved or allocated by the California Tax Credit Allocation Committee (the "Tax Credit Allocating Body"), acting under Section 42(h) of the Code pursuant to its Preliminary Reservation of Low Income Housing Tax Credits dated June 10, 2015, TCAC CA-15-\_\_, and any successive document or instrument or any, continuation, or finalization of such reservation or allocation.

F. Borrower is a limited partnership operating pursuant to that certain Amended and Restated Agreement of Limited Partnership of Borrower, dated on or about the date hereof (the "Partnership Agreement") entered into by **SUTTER COMMUNITY AFFORDABLE HOUSING**, a California nonprofit public benefit corporation (the "Managing General Partner"), **TPC HOLDINGS V, LLC**, an Idaho limited liability company (the "Administrative General Partner," and with the Managing General Partner, each a "General Partner" and collectively the "General Partners"), **CREA KRISTEN COURT, LLC**, a California limited liability company (the "Investor Limited Partner"), and **CREA SLP, LLC**, a California limited liability company, as the special limited partner (the "Special Limited Partner"). Pursuant to the Partnership Agreement, Investor Limited Partner has been admitted as an investor limited partner and has agreed to make capital contributions to Borrower. Investor Limited Partner's obligation to make capital contributions is evidenced by, and subject to the conditions of, the Partnership Documents.

G. The **CITY OF LIVE OAK**, a California municipal corporation (the "First Junior Lender") has provided, or has agreed to provide to Borrower (i) an acquisition loan in the original principal amount of \$293,000 and (ii) a fee deferral loan in the original principal amount of \$373,349 (collectively, the "First Subordinated Loan") secured by some or all of the Property. It is a material condition to Bank making the Loan to Borrower that Borrower obtain the First Subordinated Loan upon the terms and conditions described below. All documents which evidence, guaranty, secure, or otherwise pertain to the First Subordinated Loan, including but not limited to any deed of trust, mortgage, or other security instrument securing the First Subordinated Loan, any assignments of the First Subordinated Loan to Borrower, and any regulatory agreement, development agreement and use restrictions of First Junior Lender, are herein referred to as the "First Subordinated Loan Documents."

H. The **REGIONAL HOUSING AUTHORITY OF SUTTER AND NEVADA COUNTIES** (the "Second Junior Lender" and, together with the First Junior Lender, the "Junior Lender") has provided, or has agreed to provide to Borrower (i) an acquisition loan in the original principal amount of \$823,000 and (ii) a capital funds loan in the original principal amount of \$337,143 (collectively, the "Second Subordinated Loan" and, together with the First Subordinated Loan, the "Subordinated Loan") secured by some or all of the Property. It is a material condition to Bank making the Loan to Borrower that Borrower obtain the Second Subordinated Loan upon the terms and conditions described below. All documents which evidence, guaranty, secure, or otherwise pertain to the Second Subordinated Loan, including but not limited to any deed of trust, mortgage, or other security instrument securing the Second Subordinated Loan, any assignments of the Second Subordinated Loan to Borrower, and any regulatory agreement, development agreement and use restrictions of Second Junior Lender, are herein referred to as the "Second Subordinated Loan Documents" and, together with the First Subordinated Loan Documents, collectively, the "Subordinated Loan Documents."

I. **BONNEVILLE MORTGAGE COMPANY, INC.** (the "Takeout Lender") has agreed to provide Borrower with permanent financing for the Project (the "Takeout Loan") in the principal amount of \$1,000,000.00, guaranteed by the United States Department of Agriculture, Rural Development ("USDA") pursuant to USDA's Section 538 Guaranteed Rural Rental Housing Loan Program and pursuant to the terms of that certain commitment letter dated \_\_\_\_\_, 2015 (collectively, the "Takeout Commitment").

J. **PACIFIC WEST COMMUNITIES, INC., dba IDAHO PACIFIC WEST COMMUNITIES, INC.**, an Idaho corporation, **PACIFIC WEST BUILDERS, INC., dba IDAHO PACIFIC WEST BUILDERS, INC.**, an Idaho corporation and **TPC HOLDINGS V, LLC**, a California limited liability company (each, a "Guarantor" and collectively, the "Guarantors"), have each agreed to guaranty all or certain of Borrower's obligations to Bank in accordance with a Payment Guaranty and a Completion Guaranty, to be executed for the benefit of the Bank on or about the date hereof (each, a "Guaranty" and collectively, the "Guaranties") and have also agreed to execute the Environmental Indemnity.

K. This Agreement, the Note, the Deed of Trust, the Subordination Agreement, the Environmental Indemnity, and the Guaranties, together with all of their exhibits, and all other documents which evidence, guaranty, secure, or otherwise pertain to the Loan collectively constitute the "Loan Documents."

THEREFORE, Bank and Borrower agree as follows:

**Agreement**

**Definitions:** The following capitalized words and terms shall have the following meanings when used in this Agreement. All references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. The terms "General Partner," "Guarantor," and "Investor Limited Partner" as used in this Agreement and the other Loan Documents shall apply only if any such parties exist, and should be ignored if inapplicable.

"Accelerating Transfer" has the meaning set forth in **Section 7.5**.

"Account" means Borrower's non-interest-bearing checking account number \_\_\_\_\_ at Bank.

"Administrative General Partner" has the meaning set forth in **Recital F** above.

"Affiliate of" or "affiliated with" means in control of, controlled by or under common control with.

"Agreement" means this construction loan agreement between Borrower and Bank.

"Approved Manager" means (a) \_\_\_\_\_, a California corporation; or (b) subject to the prior approval of Bank not to be unreasonably withheld, any other reputable and creditworthy property manager.

"Architect" means **DG GROUP ARCHITECTURE PLLC (dba Pacific West Architecture)**, a licensed architect, acting as the architect in connection with the design and/or construction of the Improvements.

"Architecture Contract" means that certain contract entitled AIA Standard Form of Agreement Between Owner and Architect dated as of May 15, 2014, covering certain services of the Architect in connection with the design and construction of the Improvements.

"Assignment of Contracts" means the assignment from Borrower to Bank of the Construction Contract, the Architecture Contract, the Plans and Specifications, and all contracts related to the construction, design, management, and operation of the Improvements and the Property, together with such written consents of Borrower's contract parties under such contracts as Bank may require.

"Bank" means **RABOBANK, N.A.**, its successors and assigns.

"Borrower" has the meaning set forth in the introductory paragraph to this Agreement.

"Borrower's Funds" means all funds on deposit in the Borrower's Funds Account.

"Borrower's Funds Account" means an interest-bearing account number \_\_\_\_\_ at Bank in the name of Borrower on and subject to such terms and conditions, and at such interest rates, as Bank may offer to Borrower. Funds held in the Borrower's Funds Account shall be and remain in the exclusive control of Bank, subject to the terms of this Agreement and any borrower's funds agreement entered into between Borrower and Bank.

"Borrower's Indemnity" means, collectively, all of Borrower's obligations under each indemnity by Borrower in favor of Bank and/or the Indemnified Parties relating to Hazardous Substances, including but not limited to Borrower's covenants, warranties, and indemnification obligations set forth in (a) any Hazardous Substances section or provisions set forth in this Agreement, specifically including all of Borrower's obligations contained in **Section 5**, and/or (b) any other provisions contained within the Loan Documents, or separate secured or unsecured indemnity agreement, relating to Hazardous Substances executed by Borrower in connection with the Loan.

"Capital Obligations" means an amount not to be less than \$\_\_\_\_\_.00, as such amount may be adjusted by the terms of the Partnership Agreement, which is to be contributed by Investor Limited Partner to Borrower pursuant to the Partnership Agreement or other Partnership Documents.

"Closing Date" means the date of recordation of the Deed of Trust.

"Code" means the federal Internal Revenue Code and the regulations thereunder, as amended.

"Completion Date" has the meaning set forth in **Recital A** above.

"Construction Contract" means that certain AIA Standard Form of Agreement Between Owner and Contractor dated \_\_\_\_\_, covering certain services of the Contractor in connection with the construction of the Improvements.

"Construction Schedule" means a written construction schedule, including completion timeline, for the Project. The Construction Schedule shall be consistent with the Pro Forma Schedule set forth in **Section 4.1(a)** below, and any other timelines, reports, and/or schedules delivered by Borrower to Bank.

"Contractor" means **PACIFIC WEST BUILDERS, INC., dba IDAHO PACIFIC WEST BUILDERS, INC.**, a licensed general contractor, acting as the contractor in connection with the construction of the Improvements.

"Cost Analysis" means a detailed cost analysis or estimate report prepared by Bank's designated construction analyst(s) or inspector(s) approving the adequacy of the Loan Budget, including any contingency line items contained therein.

"Cost Breakdown" means a detailed breakdown of construction, financing, and other development costs related to the Land and Improvements, as more fully described in **Exhibit B** attached hereto.

"Covered by Insurance" is when defense of a lawsuit has been tendered to the applicable insurance carrier under a valid insurance policy that provides coverage with respect to the claim and has a deductible amount of less than \$25,000.00, such insurance carrier has accepted such tender of defense, and such insurance carrier proceeds with such defense without denying liability for any part of such claim which could result in liability of \$25,000.00 or more to Borrower, or any General Partner, or any Guarantor, as the case may be.

"Deed of Trust" has the meaning set forth in **Recital C** above.

"Default Rate" has the meaning given it in the Note; provided, however, that if a default rate is not used or defined in the Note, "Default Rate" shall mean a per annum interest rate of five percent (5%) in excess of the rate of interest charged from time to time under the Note.

"Draw Request" means a written request signed by Borrower and if required by Bank, the Architect and/or the Contractor, together with such documentation and information as Bank may require and meeting the requirements set forth in this Agreement and the other Loan Documents.

"Effective Gross Income" means (i) the actual gross rental income of the Property, supported by a rent roll in form and substance acceptable to Bank in its reasonable discretion, plus other income from the Property, supported by evidence of such income acceptable to Bank in its reasonable discretion.

"Environmental Indemnity" means the unsecured indemnity agreement executed by Borrower and Guarantor in favor of Bank.

"Events of Default" means those events of default set forth in **Section 7.1** (each, an "Event of Default").

"Existing Environmental Reports" means that certain Phase I Environmental Site Assessment dated July 10, 2015, and prepared by RNC Environmental, LLC.

"Expenses" means all operating expenses incurred for or attributable to the Property, including a monthly accrual for taxes, insurance, replacement reserves and a reasonable management fee, but not including amounts payable under the Note.

"First Extended Maturity Date" has the meaning set forth in **Recital D** above.

"First Junior Lender" has the meaning set forth in **Recital G** above.

"First Subordinated Loan" has the meaning set forth in **Recital G** above.

"First Subordinated Loan Documents" has the meaning set forth in **Recital G** above.

"GAAP" means generally accepted accounting principles.

"General Partner" and "General Partners" have the meanings set forth in **Recital F** above.

"Guarantor" means each person or entity guaranteeing all or any portion of Borrower's obligations under the Loan Documents, or all or any portion of any other party's obligations under the Loan Documents, pursuant to a Guaranty or an Environmental Indemnity, including that party described in **Recital J** above (collectively, the "Guarantor" or "Guarantors").

"Guaranty" and "Guaranties" have the meanings set forth in **Recital J** above.

"Hard Costs" means all materials and labor related to construction of the Improvements and similar costs (specifically excluding all Soft Costs), as determined by Bank.

"Hazardous Substance" means and includes any substance, material, or waste, including asbestos, petroleum, and petroleum products (including crude oil), that is or becomes designated, classified, or regulated as "toxic" or "hazardous" or a "pollutant," or that is or becomes similarly designated, classified, or regulated, under any federal, state, or local law, regulation, or ordinance, but does not include any such substance that is a customary and ordinary household, cleaning, or office product used on the Property by Borrower or any tenant or agent of Borrower, or customary construction materials used during the course of construction of Improvements on the Property by Borrower or Contractor, provided such use is in accordance with applicable hazardous materials laws and regulations.

"Improvements" means those buildings and other improvements to the Land as shown on the Plans and Specifications with regard to the Project.

"In Balance" or "in balance" has the meaning set forth in **Section 1.3(d)**.

"Incurable Event of Default" means any non-monetary event (i.e., an event not involving the payment of money) which becomes an Event of Default hereunder without any notice or right to cure. For example, an Incurable Event of Default occurs if "any representation or warranty when made or given in any of the Loan Documents proves to be false or misleading in any material respect."

"Indemnified Costs" means all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages (including foreseeable and unforeseeable consequential damages), costs, expenses, fines, penalties and losses (including sums paid in settlement of claims and all consultant, expert and legal fees and expenses of Bank's counsel), including those incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work (whether of the Property or any other property), or any resulting damages, harm, or injuries to the person or property of

any third parties or to any natural resources, excepting those arising out of, or resulting, solely from the applicable Indemnified Party's willful misconduct.

"Indemnified Parties" means Bank, its parent, subsidiary, and any affiliated companies, any assignees of any of Bank's interest in the Loan or the Loan Documents, any owners of participation or other interests in the Loan or the Loan Documents, any purchasers of all or any portion of the Property at any foreclosure sale or from Bank or any of its affiliates, and the officers, directors, employees, and agents of each of them (each individually, an "Indemnified Party").

"Initial Cure Period" means a period of thirty (30) consecutive days.

"Insolvency Proceeding" means any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships.

"Inter-creditor Agreement" means the agreement or those agreements, as appropriate, between Borrower and Junior Lender or Junior Lenders, as appropriate, to coordinate the financing of the Project. Each Inter-creditor Agreement shall be in form and substance acceptable to Bank.

"Interest Reserve" means any reserve allocated to pay Loan interest which may be set forth in the Cost Breakdown.

"Investor Limited Partner" has the meaning set forth in **Recital F** above.

"Junior Lender" has the meaning set forth in **Recital H** above.

"Land" has the meaning set forth in **Recital A** above.

"Loan" means the construction loan being made available by Bank to Borrower pursuant to the terms of this Agreement as described in **Recital A** above.

"Loan Amount" has the meaning set forth in **Recital A** above.

"Loan Budget" is shown on the Cost Breakdown attached as **Exhibit B**, is broken down by line items, and shows all uses of Loan funds related to the Land and the construction of the Improvements.

"Loan Documents" has the meaning set forth in **Recital K** above.

"Loan Fee" has the meaning set forth in **Section 2.8(a)**.

"Managing General Partner" has the meaning set forth in **Recital F** above.

"Maturity Date" has the meaning set forth in **Recital D** above.

"Net Monthly Cash Income" means all actual cash income received from the Property during a calendar month less the actual operating expenses incurred for or attributable to the Property, excluding amounts payable under the Note.

"Net Operating Income" means Effective Gross Income minus Expenses.

"Note" means that certain promissory note described in **Recital C** above made by Borrower to the order of Bank in the Loan Amount, as amended, renewed, restated, or replaced from time to time.

"Out of Balance" occurs when Bank determines that the funds (including all undisbursed Loan funds and any sums provided and to be provided by Borrower or any other party) are insufficient to pay for all costs and expenses of the Project and sums payable under the Loan Documents.

"Partnership Agreement" has the meaning set forth in **Recital F** above.

"Partnership Documents" means a copy of the fully executed Partnership Agreement and all other related documents.

"Plans and Specifications" has the meaning set forth in **Recital B** above.

"Pro Forma Reports" means, collectively, the Pro Forma Schedule set forth in **Section 4.1(a)** below, and any other timelines, reports, and/or schedules delivered by Borrower to Bank, and approved by Bank, describing the anticipated dates for construction of the Improvements, completion of construction of the Improvements, recording of a Notice(s) of Completion for the Improvements, obtaining Certificate(s) of Occupancy for the Improvements, lease-up of the Improvements, and/or occupancy of the Improvements.

"Pro Forma Schedule" has the meaning set forth in **Section 4.1(a)**.

"Project" has the meaning set forth in **Recital C** above.

"Property" has the meaning set forth in **Recital C** above.

"Property Management Agreement" means that certain Property Management Agreement between Borrower and \_\_\_\_\_, executed on \_\_\_\_\_.

"Replacement GP" has the meaning set forth in **Section 7.5(b)**.

"Requirements" has the meaning set forth in **Section 3.2**.

"Replacement Reserve" has the meaning set forth in **Section 1.1(ee)**.

"Replacement Reserve Account" has the meaning set forth in **Section 3.26(a)**.

"Reserve Account" means each reserve or impound account established and thereafter maintained with Bank in the name of Borrower or Bank (if applicable) in connection with the Loan, including, without limitation, the Replacement Reserve Account (collectively, the "Reserve Accounts").

"Reserve Deposit" means each deposit of funds required pursuant to the Loan Documents to be made into a Reserve Account (collectively, the "Reserve Deposits").

"Second Extended Maturity Date" has the meaning set forth in **Recital D** above.

"Second Junior Lender" has the meaning set forth in **Recital H** above.

"Second Subordinated Loan" has the meaning set forth in **Recital H** above.

"Second Subordinate Loan Documents" has the meaning set forth in **Recital H** above.

"Soft Costs" means all costs set forth in the Cost Breakdown for developer fees and/or overhead, contractor fees and/or overhead, architects' and engineers' fees, legal and other professional fees and costs, and other similar fees and costs (specifically excluding Hard Costs), as reasonably determined by Bank.

"Special Limited Partner" has the meaning set forth in **Recital F** above.

"State" has the meaning set forth in **Recital A** above.

"Subordinated Loan" has the meaning set forth in **Recital H** above.

"Subordinated Loan Documents" has the meaning set forth in **Recital H** above.

"Subordination Agreement" means that certain subordination agreement in favor of Bank executed by each Junior Lender that, among other things, subordinates First Subordinated Loan and Second Subordinated Loan, as applicable to the Loan, dated of even date herewith.

"Takeout Commitment" has the meaning set forth in **Recital I** above.

"Takeout Lender" has the meaning set forth in **Recital I** above.

"Takeout Loan" has the meaning set forth in **Recital I** above

"Tax Credit Allocating Body" has the meaning set forth in **Recital E** above.

"Tax Credit Covenants" means those covenants with respect to the Tax Credits set forth in **Section 3.27**.

"Tax Credits" has the meaning set forth in **Recital E** above.

"Tax Credit Investor" shall mean the Investor Limited Partner.

"Tax Credit Investor Affiliate" shall mean entities in which (a) the Tax Credit Investor has an ownership interest, directly or indirectly, and (b) the Tax Credit Investor manages and controls, directly or indirectly, the management and business decisions of the Tax Credit Investor Affiliate.

"Taxes" means collectively, all withholdings, interest equalization taxes, stamp taxes or other taxes (except income and franchise taxes) imposed by any domestic or foreign governmental issuer and related in any manner to a rate of interest.

"Unmatured Event of Default" means an event that, with notice or the passage of time, or both, could become an Event of Default.

## **1. Conditions Precedent to Closing and Disbursements.**

**1.1 Conditions to Closing.** Before Bank becomes obligated to close the Loan herein contemplated or make any disbursement under this Agreement, the following closing conditions shall have been satisfied at Borrower's sole cost and expense in a manner acceptable to Bank in its sole and absolute discretion. No waiver of any closing condition is effective unless expressly made in writing by Bank.

(a) Financial Statements of Borrower and Other Financial Information. Borrower shall have delivered to Bank all financial statements and other financial information currently required under the Loan Documents, certified as being true, correct, and complete in all material respects by an authorized officer, manager, member, or general partner of Borrower or other applicable parties. Each Guarantor shall have delivered to Bank financial statements evidencing the respective amount of liquid assets of each Guarantor, to be acceptable to Bank in Bank's reasonable discretion.

(b) Organizational Documents and Certificates. Borrower shall have delivered to Bank for each party to each of the Loan Documents:

(i) All organization documents and evidence of due formation and good standing requested by Bank in its sole and absolute discretion, including, without limitation, a fully executed copy of the Partnership Agreement.

(ii) All resolutions, certificates of authority, incumbency certificates, or other evidence of authorization requested by Bank in its sole and absolute discretion.



(iii) Evidence of such party's Federal Tax Identification Number.

(c) Loan Documents and Other Items. Borrower shall have duly executed or obtained the due execution of, and delivered to Bank, all Loan Documents and other items required by Bank to be executed in connection with the Loan, including but not limited to this Agreement, the Note, the Deed of Trust, the Assignment of Contracts (with the written consents of such of Borrower's contract parties under the contracts assigned thereunder as Bank may require), the Guaranties, UCC-1 financing statements, and any and all other such documentation defined as a Loan Document or otherwise required by Bank to fulfill the purposes of this Agreement. Bank shall have received, reviewed, and approved in Bank's sole and absolute reasonable discretion the Partnership Documents.

(d) Security Interests Perfected. The Deed of Trust shall have been duly recorded in a first-priority lien position. The Subordination Agreement shall also have been duly recorded. Bank's security interest in all personal property and fixtures described in the Deed of Trust shall have been duly perfected in a first-priority lien position. Bank's security interest in all other personal property pledged as collateral security for the Loan, as described in one or more security agreements executed by Borrower, General Partners and/or any third party pledger, in favor of Bank, shall have been duly perfected in a first-priority lien position.

(e) Title Insurance Commitment. Bank shall have received a commitment to issue an ALTA extended coverage lender's policy of title insurance underwritten by a title insurance company approved by Bank in its sole and absolute discretion in an aggregate amount not less than the Loan Amount and insuring the lien of the Deed of Trust to be a first-priority lien on the Property, subject only to such exceptions and conditions to title as Bank has approved in its sole and absolute discretion, and containing such endorsements as Bank may require, which may include zoning, survey, access, parcel contiguity, variable rate, environmental, tax parcel, and subdivision endorsements. In addition, if required by Bank, one or more other title insurance companies acceptable to Bank shall have issued such coinsurance and/or reinsurance as Bank may require. No title matter may be insured over by any title company without the express written consent of Bank. The final title insurance policy shall be delivered to Bank within a reasonable time following the issuance of the title insurance commitment.

(f) Survey. Unless waived by Bank, Borrower shall have delivered to Bank an ALTA/ACSM survey of the Land and any existing Improvements thereon certified to Bank and the title insurance company by a licensed land surveyor and showing the location of all boundary lines, easements, rights of way, and other matters affecting the Land. Such survey shall be based upon a survey of the Land within ninety (90) days of the Loan Closing Date and dated by the land surveyor within thirty (30) days of the Loan Closing Date. Such survey shall be sufficient for the deletion of the survey exception, if any, from the Bank's title insurance policy, and shall comply with Bank's survey requirements, as determined by Bank in its reasonable discretion.

(g) Flood Hazard Evidence and Insurance. Borrower shall have provided Bank with evidence as to whether or not the Land or any portion thereof is located in an area identified as having "special flood hazards" as such term is defined in the federal Flood Disaster Protection Act of 1973, as amended. If any part of the Improvements is in a special flood hazard area, Borrower shall have provided Bank with a flood insurance policy as part of the insurance requirements of this Agreement.

(h) Insurance. Borrower shall have provided evidence that there is in effect all insurance required by Bank pursuant to this Agreement and the other Loan Documents, written by insurers, and in form and in amount satisfactory to Bank in its sole and absolute discretion.

(i) Taxes and Tax Service Contract. Borrower shall have provided to Bank the tax identification number(s) assigned to the Land and evidence that all taxes and assessments levied against or affecting the Property have been paid current, or in the event Borrower has commenced a legal or administrative challenge to any such tax or assessment, evidence that such liability has been bonded over, or that funds for the payment thereof (in the amount of the original assessment) have been escrowed with an independent third party with provisions for the payment thereof satisfactory to Bank in

its sole and absolute discretion. If requested by Bank, Borrower shall have provided to Bank, at Borrower's cost and expense, a tax service contract for the Land with a tax service company, and containing terms and conditions, acceptable to Bank in its sole and absolute discretion. Additionally if requested by Bank, Borrower shall also provide a sales tax clearance letter from the appropriate taxing authority. Borrower shall have furnished to Bank evidence satisfactory to Bank that the Land is or will be exempt from real property taxes and assessments.

(j) Bonds. Borrower shall have provided to Bank a payment and performance bond which is (i) in an amount not less than the guaranteed maximum price or fixed price set forth in the Construction Contract, (ii) issued by a Treasury-listed surety that is approved by Bank and licensed to do business in the state where the Property is located, and (iii) written in dual-obligee form naming Bank as co-obligee, in form and substance acceptable to Bank in its sole and absolute discretion. Unless prohibited by applicable law, all bonds shall cover the Contractor and any other principal subcontractors Bank designates, and, if required, all bonds and the contracts they cover, shall have been duly recorded in accordance with applicable law. If Bank elects to waive this condition to disbursement, Bank may impose other conditions in its place.

(k) Appraisal. Bank shall have received, reviewed and approved, in Bank's sole and absolute discretion, an appraisal of the Property in form and content acceptable to Bank.

(l) Environmental Questionnaire and Site Assessment. Bank shall have received, reviewed, and approved, in Bank's sole and absolute discretion, an Environmental Questionnaire and Disclosure Statement prepared and certified by Borrower using Bank's prescribed form, and the information set forth in it must be acceptable to Bank. If requested by Bank, Borrower shall also provide to Bank one or more of the following, as determined by Bank in its sole and absolute discretion: (i) a Phase I Environmental Site Assessment, (ii) a Phase II Environmental Site Assessment, if recommended by the Phase I Environmental Site Assessment, (iii) an environmental survey, and/or (iv) a report prepared by a licensed or registered environmental engineer or other qualified party satisfactory to Bank stating that no Hazardous Substances are present in, on, under or around the Property and that no condition or circumstance warranting further investigation or analysis exists in the opinion of the preparer of the report. Bank shall have received, reviewed, and, subject to Borrower's compliance with all recommendations set forth therein, approved the Existing Environmental Reports.

(m) Soils Report. If required by Bank, Borrower shall have delivered to Bank a soils report prepared within three (3) years prior to the closing of the Loan and acceptable to Bank in its sole and absolute discretion prepared by a qualified licensed soils engineer acceptable to Bank in its sole and absolute discretion. The soils report shall be satisfactory to Bank, shall be based upon adequate due diligence, and shall state that there are no unusual or hazardous soil conditions in, on, under, or around the Property, that no condition or circumstance warranting further investigation or analysis exists in the opinion of the soils engineer, and that construction of all Improvements as proposed is feasible under existing soil conditions so long as the recommendations of the soils report are followed. Additionally, if requested by Bank, Borrower shall have provided to Bank evidence acceptable to Bank in its sole and absolute discretion, including a statement signed by the soils engineer, that the Plans and Specifications and all other documents and agreements relating to construction of any Improvements conform to the recommendations of the soils report.

(n) Agreements Related to the Property. If requested by Bank, Borrower shall provide Bank with copies of all ongoing agreements related to the Property, including but not limited to all property management agreements, all service contracts and warranties, all leases affecting the Property, and such other Property-related information which Bank may reasonably request. All such agreements required by Bank shall be in full force and effect.

(o) Existing Leases; Subordinations. If there are any leases of any part of the Land or any space within the Improvements in existence as of the Closing Date (i) copies of those leases must be delivered to and approved by Bank, and (ii) if any such lease is a non-residential lease or a lease for more than one (1) residential unit within the Improvements, then if required by Bank, Bank shall have

received fully executed estoppel certificates, subordination agreements, and/or subordination, nondisturbance and attornment agreements, in form and substance acceptable to Bank in its sole and absolute discretion.

(p) Accounts Opened. Borrower shall have opened all accounts required pursuant to the Loan Documents, including the Account and the Borrower's Funds Account.

(q) Fees. Borrower shall have paid to Bank, in immediately available funds, all fees and costs called for under this Agreement or by any Loan commitment letter, including but not limited to the Loan Fee that must be paid before or contemporaneously with the closing of the Loan.

(r) Approval of Items. Bank shall have approved or consented to, as the case may be, all items required by Bank prior to the closing of the Loan pursuant to this Agreement which are subject to the consent or approval of Bank. All contracts or agreements included in such items shall be in full force and effect. Such items include but are not limited to:

(i) The Cost Breakdown, including the Loan Budget.

(ii) The Construction Contract, the Architecture Contract, the Property Management Agreement, and all other contracts listed on Exhibit B to the Assignment of Contracts.

(iii) The Plans and Specifications.

(iv) A site plan showing the layout of the Project.

(v) If requested by Bank, a Construction Schedule.

(vi) If requested by Bank, a list of all contractors' and subcontractors' names, addresses, phone numbers, and respective contract amounts.

(s) Cost Analysis. Bank shall have received, reviewed, and approved a Cost Analysis in form and substance acceptable to Bank in its sole and absolute discretion.

(t) Utilities; Utility Letters. Bank shall have received evidence satisfactory to Bank in its sole and absolute discretion that all utilities necessary to develop and occupy the Land and Improvements will be provided. If requested by Bank, such evidence shall include originally executed letters addressed to Bank from all applicable utility providers, each dated within six (6) months of the Loan Closing Date, indicating the availability of all utilities contemplated to serve the Project, including water, sewer, electricity, gas and telephone, and that such utilities are available at the site and that they will be available at the time of completion of the Project, with capacity adequate to serve the Project, and indicating the payment or unpaid amounts of all tie-in or tap-on fees, other use fees or deposits, and/or similar charges or deposits.

(u) Public Road Dedication. Unless waived by Bank, Borrower shall have delivered to Bank evidence that all streets and roads necessary for access to the property have been dedicated for public use and are completed and accepted by the appropriate governmental authorities. This information can be shown on the survey by a notation of "dedicated" by the name of the street, or alternatively by Borrower's delivery of copies of any applicable recorded private easements to Bank.

(v) Zoning; Zoning Letter. Borrower shall have provided to Bank evidence satisfactory to Bank in its sole and absolute discretion that the Property is properly zoned for its intended use and that any and all zoning stipulations have been complied with. If requested by Bank, such evidence shall include originally executed letters addressed to Bank from the applicable governmental authority, dated within six (6) months of Loan Closing Date, indicating that all applicable zoning ordinances and/or restrictive covenants affecting the Project permit the use of the property for its intended

purposes and that there are no variances or other conditions currently outstanding that would affect the zoning as stated. Such evidence, including such zoning letter, shall be in a form sufficient to permit the title insurance company to issue a zoning endorsement (ALTA Form 3.0 or equivalent).

(w) Permits. Bank shall have received copies of all building permits, licenses, and consents for commencement of work on the Improvements, or written evidence satisfactory to Bank in its sole and absolute discretion from the appropriate governmental authorities that, except for the payment of permit issuance fees, all conditions to the issuance of those permits have been satisfied and the governmental authorities are in a position to deliver the permits to Borrower.

(x) Compliance With Requirements; Engineer's/Architect's Certificate. If requested by Bank, Borrower shall have provided to Bank evidence satisfactory to Bank in its sole and absolute discretion that the Property and the Project is in compliance with, and when completed will comply with, all Requirements, including without limitation, all zoning ordinances, environmental protection laws, and all other laws and governmental rules and regulations including the Americans with Disabilities Act, which evidence may include an original certificate executed by the Architect and/or Project engineer, in form and substance acceptable to Bank, certifying compliance therewith.

(y) Condition of Property. Unless otherwise agreed in writing by Bank, the Property and all existing improvements thereon shall not be in need of immediate repairs except as contemplated by the Plans and Specifications.

(z) Opinion Letters. Borrower has delivered to Bank a favorable opinion from independent counsel, opining to such matters as Bank may require, in form and substance satisfactory to Bank in its sole and absolute discretion, by counsel acceptable to Bank for Borrower and/or any other parties to the Loan Documents.

(aa) No Default. No event shall have occurred and be continuing which would constitute a default or Event of Default (as defined in the applicable document) or an Unmatured Event of Default under any of the Loan Documents. No breach, default, or failure of condition, shall have occurred and be continuing under any of the Partnership Documents (subject to applicable notice and cure periods). No event shall have occurred and be continuing that would constitute a breach, default, or Event of Default (as defined or described in the applicable document), or that, with notice or the passage of time, or both, could become a breach, default or Event of Default under any of the Subordinated Loan Documents.

(bb) Evidence of Equity and Tax Credits. Borrower shall provide to Bank evidence of Investor Limited Partner's first capital contribution to Borrower in an amount not less than \$\_\_\_\_\_.00, and that all of such monies have been spent in accordance with the approved Cost Breakdown (or deposited in the Borrower's Funds Account), as applicable, which evidence shall be acceptable to Bank in its sole and absolute discretion, and may include but may not be limited to canceled checks or other evidence of payment and/or lien waivers. Borrower shall also provide to Bank evidence of the availability to the Project of the Tax Credits in the form of the Preliminary Reservation of Low Income Housing Tax Credits issued by the Tax Credit Allocating Body with respect to the Project.

(cc) Junior Loans. With respect to all junior loans, including the First Subordinated Loan and Second Subordinated Loan, Bank shall have received, reviewed, and approved or consented to the applicable loan documents (including, without limitations, all requirements of the Junior Lender with regard to rental assistance, interest credit subsidies, and reserves) and all other items required by Bank, and all regulatory agreements, conditions, covenants, and restrictions, or other restrictive covenants related to such loans. The Subordinated Loan Documents shall have been fully executed by the Junior Lender and Borrower and each Subordinated Loan shall have been fully disbursed and expended by Borrower's predecessor-in-interest on Property related expenses. Bank shall have received one or more fully executed subordination agreements, in form and substance acceptable to Bank in its sole and absolute discretion, subordinating the lien and indebtedness of the Subordinated Loan to the Loan and the Loan Documents, and such Subordination Agreement shall be recorded in the Official Records on or

about the Closing Date. **[CONFIRM ALL CITY AND HOUSING AUTHORITY IN BEFORE BANK FUNDS]**

(dd) Searches. Borrower shall have delivered to Bank the following searches regarding Borrower, Guarantor and each General Partner from the State of California, the State of formation of the Borrower and each General Partner and each Guarantor, as applicable (if different than the State of California), and the County where the Property is located, acceptable to Bank in its sole and absolute discretion: (i) UCC, (ii) Judgment, (iii) Litigation, (iv) Tax Lien, and (v) Bankruptcy.

(ee) Takeout Commitment. Bank shall have received, reviewed, and approved, a true, correct and complete copy of the Takeout Commitment, which Takeout Commitment shall be in form and substance acceptable to Bank in its sole and absolute discretion. Bank shall have received, reviewed and approved a true, correct and complete copy of the rate lock agreement with Takeout Lender, which shall be in form and substance acceptable to Bank in its sole and absolute discretion. No breach, default, or failure of condition, shall have occurred and be continuing under the Takeout Commitment. Takeout Lender shall not have indicated that it will not honor the terms of the Takeout Commitment or that it will not make the Takeout Loan for any reason.

(ff) Miscellaneous. Borrower shall have delivered to Bank any other item reasonably required by Bank and shall have fulfilled any other condition reasonably required by Bank to fulfill the intention of this Agreement and any Loan commitment issued to Borrower.

**1.2 Conditions to Initial Disbursement**. Before Bank becomes obligated to make the initial disbursement of Loan funds under this Agreement, the following conditions shall have been satisfied at Borrower's sole cost and expense in a manner acceptable to Bank in its sole and absolute discretion. No waiver of any condition is effective unless expressly made in writing by Bank.

(a) Closing Conditions. All closing conditions set forth above shall have been satisfied or shall have been waived or deferred by Bank in its sole and absolute discretion.

(b) Draw Request. Bank shall have received a complete and accurate Draw Request from Borrower, and Bank shall have determined that all conditions contained in this Agreement to the disbursement of the items set forth in the Draw Request have been met. For purposes hereof, a Draw Request shall not be considered "complete and accurate," and Bank shall have no obligation to fund all or any part of such Draw Request, unless and until such Draw Request includes and is accompanied by all items requested by Bank pursuant to the terms of the Loan Documents, which are complete and accurate, and in form and content acceptable to Bank in its reasonable discretion.

(c) Title Endorsements. If the initial disbursement is made after the closing of the Loan, at Borrower's sole cost and expense Bank shall have received a "bring-down" or "date-down" endorsement, and/or other endorsements required by Bank, to the title insurance policy, insuring the continuing first-priority lien of the Deed of Trust, including first-priority lien of the disbursement, in form and substance acceptable to Bank in its sole and absolute discretion (in the form of a CLTA 122 endorsement).

(d) No Condemnation Proceedings. Neither the Property nor any interest in it shall be affected by eminent domain or condemnation proceedings.

(e) Additional Conditions if Construction Commenced. If the construction has commenced on the Property, the subsequent disbursement conditions set forth below shall be satisfied, or shall have been waived or deferred by Bank in its sole and absolute discretion.

(f) No Default. No event shall have occurred and be continuing which would constitute a default or Event of Default (as defined in the applicable document) or an Unmatured Event of Default under any of the Loan Documents. No breach, default, or failure of condition, shall have occurred

and be continuing under any of the Partnership Documents (subject to applicable notice and cure periods). No event shall have occurred and be continuing that would constitute a breach, default, or Event of Default (as defined or described in the applicable document), or that, with notice or the passage of time, or both, could become a breach, default or Event of Default under any of the Subordinated Loan Documents.

**1.3 Subsequent Disbursement Conditions.** After the initial disbursement, but before Bank becomes obligated to make any subsequent disbursement of Loan funds under this Agreement, all of the following conditions shall have been satisfied at Borrower's sole cost and expense in a manner acceptable to Bank in its sole and absolute discretion. No waiver of any condition is effective unless expressly made in writing by Bank.

(a) Closing and Initial Disbursement Conditions; Title Endorsement. All closing conditions and initial disbursement conditions set forth above shall have been satisfied and remain satisfied as of the date of the disbursement, or shall have been waived or deferred in writing by Bank in its sole and absolute discretion. With respect to title insurance, Bank shall have the right to require, with each subsequent disbursement, at Borrower's sole cost and expense, a "bring-down" or "date-down" endorsement to the title insurance policy, in form and substance acceptable to Bank in its sole and absolute discretion.

(b) No Damage to Improvements. The Improvements shall not be materially damaged and not repaired, unless Bank shall have received funds from Borrower or insurance proceeds sufficient to pay for all repairs in a timely manner as determined by Bank in its sole and absolute discretion.

(c) No Mechanic's or Materialmen's Liens, Stop Notices, or Like Notices or Filings. Bank shall not have received or have knowledge of any bonded stop notice, notice of mechanic's or materialmen's liens or other similar notice or filing affecting or which could affect the Property or the priority of the disbursement, unless Borrower files a release bond or otherwise provides information satisfactory to Bank in its sole and absolute discretion that such notice or filing will not have such an effect.

(d) Loan "In Balance". The Loan shall be "in balance" as reasonably determined by Bank, and Bank shall have approved any revised Cost Breakdown proposed by Borrower.

(e) No Default. No event shall have occurred and be continuing which would constitute a default or Event of Default (as defined in the applicable document) or an Unmatured Event of Default under any of the Loan Documents. No breach, default, or failure of condition, shall have occurred and be continuing under any of the Partnership Documents (subject to applicable notice and cure periods). No event shall have occurred and be continuing that would constitute a breach, default, or Event of Default (as defined or described in the applicable document), or that, with notice or the passage of time, or both, could become a breach, default or Event of Default under any of the Subordinated Loan Documents.

(f) Soils Report Compliance. If requested by Bank, Borrower shall have provided to Bank evidence that the soils engineer observed the soils work and found it to have been completed in accordance with the recommendations of any soils report previously required by Bank.

(g) Junior Loans. **[DISCUSS/CONFIRM IF ANY JUNIOR LOANS WILL BE DISBURSED THROUGHOUT CONSTRUCTION AND WHEN REQUIRED BY]**

**1.4 Final Disbursement.** Before Bank becomes obligated to make any final disbursement of Hard Costs and/or any final disbursement of retention under this Agreement, the following conditions shall have been satisfied at Borrower's sole cost and expense in a manner acceptable to Bank in its sole and

absolute discretion. No waiver of any such condition is effective unless expressly made in writing by Bank.

(a) Closing, Initial, and Subsequent Disbursement Conditions. All closing conditions, initial disbursement conditions, and subsequent disbursement conditions set forth above shall have been satisfied or shall have been waived by Bank in its sole and absolute discretion

(b) Final Draw Request. Bank shall have received a complete and accurate final Draw Request from Borrower, and Bank shall have determined that all conditions contained in this Agreement to the disbursement of the items set forth in the final Draw Request have been met. Unless otherwise agreed to in writing by Bank, the final Draw Request shall be accompanied by written certification by the Architect and/or the Contractor (as determined by Bank) that all Improvements as completed conform to the Plans and Specifications and all Requirements (which shall include the Contractor's and/or Architect's execution of the standard AIA G702 and G703), together with such other documentation and information as Bank may reasonably require.

(c) Title Endorsements. Bank shall have received, at Borrower's sole cost and expense, endorsements to, or a reissue of, the title insurance policy, in form and substance acceptable to Bank in its sole and absolute discretion, insuring lien-free completion of the Improvements, and the continuing first-priority lien of the Deed of Trust, and including first-priority lien of the disbursement.

(d) Improvements Complete. All construction of the Improvements must be fully completed in accordance with the Plans and Specifications and all Requirements.

(e) Governmental Approvals. Bank shall have received written evidence acceptable to Bank of the issuance of certificates of occupancy and/or any other approvals and acceptances required to be issued by all appropriate governmental authorities, if any, including those required to permit residential occupancy of all units and occupancy and use of all facilities within all Improvements.

(f) As-Built Plans and Survey. If requested by Bank, Borrower shall have provided to Bank a complete set of Plans and Specifications and/or a survey showing the Improvements as built.

(g) No Default. No event shall have occurred and be continuing which would constitute a default or Event of Default (as defined in the applicable document) or an Unmatured Event of Default under any of the Loan Documents. No breach, default, or failure of condition, shall have occurred and be continuing under any of the Partnership Documents (subject to applicable notice and cure periods). No event shall have occurred and be continuing that would constitute a breach, default, or Event of Default (as defined or described in the applicable document), or that, with notice or the passage of time, or both, could become a breach, default or Event of Default under any of the Subordinated Loan Documents.

## **2. Disbursement Conditions and Procedures; Other Loan Terms.**

### **2.1 Cost Breakdown; Disbursements; Interest Reserve.**

(a) Cost Breakdown. Subject to the satisfaction or waiver, in writing, of all closing and disbursement conditions precedent set forth in this Agreement, Bank shall make disbursements of the Loan based on the Cost Breakdown. Set forth in the Cost Breakdown is the Loan Budget. From each line item within the Cost Breakdown, Bank shall disburse Loan funds in an amount not to exceed the total amount shown in the Loan Budget for that line item, taking into account all prior disbursements, retention requirements, and any reallocation of funds to which Bank has consented to in writing.

(b) Line Items Not Requiring Retention. For each line item set forth in the Cost Breakdown not requiring retention, subject to the terms and conditions contained herein, Bank shall make one or more disbursements without retention for each Draw Request.

(c) Line Items Requiring Retention. Unless otherwise agreed in writing by Bank, for each line item set forth in the Cost Breakdown requiring retention (i.e., all hard costs of construction at ten percent (10%) retention, as shown on the Cost Breakdown and certain soft costs of construction at the retention rate as shown on the Cost Breakdown), each disbursement hereunder shall be equal the amount applied for in the applicable Draw Request less the applicable contingency percentage shown on the Cost Breakdown. Bank shall retain the remaining undisbursed portions of all these line items, which shall equal the percentage shown on the Cost Breakdown of the aggregate dollar amount to be disbursed by Bank from those line items, whether consisting of Loan funds, Borrower's Funds, or a combination of both.

(d) Release of Retention.

(i) Bank shall disburse the amounts held as retention in accordance with the terms of this Agreement when all of the following conditions are satisfied or waived in writing by Bank:

(A) The Improvements shall have been completed in accordance with the terms of this Agreement.

(B) If requested by Bank, Bank shall have received evidence that a valid notice of completion and/or other completion documentation acceptable to Bank for the Improvements has been executed and recorded (if required or advisable under applicable law).

(C) Bank shall have received a Draw Request for such retention, which shall include written certification by the Architect and/or the Contractor (as determined by Bank) that the completed Improvements conform to the Plans and Specifications.

(D) If requested by Bank, Borrower shall have provided endorsements to, or a reissue of, Bank's title insurance policy insuring lien-free completion of such Improvements as well as first-lien priority of the Loan, and such other endorsements insuring such other matters relating to the completed construction as Bank may require.

(E) No default or Event of Default or Unmatured Event of Default shall have occurred and be continuing under any of the Loan Documents.

(e) Interest Reserve. Notwithstanding any Interest Reserve set forth in the Cost Breakdown, all Net Monthly Cash Income from the Property including, without limitation, all funds on account in the Borrower's Funds Account, shall be used to pay interest coming due under the Loan. After (i) all Net Monthly Cash Income including, without limitation, all funds on account in the Borrower's Funds Account, has been used, and (ii) all disbursement conditions are met (or have been waived in writing by Bank) as determined in Bank's sole and absolute discretion, Bank shall disburse funds from the Interest Reserve to pay the excess monthly interest coming due under the Loan. All disbursements from the Interest Reserve shall be made first from Borrower's Funds Account which may be allocated to that line item from the Borrower's Funds Account. Loan funds shall be disbursed from the Interest Reserve only after any and all such Borrower's Funds have been exhausted.

(f) Contingency Line Items. From time to time, Borrower may request Loan funds from a contingency line item (if any) set forth on the Cost Breakdown, subject to any retention or other requirements set forth herein or in any other Loan Document applying to that line item, or request Bank to allocate or reallocate Loan funds from a contingency line item, or increase, decrease, and/or deplete a contingency line item. Each such request shall be in writing (by Draw Request, submission of a revised Cost Breakdown, or other written request, as applicable) and shall contain such supporting documentation, including change orders, invoices, and canceled checks, in such forms as Bank shall require. Bank in its sole and absolute discretion may decline any such request for contingency funds, or any request to allocate, reallocate, increase, decrease, or deplete any contingency line item.



(g) Use of Disbursements; Revised Cost Breakdown. Borrower agrees to use disbursements solely in conformity with the Cost Breakdown and Loan Budget. In no event shall disbursements be used to pay developer fees and/or expenses. If the Improvements cannot be completed in strict conformity with the most recently approved Cost Breakdown, Borrower shall immediately submit to Bank for its approval a revised Cost Breakdown. The revised Cost Breakdown shall identify Borrower's requested changes in any line items and shall be accompanied by Borrower's written statement of reasons for the changes. If further changes are required, Borrower shall seek Bank's approval, following the procedures described above. Bank may withhold further disbursements unless and until it approves the revised Cost Breakdown. Bank reserves the right to approve or disapprove any Cost Breakdown in its reasonable judgment. The most recently approved Cost Breakdown supersedes all previously approved Cost Breakdowns. Nothing contained in this section, or any approval by Bank of a revised Cost Breakdown, shall obligate Bank to advance any proceeds in excess of the Loan Amount.

(h) Disbursement to Pay Fees and Costs. Subject to the requirements of the Tax Certificate, Bank, at its option, may use Loan funds to pay loan fees owing to Bank, interest on the Loan, legal fees and expenses of Bank's attorneys which are payable by Borrower, and such other sums as may be owing from time to time by Borrower to Bank with respect to the Loan, all without further notice to or authorization by Borrower. Bank at its option may make any such payment on Borrower's behalf by (i) debiting the Loan funds in the amount of the payment and disbursing such amount to itself, or (ii) disbursing all or part of the payment amount into the Account, and then either debiting the Account or invoicing Borrower in the amount of the payment(s). For these purposes, Bank is not restricted to the line items and cost categories of the Cost Breakdown. Borrower acknowledges that such a use of Loan funds by Bank may cause the Loan to become "out of balance," requiring deposits by Borrower into the Borrower's Funds Account.

(i) Debit of Loan at Closing. As of the day the Loan closes, Bank is authorized to make payments on Borrower's behalf by debiting the Loan funds and disbursing such amounts to itself for all costs and expenses payable by Borrower to Bank pursuant to the terms of this Agreement, if such have not been received by Bank in immediately available funds directly from Borrower's own funds. Such expenses shall include but not be limited to: (i) legal fees and expenses of Bank's counsel, (ii) loan administration and documentation fees, (iii) appraisal fees, and if applicable, appraisal review fees, (iv) construction inspection fees, (v) the Loan Fee, if any; and (vi) and other fees and costs required to be paid to Bank by Borrower under this Agreement.

(j) Interest on Disbursements. Interest on each disbursement, whether initiated by Borrower or Bank, shall be payable from the time Bank debits the Loan funds in the amount of the disbursement.

(k) Deferred Cost Items. No Loan funds shall be disbursed or otherwise used to pay for the following items shown on the Cost Breakdown as being deferred during construction: Developer Fee of \$\_\_\_\_\_.00, Permanent Loan Legal Fees of \$\_\_\_\_\_, Permanent Lender Origination Fees of \$\_\_\_\_\_, Permanent Lender Underwriting Costs of \$\_\_\_\_\_, TCAC Fees in the amount of \$\_\_\_\_\_, Accounting and Cost Certification Fees in the amount of \$\_\_\_\_\_ and \_\_\_\_\_. Additionally, in no event shall any Loan Funds be used to pay any or all of the Developer Fee except as approved, in writing, by the Bank and the Investor Limited Partner.

## **2.2 Loan in Balance; Borrower's Funds Account.**

(a) If at any time and from time to time Bank determines that the sums of (i) any undisbursed portion of the Loan to which Borrower is entitled (inclusive of the contingency amounts and line item savings in the Cost Breakdown on a percentage of completion basis), plus (ii) any sums to be paid by Borrower or any other party from other funds on deposit with Bank or anticipated in the approved Cost Breakdown, are insufficient to pay through completion of Improvements and the Maturity Date the actual unpaid costs of the construction, marketing, ownership, maintenance and sale or leasing of the Property (including any interest and other sums accruing or payable under the Loan Documents), the Loan is "out of balance." If the Loan is "out of balance," Borrower shall, within fifteen (15) days after

demand by Bank, deposit with Bank the amount of the deficiency in the Borrower's Funds Account with interest earned thereon to be added to such account. The Loan is "in balance" when sufficient sums are in the Cost Breakdown to satisfy the requirements of this Section.

(b) Borrower acknowledges that the Loan may become "out of balance" from a shortage of funds in any single line item or category of the Cost Breakdown, even if there are undisbursed Loan funds in other line items or categories (subject to application of line item savings on a percentage of completion basis). Borrower further acknowledges that changes in circumstances may cause the Loan to become "out of balance", including but not limited to projections of interest rates, anticipated extensions of the Maturity Date, cost overruns and construction change orders, failure of the Improvements to be leased and occupied as anticipated by the Pro Forma Schedule, failure of other lenders to fund their loans and failure of an Investor Limited Partner to make payments under the Partnership Documents.

(c) The disbursement procedures described in this Agreement shall apply to the Loan funds and also any Borrower's Funds which may be on deposit in the Borrower's Funds Account. Any such Borrower's Funds shall be fully disbursed until they are exhausted prior to any Loan funds being disbursed.

*[Remainder of page left intentionally blank]*

**2.3 Draw Requests.**

(a) For each disbursement from the Borrower's Funds Account or the Loan, as applicable, Borrower shall submit to Bank, or upon the request of Bank, to a third-party construction control company acceptable to Bank in its sole and absolute discretion (a "Construction Control Company"), a Draw Request signed by Borrower and if required by Bank, the Architect and/or the Contractor, together with such documentation and information as Bank may require. Each Draw Request shall be acceptable in form and substance to Bank in the exercise of its reasonable judgment, and shall include (i) conditional and unconditional lien waivers in form and substance acceptable to Bank from Contractor and from each and every subcontractor who has either performed work at the Property or who has a contract with Contractor or Borrower, and (ii) such additional supporting items of information and documentation, including invoices, cancelled checks, and other evidence, as Bank may require to show that Borrower is in compliance with the Loan Documents. If Bank so requires, any given Draw Request shall also include written certification by the Architect and/or the Contractor (as determined by Bank) that the Improvements as constructed to date conform to the Plans and Specifications.

(b) In each Draw Request, Borrower shall request disbursement for one or more specified line items of the Loan Budget. Borrower may submit a Draw Request to Bank no more than once in a calendar month, unless Bank agrees, in its sole and absolute discretion, to make disbursements more frequently. Borrower shall use all Loan funds and all Borrower's Funds strictly for the purposes for which they were disbursed by Bank.

(c) Unless Borrower has notified Bank in writing to the contrary, each Draw Request shall constitute Borrower's representation and warranty to Bank that (i) the Loan is "in balance," (ii) all prior disbursements, as well as that currently being requested, were and will be used in strict compliance with the Loan Budget, and (iii) no default or Event of Default (as defined in the applicable document) or Unmatured Event of Default has occurred and is continuing under any of the Loan Documents, and shall also constitute a reaffirmation of the representations and warranties of Borrower set forth in the Loan Documents as true and correct as of the date of such Draw Request.

(d) Borrower authorizes \_\_\_\_\_ and \_\_\_\_\_ to sign all Draw Requests and other documents in connection with the administration of the Loan. Borrower represents and warrants to Bank that the following signatures are the specimen signatures of the persons named in the preceding sentence:

\_\_\_\_\_  
\_\_\_\_\_

*[Remainder of page left intentionally blank]*

**2.4 Disbursement Procedures.** Unless otherwise agreed to in writing by Bank, the following procedures will apply with respect to the disbursement of the Loan.

(a) Soft Costs. Soft Costs shall be disbursed based upon Bank's approval of Borrower's Draw Requests as set forth in this Agreement. No disbursements for Soft Costs will be made until all applicable conditions for disbursement have been met.

(b) Hard Costs. Hard Costs shall be disbursed on a percentage of completion basis. No disbursements for Hard Costs will be made until Bank or its designated construction inspector or consultant has completed a site inspection, including a construction inspection by Bank's inspector, at Borrower's sole cost and expense, and Bank or its construction inspector or consultant shall have approved the applicable percentage of completion of the Hard Costs being requested, and all other conditions under this Agreement for disbursement have been met.

(c) Procedures Generally. Bank shall make disbursements in accordance with its standard disbursement procedures. After the closing of the Loan, Bank may provide to Borrower a summary of the Bank's current disbursement procedures to be followed when Borrower submits each Draw Request. As part of each Draw Request, Borrower will be required to submit a package of disbursement items and information as required by Bank, but consistent with this Agreement. The items which shall be included as part of the Draw Request include the following:

(i) Request for Payment. As a cover sheet to the Draw Request, Borrower shall submit to Bank a request for payment on a Bank-prescribed form setting forth, among other things, the total amount requested, any Loan Budget reallocations requested, and a draw summary by line item.

(ii) Contractor's Application and Certificate for Payment. Borrower shall submit to Bank a Contractor's Application and Certificate for Payment (i.e., AIA Documents G702 and G703) prepared and fully executed by the Contractor. If required by Bank, such Certificate for Payment shall also be fully executed by the Architect thus certifying the work covered therein. By submitting the Certificate for Payment to Bank, Borrower acknowledges its review and approval of such documents and all information it contains.

(iii) Lien Waivers. All Draw Requests for Hard Costs shall include a conditional lien waiver in the amount of the current payment due for each Hard Cost item set forth in the foregoing Certificate of Payment (and the AIA G702 and G703 thereto) being submitted. The subsequent Draw Request shall include an unconditional lien waiver for each such Hard Cost item and shall cover an amount which (A) is at least the total amount disbursed for such Hard Cost item pursuant to the previous Draw Request, and (B) when totaled with all previous unconditional lien waivers for such Hard Cost item, totals at least the total aggregate amount previously disbursed for such Hard Cost item. Borrower agrees that any conditional or unconditional lien waiver delivered pursuant to this Section shall be in the form of conditional or unconditional (as applicable) lien waiver set forth in California Civil Code § 8132-8138.

(iv) Back-Up Invoices for Soft Costs. All Draw Requests for Soft Costs shall include back-up invoices for each Soft Cost item. Unless otherwise agreed in writing by Bank, each such invoice shall (A) indicate the correct address of the Project, (B) be no more than sixty (60) days old, except for Soft Costs incurred and paid prior to the closing of the Loan, and (C) be in an amount which reconciles with the applicable request for payment form.

(v) Offsite Stored Materials. Bank will disburse for materials to be used in the construction of the Improvements which are or will be stored at a location other than the Project site, if and only if, all of the following conditions are met:

(A) All conditions to disbursement set forth in the Loan Documents have been satisfied or waived in writing by Bank.

(B) Borrower shall have delivered to Bank a bill of sale and/or copies of invoices covering such offsite stored materials, and Bank shall have filed a UCC-1 Financing Statement which shows of record as perfecting a first-priority security interest in the offsite stored materials.

(C) Unless otherwise agreed in writing by Bank, such offsite stored materials shall be located in a bonded warehouse and shall be properly tagged and identified as determined by Bank.

(D) At Borrower's sole cost and expense, Bank or Bank's independent third party inspector or consultant, shall have inspected such offsite stored materials at the storage site and such materials shall be stored in a manner and shall be in a condition acceptable to Bank.

(E) At Borrower's sole cost and expense, Borrower shall have provided to Bank evidence of such additional insurance with respect to the offsite stored materials as Bank may require. Such additional insurance shall include coverage for transportation of such offsite stored materials from the storage site to the Project site.

**2.5 Escrow for Loan Closing.** In connection with the Loan closing and the initial disbursement of Loan proceeds by Bank under this Agreement, Bank, at its option, may require that such disbursement be made through an escrow maintained with a title insurance company or law firm acceptable to Bank in its sole and absolute discretion, in accordance with escrow instructions prepared by Bank.

**2.6 Loan Disbursements.** Bank shall make all disbursements through the Account. After the occurrence and during the continuance of any Unmatured Event of Default or Event of Default, Bank, if it so chooses, may make disbursements, through the Construction Control Company (if any), and/or directly to the Contractor, subcontractors, laborers, or material suppliers.

**2.7 Disbursement Conditions.**

(a) Fulfillment of Conditions. Bank need not make any disbursement of the Loan until Borrower fulfills all conditions of the Loan Documents, at Borrower's sole cost and expense and in a manner acceptable to Bank in its sole and absolute discretion (unless another standard is specified) including the Loan closing conditions and the Loan disbursement conditions set forth in **Section 1** above. Borrower acknowledges that delays in disbursements may result from the time necessary for Bank to verify satisfactory fulfillment of any and all conditions to a given disbursement. Borrower consents to all such delays. Bank may waive a condition of disbursement, but each such waiver shall be enforceable against Bank only if it is expressly made in writing by Bank. If Bank makes a disbursement before fulfillment of one or more required conditions, that disbursement alone shall not be a waiver of such conditions, and Bank reserves the right to require their fulfillment before making any subsequent disbursements. Bank may condition any disbursement made following waiver of any one or more conditions upon receipt of an endorsement to Bank's title insurance policy. If all conditions are not satisfied, Bank, in its sole and absolute discretion, may disburse as to certain items or categories of costs and not others.

(b) Deferral of Conditions; Conditions Subsequent. If Borrower has not fulfilled all closing conditions and initial disbursement conditions prior to the date set for closing the Loan, Bank, at its option, may close the Loan and may disburse some or all of the Loan funds subject to Borrower's compliance with any or all such condition(s) as conditions subsequent to the Loan closing. In such event, Bank shall notify Borrower of the conditions subsequent that must be met and the time period(s) within which Borrower is required to comply. If no time period for compliance is specified by Bank as to any condition subsequent, then Borrower shall comply with such condition subsequent within thirty (30) days of the date of closing of the Loan. Failure of Borrower to comply with all conditions subsequent within the applicable time periods shall be an Event of Default hereunder.

**2.8 Loan Fees.** Borrower shall pay to Bank the following fees in immediately available funds (unless paid from Loan funds as specifically set forth below):

(a) Loan Fee. Borrower shall pay to Bank, on or prior to the closing of the Loan, a loan fee (the "Loan Fee") in an amount equal to one percent (1.00%) of the Loan Amount and a loan processing fee of \$2,500.00. The Loan Fee may be paid from the proceeds of the Loan by debit of the Loan funds at the closing of the Loan.

(b) Extension Fee. If Borrower elects to extend the Maturity Date pursuant to the terms set forth below, Borrower shall pay to Bank a nonrefundable extension fee (each an "Extension Fee") in the amount of one quarter of one percent (0.25%) of the Loan Amount in consideration of each such extension of the Maturity Date. The Extension Fee is payable on or before the applicable Maturity Date.

**2.9 Extension of Maturity Date**

(a) Extension. Upon written request of the Borrower not less than thirty (30) days and not more than sixty (60) days before the then-applicable Maturity Date, if on or before the Maturity Date, Borrower satisfies the conditions set forth in this Section, the Maturity Date will be extended to February \_\_, 2018 (as so extended, the "First Extended Maturity Date") and if first extended to the First Extended Maturity Date, the Maturity Date may be further extended to May \_\_, 2018 (as so extended, the "Second Extended Maturity Date") upon Borrower's request and subject to satisfaction of the conditions set forth in this Section. If the Maturity Date is so extended (i) all sums outstanding under the Loan will be due and payable on the First Extended Maturity Date or Second Extended Maturity Date, as applicable, and (ii) all references herein and in the other Loan Documents to the "Maturity Date" shall thereafter mean the First Extended Maturity Date or Second Extended Maturity Date, as applicable.

(b) Conditions to Extend. Bank's obligation to extend the Maturity Date as described in clause (a) above is subject to the following conditions to extend, all of which shall be satisfied as determined by Bank in its sole and absolute discretion, unless otherwise waived in writing by Bank:

(i) Good Condition and Repair. Bank shall be satisfied that the Property, including any construction on it, has been well maintained and is in good condition and repair, except for any insured casualty which is being repaired in accordance with the terms of the Loan Documents.

(ii) Endorsements. Bank shall have received at Borrower's sole cost and expense, a title policy "bring-down" or "date down" endorsement, and such other title endorsements or title policies as Bank may request, in form and substance satisfactory to Bank, to insure the continuing first-priority lien of the Deed of Trust.

(iii) No Defaults. No Event of Default (as defined in the applicable document) shall have occurred, and no default or Unmatured Event of Default shall have occurred and be continuing under any of the Loan Documents. No breach, default, or failure of condition, shall have occurred and be continuing under any of the Partnership Documents (subject to applicable notice and cure periods).

(iv) No Material Adverse Change. There shall be no material adverse change in Borrower's or any general partner of Borrower's or any Guarantor's financial condition, or event of condition that materially impairs Borrower's intended use of the Property or Borrower's or any general partner of Borrower's or any Guarantor's ability to repay the Loan.

(v) Loan In Balance. Bank shall be satisfied that the Loan is "in balance."

(vi) Pro Forma Schedule. Bank shall be satisfied that the projections made by Borrower in the Pro Forma Schedule have been fully met up to that time and that such projections will

continue to be accurate prospectively, or in the alternative, Borrower shall have provided a new Pro Forma Schedule satisfactory to Bank.

(vii) Execution and Recordation of Modification Documents. Borrower and Bank shall have executed and delivered such modifications to the Loan Documents as Bank may require, including any such documents as Bank may require to be in recordable form.

(viii) Extension Fee. For each ninety (90) day extension, Bank shall have received the Extension Fee in immediately available funds.

(ix) Extension of Takeout Commitment. Borrower shall have obtained an extension of the Takeout Commitment to a date not sooner than the First Extended Maturity Date or Second Extended Maturity Date, as applicable, and shall have paid in full all costs and fees in connection with such extension.

**2.10 Other Financing.** The following shall apply with respect to financing for the Property other than Bank's Loan:

(a) Subordinated Loan. With respect to each Subordinated Loan, the following will apply:

(i) The Subordinated Loan Documents shall be subject to the review and approval of Bank in its sole and absolute discretion, and shall be fully subordinated in writing to Bank's Loan Documents in the form of the Subordination Agreement and in such other form as Bank may deem necessary to subordinate the Subordinated Loan. Notwithstanding the foregoing, Bank shall have approved any regulatory agreement entered into or to be entered into between Borrower and any Junior Lender to be recorded, in the form previously approved by Bank or otherwise in form and substance acceptable to Bank, prior in time and senior in lien priority to the Deed of Trust.

(ii) Bank acknowledges that each Junior Lender may require Borrower enter into additional regulatory agreements after the Closing Date. Bank hereby agrees to review all documents provided in connection with such request, all of which documents must be approved, in writing, by Bank (such approval not to be unreasonably withheld, delayed or conditioned). Borrower may agree to the recording of any Bank-approved documents of the Subordinated Loan requested by Junior Lender after the Closing Date; provided, however, that in connection with any such recording of additional or amended junior loan documents, and at Borrower's sole cost and expense, Bank shall receive an endorsement to the Bank's title insurance policy, in form and substance acceptable to Bank in its sole and absolute discretion, insuring that the Deed of Trust remains prior in time and senior in lien priority to such Subordinated Loan documents and all such documents shall thereafter constitute "Subordinated Loan Documents."

(b) Takeout Loan. The Takeout Commitment shall be subject to the review and approval of Bank in its sole and absolute discretion.

**2.11 Collateral Security.**

(a) Other Collateral. In addition to the Land, Improvements, and other Property described above, the Loan shall be secured by all of the following:

(i) Personalty Related to the Land and Improvements. A *first-priority* lien on all equipment, furniture, fixtures, and materials to be incorporated into the Improvements, and any other personal property owned by Borrower located on or used in connection with the Land and Improvements.

(ii) Contracts, Plans and Specifications. An assignment of, and *first-priority* security interest in: (A) the Construction Contract, the Architecture Contract, and all engineering

contract(s), development contracts, management contracts, and all other agreements now or hereafter entered into by Borrower with any contractor in connection with construction of or on the Property and/or with any architect, engineer, or other consultant in connection with the design, engineering, construction of or on, management of, or for services on or related to, the Property, and (B) the Plan and Specifications and all other plans, specifications, and drawings with respect to the Property.

(iii) Borrower's Funds Account and Reserve Accounts. An assignment of, and first-priority security interest in all of the following accounts (whether opened prior to, concurrently with, or subsequent to, the closing of the Loan), and all funds contained or deposited therein: (A) the Borrower's Funds Account, if any, (B) the Account, if any, and (C) all Reserve Accounts, including but not limited to, the Replacement Reserve Account.

(iv) Partnership Interests and Related Collateral. An assignment of, and first-priority security interest in, all of Borrower's and General Partner's respective interests, in and to the Partnership Interest Collateral including but not limited to (A) all of General Partner's rights as a general partner in Borrower including rights under the Partnership Agreement, (B) the Tax Credits (subject to the Tax Credit Requirements to the extent not prohibited by applicable law, and (C) the Capital Obligations.

(b) Release of Collateral. Unless otherwise agreed in writing by Bank, Bank's security interest in all collateral for the Loan shall be released by Bank when the Loan has been paid and performed in full; provided, however, that if there is any conflict in the release terms contained in any security agreement, assignment, or other security instrument as to the terms upon which the Bank's security interest in the collateral described in that document, or any portion thereof, shall be terminated and/or released Borrower, and the terms of this Section, the terms of any such security agreement, assignment, or other security instrument shall control and govern the collateral described therein.

(c) Collateral Documents. Borrower agrees to execute any and all documents, including security agreements and financing statements, as Bank may reasonably request in order to create, perfect, or continue the security interests described above.

**3. Covenants of Borrower.** Borrower promises to keep each of the covenants set forth below, unless Bank has waived compliance in writing.

### **3.1 Commencement and Completion of Improvements.**

(a) Borrower shall commence construction of the Improvements within thirty (30) days after the Closing Date and shall continue construction diligently to completion.

(b) By the Completion Date, Borrower shall have completed construction of the Improvements. As used in this Agreement, completion of construction of the Improvements includes, inter alia, completing construction of the structural components, operating systems, and all other elements of such buildings. Unless otherwise agreed to in writing by Bank, the Improvements are deemed complete for all purposes of this Agreement when (i) they have been substantially completed in accordance with the Plans and Specifications, as evidenced by the written certification of the Architect and/or the Contractor (as determined by Bank) in a form satisfactory to Bank, (ii) Borrower has provided Bank with a certificate of occupancy and/or any other approvals required to be issued by all appropriate governmental authorities in order to permit occupancy of all units and facilities within the Improvements (if any are required), notice of completion (recorded, when advisable or necessary under applicable law) and passage of the requisite time without the filing of claims for mechanic's or materialmen's liens, completion affidavit, or other evidence satisfactory to Bank that the Improvements are complete, are lien-free, and have been inspected by and received final approval of the appropriate governmental authorities.

**3.2 Requirements.** Borrower shall construct the Improvements in a good and workmanlike manner in accordance with sound building practices, as well as the Plans and Specifications. Borrower shall comply with all existing and future laws, regulations, orders, building codes, restrictions and



requirements of, and all permits and approvals from, and agreements with and commitments to, all governmental, judicial, or legal authorities having jurisdiction over the Project, including those pertaining to the ownership, construction, marketing, sale, leasing, or financing of the Improvements, and with all recorded covenants and restrictions and other title encumbrances affecting the Project (collectively, the "Requirements").

### **3.3 Changes.**

(a) Borrower agrees to provide Bank with copies of all change orders (for any change in any work or materials for the Improvements, whether positive or negative), together with all additional documents relating thereto that Bank may require. These documents may include the following: (i) plans and specifications indicating the proposed change, (ii) a written description of the proposed change and related working drawings, and (iii) a written estimate of the cost of the proposed change and the time necessary to complete it.

(b) Borrower shall obtain Bank's prior written approval of any change order, if with respect to such change order any of the following apply:

(i) the cost of such change exceeds Ten Thousand and No/100 Dollars (\$10,000.00); or

(ii) if the aggregate amount of all changes (whether positive or negative) will then exceed Twenty-Five Thousand and No/100 Dollars (\$25,000.00); or

(iii) regardless of cost, if such change is a material change in structure, design, function, or exterior appearance of the Improvements; or

(iv) regardless of cost, such change requires the approval of Investor Limited Partner, Takeout Lender, or any Junior Lender or any other party to any of the Loan Documents; or

(v) regardless of cost, if such change would cause any line item or category of the cost breakdown to be increased or decreased by five percent (5%) or more; or

(vi) regardless of cost, if such change could affect the value of Bank's security adversely; or

(vii) regardless of cost, if such change will delay completion of the Improvements beyond the Completion Date.

(c) In addition, Borrower shall obtain Bank's prior written approval of all material changes in the scope or general conditions of the Construction Contract, the Architecture Contract, or any other contracts for the construction of the Improvements. Finally, Borrower shall obtain from the appropriate persons or entities all approvals of any changes in plans, specifications, work, materials or contracts required by any of the Requirements (including those of any governmental agency) or under the terms of any lease, loan commitment, or other agreement relating to the Property.

(d) Bank may take a reasonable time to evaluate any requests for proposed changes and may require that all approvals required from other parties be obtained before it reviews any requested change. Bank may approve or disapprove changes in the exercise of its reasonable judgment. Borrower acknowledges that delays may result and agrees that, so long as the delays are not unreasonable in duration, they will not affect Borrower's obligation to complete the Improvements by the Completion Date.

**3.4 Construction Information and Verification.** The following shall apply during the term of the Loan:

(a) Within fifteen (15) days after receiving notification from Bank, Borrower shall deliver to Bank for Bank's review and approval any and all of the following information and documents that Bank may request:

(i) Current plans and specifications for the Improvements certified by the Architect as being complete and accurate;

(ii) A current, complete and correct list showing the name, address and telephone number of each contractor, subcontractor and material supplier engaged in connection with the construction of the Improvements and the total dollar amount of each contract and subcontract (including any changes), together with the amounts paid through the date of the list;

(iii) True and correct copies of the most current versions of all executed contracts and subcontracts identified in the list described in clause (ii) above, including any changes;

(iv) A current construction progress schedule showing the progress of construction and the projected sequencing and completion times for uncompleted work, all as of the date of the schedule; and

(v) Any update to any item described above, previously delivered to Bank.

(b) Borrower expressly authorizes Bank to contact the Architect, Contractor or any contractor, subcontractor, material supplier, surety or any governmental authority or agency to verify or discuss any information disclosed in accordance with this Section and any other information related to the Property that Bank may reasonably require.

(c) Any defaulting architect, contractor, subcontractor, material supplier, or surety shall be replaced promptly, and Borrower shall deliver promptly all required information and documents to Bank regarding each replacement architect, contractor, subcontractor, material supplier, and surety. Bank may disapprove any architect, contractor, subcontractor, material supplier, surety, or other party Bank in its reasonable judgment deems financially or otherwise unqualified; however, in no event may the absence of disapproval be deemed approval.

(d) If, based on any construction progress schedule or other materials submitted by Borrower, Bank in its reasonable judgment determines that the Improvements will not be completed by the Completion Date, Bank may request Borrower in writing to reschedule the work of construction to permit timely completion. In addition, if Bank in its reasonable judgment determines that any building constituting the Improvements will not be "placed in service" (within the meaning of Section 42 of the Code) by the Completion Date, Bank may request Borrower in writing to reschedule the work of construction. Within fifteen (15) days after receiving such a request from Bank, Borrower shall deliver to Bank a revised construction progress schedule and Pro Forma Schedule showing completion of the Improvements by the Completion Date.

**3.5 Permits, Licenses and Approvals.** Borrower shall obtain, comply with, and keep in effect all permits, licenses, and approvals required from governmental bodies in order to construct, occupy, operate, market, and lease or sell the Land and Improvements. Borrower shall deliver copies of all such permits, licenses, and approvals to Bank promptly, and in any event within five (5) days after receipt thereof.

**3.6 Conditional Sales Contracts; Removal of Fixtures and Equipment.** Without Bank's prior written consent, Borrower shall not (a) purchase or contract for any materials, equipment, furnishings, fixtures, or articles of personal property to be placed or installed on the Land or any Improvements under any security agreement or other agreement where the seller reserves or purports to reserve a lien, security interest, or title thereto, or the right of removal or repossession after such items are installed on or placed in the Property, or (b) remove or permit to be removed from the Land or the

Improvements any equipment, machinery, or fixtures used in connection with the management, maintenance, operation, or enjoyment thereof unless replaced by articles of equal suitability and value owned by Borrower free and clear of any lien or security interest.

### **3.7 Site Visits; Right to Stop Work.**

(a) Bank and its agents and representatives shall have the right to enter and visit the Property at any reasonable time for the purposes of performing an appraisal, observing the work of construction and examining all materials, plans, specifications, working drawings, and other matters relating to the construction. For purposes of these site visits, Borrower shall maintain at all times a full set of working drawings at the construction site. Bank has the right to examine, copy and audit the books, records, accounting data and other documents of Borrower and its contractors relating to the Property or construction of the Improvements. In each instance, Bank shall give Borrower reasonable notice before entering the Property and make reasonable efforts to avoid interfering with Borrower's use of the Property when exercising any of the rights granted in this Section.

(b) If Bank in its reasonable judgment determines that any work or materials fail to conform to the approved Plans and Specifications or sound building practices, or that they otherwise depart from any of the requirements of this Agreement, Bank may require the work, or a portion thereof, to be stopped and may withhold disbursements until the matter is corrected. If this occurs, Borrower shall correct the work to Bank's satisfaction promptly and halt all other work to the extent that such other work relates to or otherwise cannot be properly completed absent completion of the corrective work, pending completion of such corrective work. No such action by Bank will affect Borrower's obligation to complete the Improvements in accordance with the Pro Forma Schedule and on or before the Completion Date.

(c) Bank has no duty to visit the site, to supervise or observe construction, or to examine any books or records. Any site visit, observation, or examination by Bank is solely for the purpose of protecting Bank's rights and interests. No site visit, observation, or examination by Bank shall impose any liability on Bank or result in a waiver of any default of Borrower or be a representation that Borrower is or will be in compliance with the Plans and Specifications, that the construction is free from defective materials or workmanship, or that the construction complies with all applicable Requirements. Neither Borrower nor any other party is entitled to rely on any site visit, observation, or examination by Bank. Bank owes no duty of care to protect Borrower or any other party against, or to inform Borrower or any other party of, any negligent or defective design or construction of the Improvements or any other adverse condition affecting the Property.

**3.8 Protection Against Lien Claims.** Borrower shall pay or otherwise promptly discharge all claims and liens for labor done and materials and services furnished in connection with the construction of the Improvements. If a mechanic's or materialman's lien has been recorded against the Land or a bonded stop notice has been issued with respect to the Land or Improvements, Borrower shall promptly deliver, or cause the title insurance company to deliver, a copy of such claim or lien to Bank (whether recorded or not). Borrower has the right to contest in good faith any claim or lien, provided that it does so diligently and without prejudice to Bank and without delay in completing the Improvements. If Borrower contests any such claim or lien, then promptly upon Bank's request, Borrower shall provide, or shall cause the Contractor to provide, a bond, cash deposit, or other security satisfactory to Bank in the exercise of its reasonable judgment. If Borrower chooses to contest such claim or lien in good faith, unless otherwise agreed to in writing by Bank, Borrower may record a payment bond in form and substance acceptable to Bank either (a) in an amount adequate to cover the Construction Contract amount, or (b) specifically covering such claim or lien. Bank shall not be required to make any further disbursements of the Loan unless and until Bank has received evidence acceptable to Bank in its sole and absolute discretion that each such claim or lien has been released, and that title to the Land is clear of each such claim or lien.

**3.9 Signs and Publicity.** At Bank's request, Borrower will identify Bank as the construction lender on any signs posted on the Property and use its best efforts to identify Bank in publicity concerning the Project. In the alternative, with Borrower's consent, which may not be unreasonably withheld, Bank

may post signs on the Property identifying itself as the construction lender for the Project. Bank may refer to the Project in its own promotional and advertising materials. Borrower may not post signs, or otherwise identify Bank as the construction lender, except with Bank's prior written consent in each instance.

### **3.10 Insurance.**

(a) Borrower shall provide, maintain, and keep in force at all times during the term of the Loan the following:

(i) Prior to completion of the Improvements, a policy or policies of "builder's risk special form" insurance in nonreporting form, in an amount not less than the full insurable completed value of the Property on a replacement cost basis. Upon and at all times following completion of the Improvements, a policy or policies of "all risk" casualty insurance in non-reporting form, in an amount not less than the full insurable completed value of the Property on a replacement cost basis. Such policy or policies must insure against loss or damage by hazards customarily included within such "all risk" policies and any other risks or hazards Bank may reasonably specify (including coverage for acts of terrorism). So long as the Contractor has procured and maintains builder's risk coverage acceptable in form, substance, and amount to Rabobank, and further provided that Borrower and Bank are named as additional insured parties on Contractor's policy(ies), this **Section 3.10(a)(i)** shall be deemed satisfied.

(ii) Comprehensive liability insurance naming Bank as an additional insured, on an "occurrence" basis against claims for "personal injury" liability, including bodily injury, death, or property damage liability, with a limits of not less than One Million and No/100 Dollars (\$1,000,000.00) for each occurrence and not less than Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate. Such insurance must be primary and noncontributory with any other insurance carried by Bank. If Borrower is an owner/builder, then such insurance shall include product/completed operations and contractual coverage.

(iii) Such policy or policies of worker's compensation insurance as may be required by applicable worker's compensation insurance laws (including employer's liability insurance, if required by Bank), covering all employees of Borrower and the Contractor.

(b) Borrower shall provide, maintain, and keep in force at all times prior to repayment of the Loan, any and all additional insurance Bank in its reasonable judgment may from time to time require against commonly insured hazards for similarly situated properties. Such additional insurance may include flood insurance as required by federal law and earthquake and/or sinkhole insurance as required by Bank. At Bank's request, Borrower shall supply Bank with an original, countersigned original, or certified copy of any policy.

(c) All policies of insurance required under the Loan Documents must be issued by companies approved by Bank having Best's ratings of not less than A:VI, and be approved by Bank as to amounts, forms, risk coverages, deductibles, expiration dates, and loss payable and cancellation provisions. In addition, each required policy must contain such endorsements as Bank may require, as well as a Non Contributory Standard Mortgagee Clause or its equivalent in favor of Bank, and must provide that all proceeds be payable to Bank to the extent of its interest. An approval by Bank is not, and shall not be deemed to be, a representation of the solvency of any insurer or the sufficiency of any amount of insurance.

(d) Each policy of insurance required under the Loan Documents must provide that it may not be modified or canceled without at least thirty (30) days prior written notice to Bank. At least ten (10) days before expiration of any required insurance policy, Borrower shall furnish Bank with proof acceptable to Bank that a new policy has been issued, continuing in force the insurance covered by the policy which is expiring. At the same time, Borrower shall also furnish Bank with evidence satisfactory to Bank that all premiums for any such new policy have been paid. If at least ten (10) days before a required policy expires, Bank does not receive proof and evidence that a new policy has been issued and that premiums for it have been paid, Bank in its sole discretion may procure a new policy and advance

funds to pay the premiums for it. Borrower shall repay Bank immediately on demand for any advance for such premiums, which shall be considered to be an additional loan to the Borrower bearing interest at the rate of interest provided for in the Note, and secured by the Loan Documents.

(e) As to all policies of insurance provided by Borrower, Borrower shall be named as the insured and any additional insured parties shall be subject to Bank's approval. As to all policies of insurance provided by a third party other than Borrower (e.g., the Contractor), Borrower shall be named as an additional insured.

(f) Borrower is aware that California Civil Code § 2955.5(a) provides as follows: No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

**3.11 Cooperation.** Borrower shall cooperate at all times with Bank in bringing about the timely completion of the Improvements, and Borrower shall resolve all disputes arising during the work of construction in a manner allowing work to proceed expeditiously.

**3.12 Income from Property.** Borrower shall first apply all income from leases, and all other income derived from the Property, to pay costs and expenses associated with the ownership, maintenance, development, operation, and marketing of the Land and Improvements, including all amounts then required to be paid under the Loan Documents, before using or applying such income for any other purpose. Until the Loan is repaid in full and Bank has no further obligation to make disbursements of Loan funds, but subject to fees required to be paid to any partner or affiliate of Borrower pursuant to and in accordance with the Partnership Documents, (a) all Net Monthly Cash Income shall be used first to pay monthly interest payments coming due under the Loan except as otherwise provided in the Loan Documents, and (b) except as may be otherwise permitted herein, Borrower may not distribute any income to any of its members, partners, or shareholders, allow any member, partner, or shareholder to withdraw capital or make any payments on indebtedness owed to any member, partner, or shareholder.

**3.13 Payment of Expenses.** Borrower shall pay Bank's reasonable costs and expenses incurred in connection with the making, disbursement, and administration of the Loan. Borrower shall also pay any and all of Bank's costs and expenses incurred in connection with any revisions, extensions, renewals, or "workouts" of the Loan, and in the exercise of any of Bank's rights or remedies under this Agreement. Such costs and expenses include charges for title insurance (including endorsements), filing, recording, and escrow charges, fees for appraisal and appraisal review, architectural and engineering review, construction services (including those of Bank's construction inspector) and environmental services, mortgage taxes, document review and preparation, reasonable legal fees and expenses of Bank's counsel, and any other reasonable fees and costs for services, regardless of whether such services are furnished by Bank's employees or agents or independent contractors. Borrower acknowledges that amounts payable under this Section are not included in any loan or commitment fees for the Loan. All such sums incurred by Bank and not immediately reimbursed by Borrower will be considered an additional loan to Borrower secured by the Deed of Trust and bearing interest at the Default Rate.

**3.14 Financial and Other Information. [CONFIRM W/APPROVAL]**

(a) **Financial and Other Information of Borrower.** Borrower shall keep true and correct financial books and records, using GAAP, or such other accounting principles as Bank in its reasonable judgment may find acceptable from time to time. Borrower shall provide to Bank the following:

(i) Within one hundred twenty (120) days after Borrower's fiscal year end, Borrower's annual financial statements. These financial statements shall be audited by a Certified Public Accountant acceptable to Bank. These financial statements shall be prepared on a consolidated basis.

Following thirty (30) days written notice by Bank, if Borrower fails to comply with the obligations of this **Section 3.14** or any other requirements to deliver financial information related to Borrower, the Property, or the Loan within the specified time periods set forth herein or in any other provision requiring such delivery, then Borrower shall pay to Bank, as damages, the sum of \$100 per day (plus interest thereon at the Default Rate as specified in the Note) until Borrower has complied therewith or such information is otherwise received by Bank.

(ii) Quarterly operating statements and rent rolls for the Property, within sixty (60) days after each quarter end.

(iii) Beginning on the completion of the Improvements, monthly operating statements and rent rolls for the Property, within thirty (30) days after month end.

(iv) As soon as available, but in no event later than thirty (30) days after the filing date, signed copies of Borrower's federal tax return and all supporting schedules (including K-1's or their equivalent).

(v) Promptly upon the request of Bank, quarterly balance sheets and income statements for itself and the Property.

(vi) Promptly upon the request of Bank, such other information as Bank may reasonably request concerning the affairs and properties of Borrower.

(b) Financial and Other Information of General Partners. Borrower shall cause each General Partner to keep true and correct financial books and records, using GAAP, or such other accounting principles as Bank in its reasonable judgment may find acceptable from time to time. Borrower shall cause each General Partner to provide to Bank the following:

(i) Within ninety (90) days after (A) the calendar year end for each General Partner that is a natural person, and (B) the applicable fiscal year end for each General Partner that is an entity, such General Partner(s)'s annual financial statements. These financial statements may be prepared by General Partner if certified to be true and correct by each General Partner. These financial statements shall be prepared on a consolidated basis.

(ii) As soon as available, but in no event later than thirty (30) days after the filing date, signed copies of each General Partner's tax returns, including all extensions and all supporting schedules (including K-1's or their equivalent).

(iii) Promptly upon the request of Bank, quarterly balance sheets and income statements for each General Partner, each of its managing or other members, and each of its general partners, as applicable.

(iv) Promptly upon the request of Bank, such other information as Bank may reasonably request concerning the affairs and properties of such General Partner, each of its general partners, and each of its managing or other members, as applicable.

(c) Financial and Other Information of Guarantor. Borrower shall cause each Guarantor to keep true and correct financial books and records, using GAAP, or such other accounting principles as Bank in its reasonable judgment may find acceptable from time to time. Borrower shall cause each Guarantor to provide to Bank the following:

(i) Within one hundred twenty (120) days after Pacific West Communities, Inc.'s fiscal year, such Guarantor's annual financial statements. These financial statements may be prepared by Guarantor if certified to be true, complete and correct by Guarantor.

(ii) Within one hundred twenty (120) days after Pacific West Builders, Inc.'s fiscal year end, such Guarantor's annual financial statement. These financial statements shall be prepared on a consolidated basis and compiled by a certified Public Accountant acceptable to Bank.

(iii) As soon as available, but in no event later than thirty (30) days after the filing date, signed copies of all tax returns, including all extensions and all supporting schedules (including K-1's or their equivalent).

(iv) Promptly upon the request of Bank, quarterly balance sheets and income statements for each Guarantor.

(v) Promptly upon the request of Bank, such other information as Bank may reasonably request concerning the affairs and properties of each Guarantor.

**3.15 Notices.** Borrower shall notify Bank promptly in writing of any and all of the following:

(a) Any litigation affecting Borrower and any General Partner where the amount claimed is or may be Twenty-Five Thousand and No/100 Dollars (\$25,000.00) or more, and which (i) is not dismissed within sixty (60) days of the filing thereof, and (ii) is not Covered by Insurance.

(b) Any litigation affecting Borrower and any Guarantor where the amount claimed is or may be Fifty Thousand and No/100 Dollars (\$50,000.00) or more, and which (i) is not dismissed within sixty (60) days of the filing thereof, and (ii) is not Covered by Insurance.

(c) Any written or oral communication Borrower receives from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Land or Improvements fail in any respect to comply with any of the Requirements or any other applicable governmental law.

(d) Any material adverse change in the physical condition of any Property (including any damage suffered as a result of fire, earthquakes, or floods).

(e) Any material adverse change in Borrower's, or any General Partner's, or any Guarantor's financial condition, any material adverse change in Borrower's or any General Partner's operations, or any change in the management of Borrower or any General Partner.

(f) Any default by the Contractor or any subcontractor, material supplier, or surety, related to the Property, or any material adverse change in the financial condition or operations of any of them.

(g) Any other circumstance, event, or occurrence that results in a material adverse change in Borrower's, or any General Partner's, or any Guarantor's ability to timely perform any of its obligations under any of the Loan Documents.

(h) Any written or oral communication Borrower receives from any Junior Lender that a (i) default or Event of Default (as defined in the applicable document), or event that with notice or the passage of time, or both, could become such an Event of Default, shall have occurred and be continuing under any of the Subordinated Loan Documents, or, (ii) it will not or may not fund the applicable Subordinated Loan.

**3.16 Keeping Guarantor Informed.** Borrower shall keep each Guarantor informed of Borrower's financial condition and business operations, the condition and all uses of the Property, including all changes in condition or use, and any and all other circumstances that may affect Borrower's ability to pay or perform its obligations under the Loan Documents. However, any failure to do so shall not give rise to any defense to Guarantor.

**3.17 Performance of Acts.** Upon Bank's request, Borrower shall perform all acts necessary or advisable to perfect any lien or security interest provided for in the Loan Documents or to carry out the intent of the Loan Documents.

**3.18 Notice of Change.** Borrower shall give Bank at least thirty (30) days prior written notice of any change in:

- (a) the location of its place of business or its chief executive office if it has more than one place of business;
- (b) Borrower's name or business structure;
- (c) the state in which Borrower has filed its entity incorporation or organizational documents; and
- (d) Borrower's organizational identification number, if any, assigned by the state of its incorporation or organization or of any newly assigned such number where one had not been previously assigned.

Unless otherwise approved by Bank in writing, Borrower agrees that all Property that consists of personal property (other than the books and records) will be located at the Land and that all books and records will be located at Borrower's place of business or chief executive office if Borrower has more than one place of business.

**3.19 Indemnity Regarding Construction and Other Risks.** Borrower indemnifies, defends, and holds the Indemnified Parties harmless for, from, and against any and all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages (including foreseeable and unforeseeable consequential damages), costs, expenses, fines, penalties, and losses (including sums paid in settlement of claims and all reasonable consultant, expert and legal fees and expenses of Bank's counsel), and any resulting damages, harm or injuries to the person or property of any third parties, directly or indirectly arising out of or resulting from (a) construction of any improvements on the Property, (b) the ownership, management, maintenance, operation, marketing, leasing, sale, or use of the Property, including any such claims based on theories of derivative liability, comparative negligence or otherwise, (c) any development of, or improvement to or rehabilitation of, the Property, including any defective workmanship or materials, (d) any failure to satisfy any Requirements or any reports, maps, development agreements, or regulatory agreements that apply or pertain to the Property, (e) breach of any representation or warranty made or given by Borrower to any of the Indemnified Parties or to any prospective or actual lessee or buyer of all or any portion of the Property, and/or (f) any claim or cause of action of any kind by any party that any Indemnified Party is liable for any act or omission of Borrower or any other person or entity in connection with the ownership, management, maintenance, operation, marketing, leasing, sale, or use of the Property, or any development of or improvement to the Property, excepting those arising out of, or resulting, solely from the applicable Indemnified Party's gross negligence or willful misconduct. Notwithstanding, anything to the contrary in any other Loan Document, the provisions of this Section shall survive the termination of this Agreement, repayment of the Loan, and foreclosure of the Deed of Trust or similar proceedings.

**3.20 Maintenance and Repair.** Borrower shall (a) maintain the Property, including the parking and landscaping portions thereof, in good condition and repair, (b) promptly make all necessary structural and non-structural repairs to the Improvements (or cause tenants under any leases to perform such obligation), (c) not demolish, alter, remove, or add to any Improvements, excepting (i) the repair and restoration of Improvements following damage thereto as required by the Deed of Trust, (ii) the construction or installation of non-structural alterations or improvements, provided the same are in all respects consistent with the character and utility of the existing Improvements, (iii) the installation or construction of tenant improvements and related demolition in connection with any leases approved in accordance with this Agreement, and (d) not erect any new buildings, structures or building additions on the Land, without the prior written consent of Bank in each instance. Borrower shall pay when due all



claims for labor performed and materials furnished therefor in connection with any improvements or construction activities.

**3.21 Preservation of Rights.** Borrower shall obtain, preserve and maintain in good standing, as applicable, all rights, privileges and franchises necessary or desirable for the operation of the Property and the conduct of Borrower's business thereon or therefrom.

**3.22 Tax Receipts.** Borrower shall provide to Bank, within thirty (30) days after the end of the fiscal year of the applicable governmental authority, bills showing the payment (to the extent then due and payable) of all taxes and assessments that are or may become a lien upon the Property or any portion thereof. If Borrower fails, following demand, to provide Bank the tax receipts required by this Section, without limiting the other remedies available to Bank under this Agreement, Bank may, at Borrower's sole expense, obtain and enter into a tax services contract with respect to the Property with a tax reporting agency satisfactory to Bank.

**3.23 Capital Contributions of Investor Limited Partner.** Borrower shall cause Investor Limited Partner to make the capital contributions and/or other advances required pursuant to the Partnership Agreement and the Partnership Documents, at the times, in the amounts, and subject to the terms and conditions specified therein (subject to adjustment pursuant to the terms of the Partnership Agreement). In no event may Borrower amend, modify, or waive any term of the Partnership Agreement or the Partnership Documents to the extent that any such act would affect the schedule and/or amount of any funding of Capital Obligations or other advances or fundings thereunder or the identity of the managers or material officers thereunder without the prior written consent of Bank in its sole and absolute discretion.

**3.24 Intentionally Omitted.**

**3.25 Appraisals.** If required by Bank or if required by applicable law or regulations, Bank shall have the right to order appraisals of the Property from time to time from an appraiser selected by Bank, which appraisals shall comply with all federal and state standards for appraisals and otherwise shall be satisfactory to Bank in all material respects. Borrower agrees to pay the cost and expense for all appraisals and reviews thereof ordered by Bank pursuant to this Section, except Borrower shall not be responsible to pay for more than one (1) appraisal during the life of the Loan (excepting the appraisal obtained in connection with the making of the Loan) unless such appraisal is ordered when (a) an Event of Default has occurred or an Unmatured Event of Default has occurred and is continuing hereunder, or (b) such appraisal or update is required by applicable law or regulation.

**3.26 As-Built Plans; Surveys.** Upon the request of Bank, Borrower shall promptly provide to Bank (a) as-built plans and specifications for the Improvements as actually completed, certified by the Architect as being complete and accurate, and/or (b) an as-built ALTA survey of the Land and Improvements in form and substance satisfactory to Bank, certified by a licensed land surveyor and showing the location of the completed improvements, and all boundary lines, easements, rights of way, and other matters affecting the Land. Borrower agrees to pay the cost and expense for such as-built plans and specifications and/or as-built surveys.

**3.27 Reserve Accounts; Impounds.** In connection with the Loan, Borrower shall establish certain reserves and/or impounds, and open and maintain certain Reserve Accounts as follows:

(a) Intentionally Omitted.

(b) Taxes and Insurance Reserve. Following any failure by Borrower to timely pay real estate taxes and assessments or insurance premiums that are due and owing, and in any event, following a default or an Event of Default under any of the Loan Document (unless otherwise agreed in writing by Bank) Borrower shall, as applicable, (i) establish and thereafter maintain with Bank a Taxes and Insurance Reserve Account, or (ii) shall pay monthly to Bank an amount equal to one-twelfth (1/12<sup>th</sup>)

of the annual cost of any real property taxes and any assessments constituting a lien on the Property, together with an amount equal to the estimated next premiums for hazard and other required insurance. Funds held in the Taxes and Insurance Reserve Account shall be and remain in the exclusive control of Bank. Funds held in the Taxes and Insurance Reserve Account may be applied (either directly by Bank or be released to Borrower for payment of such items), in Bank's reasonable discretion, for the payment of real property taxes, assessments, insurance premiums, and like items.

(c) Reserve Accounts and Impounds Generally. With respect to Reserve Accounts and impounds in connection with the Loan, the following shall apply:

(i) No Trust Fund; Sole Right to Withdraw/Disburse. Borrower hereby acknowledges and confirms that (i) the Reserve Deposits, other monies held in the Reserve Accounts, and/or impounds shall not constitute a trust fund; and (ii) Borrower shall obtain the Bank's consent which shall be given in Bank's reasonable discretion prior to making withdrawals from the Reserve Accounts and/or disbursements of impounds.

(ii) Reserve Deposits. On each date that a Reserve Deposit is due, Borrower shall pay such Reserve Deposit to Bank for deposit into the applicable Reserve Account. Bank may, upon written request from the Borrower, waive any requirement for the payment of a Reserve Deposit; provided, however, that any such waiver by Bank of a requirement that the Borrower pay such Reserve Deposit may be revoked by Bank, in Bank's sole and absolute discretion, at any time upon notice in writing to the Borrower.

(iii) Assignment of Reserve Accounts; Grant of Security Interest. On and subject to the terms and conditions of the Deed of Trust which secures the Loan, the Borrower, as debtor, hereby irrevocably and unconditionally grants, pledges, assigns, transfers, and sets over to Bank, and there is hereby created in favor of Bank, as secured party, a security interest in and to all Borrower's right, title, and interest in and to the Reserve Accounts, to secure payment and performance of the Loan and certain other "Secured Obligations" (as such term is defined in the Deed of Trust); provided, however, Bank shall make disbursements from the Reserve Accounts in accordance with the terms of this Agreement. The Deed of Trust constitutes a security agreement under the Uniform Commercial Code (as such term is defined in the Deed of Trust). Upon the request of Bank, Borrower agrees to take all actions and execute any and all documents, as Bank may reasonably request in order to create, perfect, or continue Bank's security interest in the Reserve Accounts.

(iv) Assignment of Rights and Claims. The Borrower assigns to Bank all rights and claims the Borrower may have against all persons or entities supplying labor or materials in connection with any repair or replacement for which Reserve Account funds are used; provided, however, that Bank may not pursue any such right or claim without the prior written consent of Borrower, which consent shall not be unreasonably withheld or delayed, unless a default or Event of Default (as defined in the applicable document) has occurred under any of the Loan Documents.

(v) No Disbursements from Reserve Accounts During Continuation of an Unmatured Event of Default. If any Unmatured Event of Default has occurred and is continuing under any of the Loan Documents, then at Bank's option in its sole and absolute discretion, Bank may withhold disbursements from the Reserve Accounts.

(vi) Application of Reserve Accounts Upon an Event of Default. If any default or Event of Default (as defined in the applicable document, subject to applicable notice and cure periods) has occurred under any of the Loan Documents, then Borrower shall immediately lose all of its rights to receive disbursements from the Reserve Accounts unless and until the date on which all amounts secured by the Deed of Trust and the other Loan Documents have been paid in full and the lien of the Deed of Trust and the other Loan Documents, as appropriate, have been released by Bank. Upon the occurrence of any default or Event of Default (as defined in the applicable document, subject to applicable notice and cure periods), Bank may, in its sole and absolute discretion, use the funds in the Reserve Accounts (or any portion thereof) for any purpose, including but not limited to (i) repayment of

any indebtedness secured by the Deed of Trust and the other Loan Documents (including but not limited to principal prepayments and the prepayment premium applicable to such full or partial prepayment, as applicable); provided, however, that such application of funds shall not cure or be deemed to cure any default or Event of Default, (ii) reimbursement of Bank for all losses, fees, costs, and expenses (including, without limitation, reasonable legal fees) suffered or incurred by Bank as a result of such default or Event of Default, (iii) payment of any amount expended in exercising any and all rights and remedies available to Bank at law or in equity or under this Agreement or under any of the other Loan Documents, and/or (iv) to the payment of any item for which payment is required or permitted from any of the Reserve Accounts pursuant to the terms of this Agreement. Nothing in this Agreement shall obligate Bank to apply all or any portion of the Reserve Accounts on account of any default or Event of Default by the Borrower or to pay the indebtedness secured by the Deed of Trust or any of the other Loan Documents or in any specific order of priority.

(vii) Indemnification. Borrower hereby indemnifies, defends, and holds the Indemnified Parties harmless for, from, and against any and all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages (including foreseeable and unforeseeable consequential damages), costs, expenses, fines, penalties, and losses (including sums paid in settlement of claims and all reasonable consultant, expert and legal fees and expenses of Bank's counsel), and any resulting damages, harm or injuries to the person or property of any third parties, directly or indirectly arising out of, resulting from, or in any way connected with (i) any repairs or replacements made by Borrower (ii) unpaid taxes, utility bills, rent, or insurance premiums owed by the Borrower, and/or (iii) the holding of the Reserve Accounts, excepting those arising out of, or resulting, solely from Bank's gross negligence or willful misconduct.

(viii) No Impairment. Nothing in this Section shall, in any manner whatsoever, alter, impair, or affect the obligations of Borrower or relieve Borrower of any of its obligations to make payments and perform all of its obligations required under the Loan Documents.

**3.28 Covenants Regarding Tax Credits**. Subject to applicable laws and regulations, including, without limitation, California Health and Safety Code Section 50199.13 and Regulation 10302 of the regulations governing the Tax Credit Allocating Body and any requirements of Section 42 of the Internal Revenue Code of 1986, as amended (collectively, the "Tax Credit Requirements"), Borrower hereby agrees to comply with each of the following covenants (each, a "Tax Credit Covenant"):

(a) Borrower shall observe and perform all obligations imposed by the Tax Credit Allocating Body, the Federal Laws and the State Laws, as applicable, on Borrower in connection with the Tax Credits, for qualifying and maintaining the Tax Credits in connection with the Project, including without limitation the obligation to have the Project "placed in service" (within the meaning given in Section 42 of the Code) in a timely manner, and to operate the residential units of the Project, and to use Borrower's best efforts to cause all appropriate parties to operate the same, in accordance with all requirements, statutes, and regulations governing the Tax Credits and all requirements of the Tax Credit Allocating Body. Such obligations include but are not limited to the obligation to (i) cause to be kept all records, cause to be made all elections and certifications, and comply with all reporting requirements now or hereafter required to qualify for and maintain the Tax Credits in connection with the low-income occupancy of the Project, (ii) comply with the appropriate minimum low-income set-aside requirements under the Code or other applicable law, and all requirements of the Tax Credit Allocating Body, applicable to the creation, maintenance, and continued availability of the Tax Credits.

(b) Borrower shall preserve at all times the allocation and availability of the Tax Credits, as collateral for the Bank's benefit and security (subject to the Tax Credit Requirements) and not release, forego, alter, amend, or modify its rights to the Tax Credits without Bank's prior written consent in Bank's sole and absolute discretion.

(c) Borrower shall promptly deliver to Bank true and correct copies of all material notices or other material documents or communications received or given by Borrower with regard to or relating in any way to the Tax Credits. Immediately upon receipt thereof, Borrower shall deliver to Bank a

copy of (i) the final reservation of Tax Credits for the Project (if applicable), (ii) the basis audit (as required by Section 42 of the Code) for the Project (including a certificate of Borrower's accountant or attorneys if requested by Bank), (iii) the first annual income certification for all tenants of the Project showing that the tenants are qualified for purposes of Borrower's obtaining Tax Credits provided that this requirement only applies with respect to the first year of the Tax Credit period, and (iv) the fully-completed Form 8609 (required by the Code) issued for the Project. Borrower shall deliver promptly to Bank such other certificates, income certificates, reports and information as Bank may reasonably request related to the Tax Credits.

(d) Except as otherwise expressly provided herein or in any other Loan Document and except for the rights of Investor Limited Partner under the Partnership Agreement, not to permit any pledge, assignment, grant or transfer of any partnership interest of Borrower without Bank's prior written consent, which Bank may give or withhold in Bank's sole and absolute discretion.

(e) Except as otherwise expressly provided herein or in any other Loan Document, not to admit any person or entity as an additional or substitute partner of Borrower without Bank's prior written consent, which Bank may give or withhold in Bank's sole and absolute discretion.

(f) Except as otherwise expressly provided herein or in any other Loan Document and except for the rights of Investor Limited Partner under the Partnership Agreement, not to permit any other pledge or assignment of the Tax Credits, the Capital Obligations, the Investor Commitment, or any of the partnership interests pledged or assigned to Bank hereunder, without Bank's prior written consent, which Bank may give or withhold in Bank's sole and absolute discretion.

(g) Except as otherwise expressly provided herein or in any other-Loan Document, not to (a) materially alter, amend, or modify the Partnership Agreement, (b) enter into any other supplemental, additional or replacement agreement among the partners of Borrower pertaining to the Borrower or the rights and obligations of the partners of Borrower, or (c) alter, amend, or modify the Investor Debt Instrument or any other promissory note or funding agreement, without Bank's prior written consent which Bank may give or withhold in Bank's sole and absolute discretion.

(h) Not to release, forego, alter, amend, or modify Borrower's rights to the Tax Credits without Bank's prior written consent which Bank may give or withhold in Bank's sole and absolute discretion (except for Borrower's allocation of such credits to its Partners pursuant to the Partnership Agreement).

(i) Not to execute any lease of all or any portion of the Protect not complying fully with all requirements of the Tax Credit Allocating Body and all applicable Federal Laws and State Laws, except with Bank's prior written consent, which Bank may give or withhold in Bank's sole and absolute discretion.

(j) To exercise good faith in all activities relating to the operation and maintenance of the Project in accordance with the requirements of the Tax Credit Allocating Body, and all applicable Federal Laws and State Laws.

(k) Intentionally Omitted.

(l) Not to cause or permit any change to be made in (a) its name, identity or corporate, partnership, limited liability company, or other entity structure, (b) its jurisdiction of organization (c) its organizational identification number, (d) its place of business or if more than one its chief executive office, or (e) its mailing address, or (f) the location of any Collateral, including the Books and Records, unless Borrower or General Partner, as the case may be shall have notified Bank in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Bank for the purpose of further perfecting or protecting the lien and security interest of Bank in the Collateral.

(m) If either Borrower or General Partner does not have an organizational identification number and later obtains one, they shall promptly notify Bank of such organizational identification number,

(n) Borrower shall deliver to Bank promptly upon the receipt thereof:

(i) True and correct copies of all material notices or other material documents or material communications received or given by Borrower, General Partner, or Investor Limited Partner with regard to or relating in any way to the Partnership Agreement, the partnership interests, the Capital Obligations and/or the Tax Credits.

(ii) A copy of the fully-executed Final Reservation of Tax Credits for the Project.

(iii) The basis audit for the Project (including a certificate of Borrower's accountant or attorneys if requested by Bank).

(iv) Temporary certificate(s) of occupancy for each building comprising a part of the Project.

(v) An income certification for all tenants of the Project showing that the tenants are qualified for purposes of Borrower's obtaining Tax Credits.

(vi) The fully completed Form 8609 (as required by the Code) issued by the Tax Credit Allocating Body for each building in the Project.

(vii) Other certificates, reports, and information as Bank may reasonably request relating to the Partnership Agreement or the Tax Credits.

Borrower understands and acknowledges that Bank is making the Loan based, in part, upon the value of the Tax Credits, and the Tax Credits, directly or indirectly, constitute part of Bank's security for the Loan to the extent permitted by the Tax Credit Requirements or applicable law, including, without limitation, Section 42 of the Code. Borrower agrees to indemnify, defend, and hold Bank harmless for, from, and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations, and costs or expenses, including litigation costs and reasonable attorneys' fees, arising from or in any way connected with Borrower's failure to comply with one or more Tax Credit Covenants, excepting those arising out of, or resulting, solely from Bank's gross negligence or willful misconduct.

**3.29 Other Debts.** Except as otherwise provided herein or in any other Loan Document, without Bank's prior written consent, Borrower shall not have outstanding or incur any direct or contingent debts or lease obligations (other than those to Bank), or become liable for the debts of others, related to or with respect to the Property. This does not prohibit:

(a) Acquiring goods, supplies, or merchandise on normal trade credit.

(b) Endorsing negotiable instruments received in the usual course of business.

(c) Obtaining surety bonds in the usual course of business.

(d) Debts, lines of credit, and/or leases in existence on the date of this Agreement previously disclosed in writing to Bank.

**3.30 Other Liens.** Except as otherwise provided herein or in any other Loan Document, without Bank's prior written consent, Borrower shall not create, assume, or allow any security interest or lien (including judicial liens) on property Borrower now or later owns, except:

- (a) Deeds of trust and security agreements in favor of Bank.
- (b) Liens for taxes not yet due.
- (c) Liens outstanding on the date of this Agreement previously disclosed in writing to the Bank.
- (d) Additional purchase money security interests in personal or real property acquired after the date of this Agreement.

**3.31 Negative Covenants.** Except as otherwise provided herein or in any other Loan Document, without Bank's prior written consent, Borrower shall not:

- (a) engage in any business activities substantially different from Borrower's present business.
- (b) liquidate or dissolve Borrower's business.
- (c) lease or dispose of all or a substantial part of Borrower's business or Borrower's assets or sell any assets for less than fair market price.
- (d) enter into any consolidation, merger, pool, joint venture, syndicate or other combination.
- (e) enter into any sale and leaseback agreement covering any of the fixed or capital assets of Borrower.
- (f) acquire or purchase any business or substantially all of the assets of any business.
- (g) terminate or modify in any way, any of the Subordinated Loan Documents or the Partnership Agreement.

**3.32 Property Management Agreement.** Borrower shall at all times cause the Property to be managed by an Approved Manager pursuant to a Property Management Agreement. Each Property Management Agreement, if any, shall be in writing and shall be terminable upon thirty (30) days written notice without penalty or charge (other than for unpaid accrued management fees), unless otherwise agreed in writing by Bank. Borrower shall promptly provide Bank with a copy of any Property Management Agreement. Borrower shall not (i) amend, modify or waive any default under the Management Agreement, or any successor thereof, without Bank's prior written consent, which shall not be unreasonably withheld, or (ii) dismiss or replace the Approved Manager, without Bank's prior written consent, which shall not be unreasonably withheld.

**3.33 Net Operating Income.** Borrower shall make monthly deposits of all Net Operating Income into Borrower's Funds Account, to be used pursuant to and in accordance with the terms and conditions set forth in this Agreement. Interest payments under the Loan and funding of the Interest Reserve as described herein shall come first from any funds on account in the Borrower's Funds Account and Bank may automatically debit such account for this purpose, without any consent required from Borrower or any partner of Borrower. Provided all debt service for the month has been paid from Borrower's Funds Account, Borrower shall be permitted, on a monthly basis and without any further consent from Bank, to withdraw any remaining funds from Borrower's Funds Account for all purposes provided under the Partnership Agreement.

**3.34 Reserve Requirements.** Not limiting the generality of any of the foregoing, Borrower shall comply with all reserve requirements imposed upon it and/or the Project including, without limitation, those specified in the Partnership Agreement and those specified by the Junior Lender.

**3.35 Intentionally Omitted.**

**3.36 Partnership Documents.** Borrower shall not (i) other than permitted pursuant to **Section 7.5** hereof, amend, modify or waive any default under the Partnership Documents, or any successor thereof, without Bank's prior written consent, which shall not be unreasonably withheld, or (ii) other than as permitted pursuant to **Section 7.5** hereof, dismiss or replace any General Partner or Investor Limited Partner under the Partnership Documents, without the Bank's prior written consent.

**4. Pro Forma Schedule; Leases.**

**4.1 Pro Forma Schedule.**

(a) The following is Borrower's Pro Forma Schedule (the "Pro Forma Schedule"):

Date	Requirement
October 1, 2016	Notice of Completion for all Improvements and Certificate of Occupancy
April 1, 2017	90% leased
April 1, 2017	90% occupancy

(b) Borrower understands and acknowledges that Bank, in making the Loan, has relied on Borrower's projections set forth above in the Pro Forma Schedule.

(c) Whenever Borrower knows or believes there has been or will be a material failure to meet the projections of the Pro Forma Schedule, Borrower shall submit to Bank for its approval a revised Pro Forma Schedule in the form set forth above. Also, whenever Bank in its reasonable judgment determines that there has been or will be a material failure to meet such projections, Bank may make written demand on Borrower to submit a revised Pro Forma Schedule to Bank for its approval. Borrower shall submit a revised Pro Forma Schedule to Bank within fifteen (15) days after any such demand. Borrower shall use its best efforts to meet the projections of the currently approved Pro Forma Schedule.

(d) Any revised Pro Forma Schedule shall identify any changes in any projections or other economic terms and be accompanied by Borrower's statement of reasons for the changes. Borrower shall execute such documentation and provide such endorsements to Bank's title insurance policy as Bank may reasonably require in connection with the revised Pro Forma Schedule. Bank need make no further disbursements unless and until it approves the revised Pro Forma Schedule. Bank reserves the right to approve or disapprove any Pro Forma Schedule in its reasonable judgment. The most recently approved Pro Forma Schedule supersedes all previously approved Pro Forma Schedules.

**4.2 Lease Approval.**

(a) Except as specifically provided below, each lease of any part of the Project is subject to Bank's written approval as to form and substance prior to execution and delivery. Bank (and all other parties whose approval is required) shall approve Borrower's standard form of residential lease or rental agreement prior to its use by Borrower. Borrower may not materially modify the lease form approved by Bank without Bank's prior written consent, together with the approval of all other parties whose consent is required.

(b) Notwithstanding the foregoing, Borrower may enter into residential leases (and amendments) in the ordinary course of business with bona fide third party residential tenants without Bank's prior written consent if Borrower uses the lease form approved by Bank and complies with all of the following:

(i) Within fifteen (15) days after Bank's written request therefor, Bank receives a copy of the executed lease (accompanied by all financial information and certificates obtained by Borrower pertaining to the tenant).

(ii) The lease meets the requirements of Investor Limited Partner, Takeout Lender and Junior Lender, if applicable.

(iii) The lease reflects an arm's-length transaction.

(iv) The lease conforms to the projections of the Pro Forma Schedule.

(v) The lease does not affect more than one (1) residential unit within the Improvements and is for a minimum term of six (6) months and a maximum term of twelve (12) months, unless otherwise agreed in writing by Bank.

(vi) The lease, together with all leases previously executed, does not cause the Loan to become "out of balance." Borrower acknowledges that the Loan may become "out of balance" if the landlord's aggregate economic obligations under the leases exceed, or the net operating income from the Project fails to meet, Borrower's projections for such obligations, thereby increasing the cost or decreasing the value of the Project.

(vii) All residential leases (on the approved form), nonresidential leases and other leases or residency agreements entered into by Borrower, and all indebtedness arising thereunder or secured thereby, shall contain a provision stating that such leases and such tenants' rights thereunder are unconditionally junior and subordinate to the applicable Deed of Trust and the Loan Documents and all indebtedness arising thereunder or secured thereby.

(viii) Borrower, acting in good faith and exercising due diligence, has determined that the tenant qualifies as a low-income household for purposes of meeting the requirements for obtaining Tax Credits.

(ix) The lease meets the standards required by Section 42 of the Code.

(c) Bank, in its sole and absolute discretion, may consider any executed lease it receives (whether residential or commercial) to be unsatisfactory if the lease fails to meet any of the requirements of this Agreement. If this happens, or if Borrower at any time fails to submit any executed lease (and accompanying information) at the time required by this Section, or if any Event of Default has occurred and is continuing, Bank may make written demand on Borrower to submit all future leases for Bank's approval prior to execution. Borrower shall comply with any such demand by Bank.

**4.3 Leasing Information and Documents.** Following the Completion Date, within fifteen (15) days after the end of each month, Borrower shall deliver to Bank a monthly rent roll and operating statement for the Property. In addition, upon the request of Bank, if there are non-residential tenants occupying any part of the Property, Borrower shall promptly obtain and deliver to Bank such estoppel certificates, subordination agreements, and/or subordination, nondisturbance, and attornment agreements in form and substance acceptable to Bank, executed by such non-residential tenants as Bank from time to time may require.

**4.4 Purpose and Effect of Lease Approval.** Bank's approval of any lease is for the sole purpose of protecting Bank's security and preserving Bank's rights under the Loan Documents. No



approval by Bank will result in a waiver of any default of Borrower. In no event will Bank's approval of any lease be a representation of any kind with regard to the lease, its enforceability, or the financial capacity of any tenant thereunder or guarantor thereof.

**4.5 Landlord's Obligations.** Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the Land or any space within the Improvements.

**5. Hazardous Substances.**

**5.1 Representation and Warranty Regarding Hazardous Substances.** Before signing this Agreement, Borrower researched and inquired into the previous uses and owners of the Property and obtained the Existing Environmental Reports, which have been delivered to Bank. Unless otherwise disclosed in writing to Bank, other than these Existing Environmental Reports, Borrower knows of no other material updates, amendments, or additional existing environmental reports with respect to the Project or any Property. Based on that due diligence, Borrower represents and warrants that, except as Borrower has disclosed to Bank in writing and in the Existing Environmental Reports prior to the execution of this Agreement, to the best of Borrower's knowledge, (a) no Hazardous Substance has been disposed of, or released to or from, or otherwise now exists in, on, under, or around, any Property, and (b) no aboveground or underground storage tanks are now or have ever been located on or under any Property. Except as previously disclosed in writing to Bank by Borrower, prior to the execution of this Agreement, the Property has not been designated as 'border zone property' under the provisions of California Health and Safety Code, § 25220 et. seq., and there has been no occurrence or condition on any real property adjoining or in the vicinity of the Land that could cause any part of the Land or any space within the Improvements to be designated as 'border zone property'.

**5.2 Compliance Regarding Hazardous Substances.** Borrower has complied, and will comply and cause all tenants and any other persons who may come upon the Property to comply, with all federal, state, and local laws, regulations, and ordinances governing or applicable to Hazardous Substances, including those requiring disclosures to prospective and actual buyers or tenants of all or any portion of the Property. Borrower will not install or allow to be installed any aboveground or underground storage tanks on the Property. Borrower shall comply with the recommendations of any qualified environmental engineer or other expert engaged by Borrower or Bank with respect to the Property.

**5.3 Notices Regarding Hazardous Substances.** Borrower shall promptly notify Bank in writing (a) if it knows, suspects, or believes there may be any Hazardous Substance in or around any part of the Property, any improvements constructed on the Property, or the soil, groundwater, or soil vapor on or under the Property, or that Borrower or the Property may be subject to any threatened or pending investigation by any governmental agency under any law, regulation, or ordinance pertaining to any Hazardous Substance, or (b) of any claim made or threatened by any person, other than a governmental agency, against Borrower arising out of, or resulting from, any Hazardous Substance being present or released in, on, or around any part of the Property, any Improvements constructed on the Property or the soil, groundwater or soil vapor on or under the Property. Borrower shall promptly notify Bank in writing of any occurrence or condition on any real property adjoining or in the vicinity of the Land that could cause any part of the Land or any space within the Improvements to be designated as "border zone property."

**5.4 Site Visits, Observations and Testing.**

(a) The Indemnified Parties have the right at any reasonable time to enter and visit the Property for the purposes of observing the Property, taking, and removing soil or groundwater samples, and conducting tests on any part of the Property. The Indemnified Parties have no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation, or testing by any Indemnified Party imposes any liability on any Indemnified Party. In no event will any site visit, observation, or testing by any Indemnified Party be a representation that Hazardous Substances are or are not present in, on, or under the Property, or that there has been or will be compliance with any law, regulation, or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Borrower nor any other party is entitled to rely on any site visit, observation, or testing by any

Indemnified Party. The Indemnified Parties owe no duty of care to protect Borrower or any other party against or to inform Borrower or any other party of any Hazardous Substances or any other adverse condition affecting the Property. Any Indemnified Party will give Borrower reasonable notice before entering the Property. The Indemnified Party will make reasonable efforts to avoid interfering with Borrower's use of the Property in exercising any rights provided in this Section.

(b) Without limiting the generality of the foregoing, Borrower agrees that the Indemnified Parties have the same right, power, and authority to enter and inspect the Property as a secured lender under Section 2929.5 of the California Civil Code and the right to appoint a receiver to enforce this right to enter and inspect the Property to the extent such authority is provided under California law, including the authority given to a secured lender under Section 564(c) of the California Code of Civil Procedure. Borrower shall pay all costs and expenses incurred by an Indemnified Party in connection with any inspection or testing conducted in accordance with this Section. The results of all investigations conducted and/or reports prepared by or for any Indemnified Party shall at all times remain the property of the Indemnified Party and under no circumstances will any Indemnified Party have any obligation whatsoever to disclose or otherwise make available to Borrower or any other party the results or any other information obtained by any of them in connection with the investigations and reports. Notwithstanding the foregoing, the Indemnified Parties hereby reserve the right, and Borrower hereby expressly authorizes any Indemnified Party, to make available to any party (including any governmental agency or authority and any prospective bidder at any foreclosure sale of the Property) any and all environmental reports, whether prepared by any Indemnified Party or prepared by Borrower and provided to any Indemnified Party that any Indemnified Party may have with respect to the Property. Borrower consents to the Indemnified Parties' notifying any party (either as part of a notice of sale or otherwise) of the availability of any or all of the environmental reports and the information contained therein. Borrower acknowledges that the Indemnified Parties cannot control or otherwise assure the truthfulness or accuracy of any environmental report and that the release of any environmental report, or any information contained therein, to prospective bidders at any foreclosure sale of the Property may have a material and adverse effect upon the amount that a party may bid at such sale. Borrower agrees that the Indemnified Parties have no liability whatsoever as a result of delivering any or all of the environmental reports or any information contained therein to any third party, and Borrower hereby releases and forever discharges the Indemnified Parties from any and all claims, damages, or causes of action, arising out of, connected with, or incidental to any environmental report or the delivery thereof. The right of entry and inspection granted pursuant to this Section shall include all rights made available to a secured lender under California Civil Code § 2929.5, and the right to appoint a receiver to enforce such right of entry and inspection pursuant to this Section shall include the authority given to a secured lender under California Code of Civil Procedure § 564(c).

(c) Notwithstanding anything herein to the contrary, upon Borrower's request, Bank shall provide Borrower with a copy of any environmental report provided to or prepared for Bank pursuant to this Section subject to the terms and conditions of the release of such environmental report contained herein; provided, however, that Bank shall not be required to provide Borrower with a copy of, or otherwise release, any environmental report if such release (i) is prohibited by any agreement with the preparer of the report or any third party, or (ii) is otherwise prohibited by any applicable law or regulations. Neither Borrower nor any third party may rely on any environmental report released to Borrower for any purpose whatsoever. Borrower understands and acknowledges that all such environmental reports were prepared for Bank's (and/or another Indemnified Party's) sole use and benefit, and that by providing any such environmental report, Bank makes no representation or warranties with respect to the content, completeness, or accuracy of any such environmental report, any of its contents, or any other matter. Borrower indemnifies, defends, and holds the Bank harmless for, from, and against any and all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages (including foreseeable and unforeseeable consequential damages), costs, expenses, fines, penalties and losses (including sums paid in settlement of claims and all reasonable consultant, expert and legal fees and expenses of Bank's counsel), directly or indirectly arising out of or resulting from Borrower's use of any environmental report provided under this Section or arising from any conditions on, in, or, around the Property not disclosed in any environmental report, but that might or should have been discovered by the inspection and review upon which the environmental report is based. Borrower agrees to maintain any

environmental report provided to Borrower by Bank under this Section and the information it contains as confidential and agrees not to disclose the same to any person or entity without Bank's prior written consent in its sole and absolute discretion.

**5.5 Remedial Work.** Borrower shall promptly undertake any and all remedial work in response to any hazardous substances claim or notice to the extent required by any governmental agency involved or as recommended by prudent business practices, if such standard requires a higher degree of remediation, and in all events to minimize any impairment to Bank's security under the Loan Documents. All remedial work shall be conducted (a) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer, (b) pursuant to a detailed written plan for the remedial work approved by all public or private agencies or persons with a legal or contractual right to such approval, (c) with insurance coverage pertaining to liabilities arising out of the remedial work as is then customarily maintained with respect to such activities, and (d) only following receipt of any required permits, licenses or approvals. The selection of the remedial work contractors and consulting environmental engineer, the contracts entered into with such parties, any disclosures to or agreements with any public or private agencies or parties relating to remedial work and the written plan for the remedial work (and any changes thereto) at Bank's option, is subject to Bank's prior written approval, which may not be unreasonably withheld or delayed.

**5.6 Secured Obligation.** The obligations and rights of the parties under this Section are secured by the Deed of Trust until the first to occur of full and final repayment of the Loan or the transfer of title to all or any part of the Property at a foreclosure sale under the Deed of Trust (including a sale pursuant to judicial decree or the power of sale contained in the Deed of Trust or by deed in lieu of such foreclosure). The parties' obligations and rights under this Section continue in full force and effect after the full and final payment of the Loan or any such above-described foreclosure transfer, as the case may be, but (a) in the case of a full and final payment of the Loan, Borrower's obligations under this Section are thereafter limited to the indemnification obligations set forth in **Sections 5.7** and **5.8** below as to Indemnified Costs arising out of or as a result of events prior to the full and final payment of the Loan, and (b) in the case of a foreclosure transfer described above, the obligations do not include the obligation to reimburse any Indemnified Party for diminution in value of the Property resulting from the presence of Hazardous Substances on the Property before the date of such foreclosure transfer if, and to the extent that, the Indemnified Party recovers on a deficiency judgment including compensation for such diminution in value; provided, however, that nothing in this sentence impairs or limits an Indemnified Party's right to obtain a judgment in accordance with applicable law for any deficiency in recovery of all obligations that are secured by the Deed of Trust, including the Note.

**5.7 Indemnity Regarding Hazardous Substances.** Borrower indemnifies, defends, and holds the Indemnified Parties harmless for, from, and against any and all Indemnified Costs directly or indirectly arising out of, or resulting from, any Hazardous Substance being present or released in, on, or around any part of the Property, or in the soil, groundwater, or soil vapor on or under the Property, including:

(a) any claim for such Indemnified Costs asserted against any Indemnified Party by any federal, state, or local governmental agency, including the United States Environmental Protection Agency and the California Department of Health Services, and including any claim that any Indemnified Party is liable for any such Indemnified Costs as an "owner" or "operator" of the Property under any law relating to Hazardous Substances; and

(b) any claim for such Indemnified Costs asserted against any Indemnified Party by any person other than a governmental agency, including (i) any person who may purchase or lease all or any portion of the Property from Borrower, from any Indemnified Party or from any other purchaser or lessee, (ii) any person who may at any time have any interest in all or any portion of the Property, (iii) any person who may at any time be responsible for any clean-up costs or other Indemnified Costs relating to the Property, and (iv) any person claiming to have been injured in any way as a result of exposure to any Hazardous Substance; and

(c) any Indemnified Costs incurred by any Indemnified Party as a result of currently existing conditions in, on, or around the Property, whether known or unknown by Borrower or the Indemnified Parties at the time this Agreement is executed, or attributable to the acts or omissions of Borrower, any of Borrower's tenants, or any other person in, on, or around the Property with the consent or under the direction of Borrower; and

(d) any Indemnified Costs incurred by any Indemnified Party in the exercise by the Indemnified Party of its rights and remedies under this Agreement; and

(e) Borrower and the Indemnified Parties intend that, to the extent Indemnified Costs are not recoverable under Section 736(a) of the California Code of Civil Procedure, Indemnified Costs may be otherwise recoverable under the law of the State of California, as provided in Section 736(d) of the Code of Civil Procedure.

**5.8 Defense of Indemnified Parties.** Upon demand by any Indemnified Party pursuant to this Section, Borrower shall defend any investigation, action, or proceeding involving any Indemnified Costs that is brought or commenced against any Indemnified Party, whether alone or together with Borrower or any other person, all at Borrower's own cost and by counsel approved by the Indemnified Party. In the alternative, any Indemnified Party may elect to conduct its own defense at Borrower's expense.

**5.9 Remedies Upon Default.**

(a) In addition to any other rights or remedies Indemnified Parties may have under this Agreement or at law or in equity, upon the occurrence of an Event of Default arising under this Section, Indemnified Parties may (i) pursue any remedies available to it under California Code of Civil Procedure Sections 726.5 and 736; and/or (ii) do or cause to be done whatever is necessary to cause the Property to comply with any and all laws, regulations and ordinances governing or applicable to Hazardous Substances, and any other applicable law, rule, regulation, order or agreement, and the cost thereof will become immediately due and payable upon demand by Bank, and if not paid when due, will accrue interest at the Default Rate until paid. Without limiting any of the remedies provided in the Loan Documents, Borrower acknowledges and agrees that: (i) the provisions of this Section are 'environmental provisions,' as that term is defined in Section § 736(f)(2) of the California Code of Civil Procedure, made by Borrower relating to the real property security, (ii) that Borrower's failure to comply with the terms of this Agreement is a breach of contract giving Bank the right to enforce monetary and other remedies provided under Section 736 of the California Code of Civil Procedure; and (iii) an action by Bank for damages or enforcement of this Agreement does not constitute an 'action' within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for deficiency or a deficiency judgment within the meaning of Sections 580a, 580b or 726(b) of the California Code of Civil Procedure.

(b) Borrower hereby acknowledges and agrees that any amounts realized by Bank by reason of the following may be applied to pay the obligations secured by the Deed of Trust prior to being applied to pay Borrower's obligations to reimburse Bank for costs and expenses, including those incurred by Bank in enforcing its rights and remedies under the provisions of this Section: (i) any payments made pursuant to any Loan Document (other than payments made to Bank for reimbursement of costs and expenses or for enforcement of its rights and remedies, under the provisions of this Section), (ii) any foreclosure of the Deed of Trust or the other documents evidencing or securing the Loan (including any amounts realized by reason of any credit bid in connection with any such foreclosure), (iii) any conveyance in lieu of foreclosure, (iv) any other realization upon any security for the Loan, (v) any recoveries against Borrower personally (except for recoveries against Borrower for reimbursement of costs and expenses or enforcement of Bank's rights and remedies under this Section), and (vi) unless expressly prohibited by law, any recoveries against any person or entity other than Borrower (including any Guarantor).

**5.10 Legal Effect of Section.** Borrower and Bank agree that (a) this Section is intended as Bank's written request for information, and Borrower's response to such request, concerning the environmental condition of the Property, pursuant to California Code of Civil Procedure § 726.5, and (b) each provision in this Section, together with any indemnity or remedy provision applicable to a breach of any such provision, is intended by Bank and Borrower to be an 'environmental provision' for purposes of California Code of Civil Procedure § 736.

**5.11 Survival of Indemnity.** Notwithstanding anything contained in any Loan Document to the contrary, Borrower's obligations contained in this Section, including but not limited to Borrower's covenants, warranties, and indemnification obligations set forth herein, shall survive the payoff of the Loan and/or the transfer of title to all or any part of the Property at a foreclosure sale under the Deed of Trust, either pursuant to judicial decree or the power of sale contained in the Deed of Trust or by deed in lieu of such foreclosure, and shall be considered separate and independent obligations of Borrower to Bank and the Indemnified Parties.

**5.12 Intentionally Omitted.**

**6. Representations and Warranties.**

Borrower promises that each representation and warranty set forth below is and will be true, accurate and correct as of the date of this Agreement and as of the Closing Date. Each Draw Request will be deemed a reaffirmation of each and every representation and warranty made by Borrower in this Agreement.

**6.1 Authority; Enforceability.**

(a) Borrower is a California limited partnership in good standing under the laws of the State of California, and Borrower and each General Partner has complied with any and all laws and regulations concerning their organization, existence, and the transaction of their business. Borrower has the full legal right, power and authority (i) to enter into this Loan Agreement and the other Loan Documents and to carry out and consummate all transactions contemplated hereby and thereby, and by proper corporate action has duly authorized the execution, delivery and performance of this Loan Agreement and the other Loan Documents and (ii) to own the Property and to develop the Land and Improvements as contemplated in the Loan Documents to which it is a party. The officers of Borrower executing this Agreement and the Loan Documents are duly and properly in office and fully authorized to execute the same. This Agreement and the Loan Documents have been duly authorized, executed and delivered by the Borrower. Borrower and each General Partner is authorized to execute, deliver, and perform its respective obligations under the Loan Documents. Those documents are valid and binding obligations of Borrower and each General Partner, as applicable, subject to bankruptcy, creditors rights, and general principles of equity. Once executed and delivered, this Loan Agreement and the other Loan Documents will constitute the legal, valid and binding agreements of the Borrower, enforceable against the Borrower in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

(b) Borrower's exact legal name is correctly set forth in the introductory paragraph of this Agreement.

(c) Borrower's organizational number is 201518200008. Borrower shall promptly notify Bank of any change in its organizational identification number.

(d) Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, and writings concerning the Borrower's

Property (as defined in the Deed of Trust) has for the preceding four (4) months (or, if less, the entire period of the existence of the Borrower) been and will continue to be (unless Borrower notifies Bank of any change in writing at least thirty (30) days prior to the date of such change) at the address or addresses specified on the signature page of this Agreement.

(e) General Partners, Investor Limited Partner and Special Limited Partner are collectively the sole holders and owners of all of the partnership interests of Borrower. The Partnership Agreement is valid and in full force and effect in accordance with its terms. To the best of Borrower's knowledge and belief, General Partner and Investor Limited Partner are in full compliance with all of the requirements, terms, conditions and covenants of the Partnership Agreement.

**6.2 Compliance With Law.** Borrower is familiar and has complied with all of the Requirements, as well as all other applicable laws, regulations, and ordinances, including, without limitation, the Employee Retirement Income and Security Act of 1974, as amended. Borrower has obtained all permits, licenses and approvals necessary to construct the Improvements, and Borrower has delivered to Bank true and correct copies of each such permit, license, and approval. No information or fact exists that would reasonably cause Borrower to believe that all permits, licenses, and approvals required to construct, occupy, operate, market, lease, or sell the Improvements, as applicable, that have not been obtained as of the date hereof will not be readily and properly obtainable prior to the Completion Date. No provision or obligation of Borrower or any General Partner contained in any of the Loan Documents violates any of the Requirements, any other applicable law, regulation, or ordinance or any order or ruling of any court or governmental entity. No such provision or obligation conflicts with, or constitutes a breach or default under, any agreement binding or regulating the Project. No consent or approval of any trustee or holder of any indebtedness of the Borrower, and to the best knowledge of the Borrower and with respect to the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery of this Loan Agreement or the other Loan Documents, or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

**6.3 No Violation.** The execution and delivery of this Agreement and the other Loan Documents and performance by Borrower of its obligations hereunder and thereunder will not result in a default under any other material agreement to which Borrower is a party, and the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the articles of incorporation of the Borrower, its bylaws or to the best knowledge of the Borrower and with respect to the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Loan Agreement or the other Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

**6.4 No Claims.** No claims, actions, proceedings, or investigations are pending against Borrower, Guarantor, or any General Partner or affecting the Property, except for those previously disclosed by Borrower to Bank in writing. To the best of Borrower's knowledge, no threat of any such claim, action, proceeding, or investigation exists, except for those previously disclosed by Borrower to Bank in writing. When fully executed and upon the filing of a UCC financing statement, this Agreement will create a valid and (subject to the Tax Credit Requirements) enforceable first-priority security interest in the Property (as defined in the Deed of Trust). Except with respect to the pledge of the Investor Limited Partner's interest to Borrower as security for its obligation to pay equity, no partnership interest in Borrower has been pledged, assigned or transferred to any other person or entity. Except for the rights of

General Partner and Investor Limited Partner under the Partnership Agreement, Borrower has not granted any right or option to acquire a partnership interest in Borrower to any person or entity.

**6.5 Financial Information; Leasing.** All financial information delivered to Bank by or on behalf of the Borrower, General Partners, or Guarantor, including all information relating to the financial condition of (a) Borrower or any of its partners, shareholders, or members (as applicable), (b) Guarantor (if any), and (c) the Project, fairly and accurately represents the financial condition being reported on as of its date. All such information is prepared in accordance with generally accepted accounting principles consistently applied, unless otherwise noted. There has been no material adverse change in any financial condition reported at any time to Bank, except as previously disclosed to Bank in writing in later financial information and found acceptable to Bank in its sole and absolute discretion. Borrower has disclosed to Bank any and all leases affecting the Project or any portion of or interest in it.

**6.6 Accuracy.** All reports, documents, instruments, information, and forms of evidence delivered to Bank concerning the Loan or required by the Loan Documents are accurate, correct, and sufficiently complete to give Bank true and accurate knowledge of their subject matter. None of them contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

**6.7 Loan in Balance; Adequacy of Loan.** At all times during the term of the Loan, the Loan is "in balance," and the undisbursed Loan funds, together with any sums provided or to be provided by Borrower or any Junior Lender as shown in the Cost Breakdown, are sufficient to construct the Improvements through completion and to accomplish the purposes contemplated by the Loan Documents.

**6.8 Taxes.** Borrower has filed all required state, federal, and local income tax returns and has paid all taxes when due and payable. Borrower knows of no basis for any additional assessment of taxes.

**6.9 Utilities.** All utility services, including gas, water, sewage, electrical, and telephone, necessary to develop and occupy the Land and Improvements are available at or within the boundaries of the Land. In the alternative, Borrower has taken all steps necessary to assure that all utility services will be available upon completion of the Improvements.

**6.10 Borrower Not a "Foreign Person".** Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended from time to time.

**6.11 No Breaches or Defaults.** No event has occurred and is continuing which would constitute a default or Event of Default (as defined in the applicable document) or an Unmatured Event of Default under any of the Loan Documents or any of the Subordinated Loan Documents. To the best of Borrower's knowledge and belief, no material default or unwaived failure of condition of Borrower has occurred under the Partnership Documents, and Investor Limited Partner has not indicated that it will not honor the terms of the Partnership Agreement. To the best of Borrower's knowledge and belief, no material default or unwaived failure of condition of Borrower has occurred under the Takeout Commitment.

**6.12 Disclosure to Guarantor and Third Parties.** Before any Guarantor and/or any other third party (if any) became obligated in connection with the Loan or under any of the Loan Documents, Borrower made full disclosure to that Guarantor and/or third party trustor or pledgor regarding Borrower's financial condition and business operations, the present and former condition, uses, and ownership of the Property and all other circumstances bearing upon Borrower's ability to pay and perform its obligations under the Loan Documents.

**6.13 Tax Exempt Status.** Managing General Partner is a tax exempt organization recognized by the Internal Revenue Service as an organization described in Section 501(c)(3) of the Code, and has not engaged in any transaction or activity that could cause its tax exempt status under Section 501(a) of the Code and under comparable provisions of the California Revenue and Taxation Code to be eliminated.

(a) Subject to the Tax Credit Requirements, Borrower is the sole holder and owner of all right, title and interest in and to the Tax Credits, and (except as contemplated in the Partnership Agreement) has not pledged or assigned its right, title or interest in or to all or any portion of the Tax Credits to any other person or entity.

(b) The Tax Credits have been reserved to the Project as described in **Recital E** of this Agreement in accordance with the terms of all documents and instruments applicable thereto.

(c) Borrower is in full compliance with all of the requirements, terms, conditions, and covenants required to qualify for and maintain the Tax Credits imposed by the Tax Credit Allocating Body, all applicable federal statutes and regulations (the "Federal Laws"), and all California statutes and regulations (the "State Laws") governing Tax Credits.

## **7. Default and Remedies.**

**7.1 Events of Default.** An Event of Default will occur under this Agreement upon the occurrence of any of the following events:

(a) Borrower fails to make any payment of principal or interest under the Note within five (5) days after the date when due; or

(b) Borrower fails to make any deposit of funds demanded by Bank under this Agreement or the other Loan Documents including, without limitation, funds required to be deposited into any Reserve Account, within five (5) days after Bank's written demand; or

(c) Borrower fails to comply with any other covenant contained in this Agreement calling for the payment of money and does not cure that failure within five (5) days after written notice from Bank; or

(d) Borrower, any General Partner, or any Guarantor becomes insolvent or the subject of any Insolvency Proceeding, or any such party consents to the appointment or taking of possession by a receiver (or similar official) with respect to its business or property, or makes an assignment for the benefit of creditors; provided, however, that any involuntary Insolvency Proceeding shall not be considered an Event of Default hereunder if it is either (i) consented to in writing by Bank, or (ii) dismissed within ninety (90) days of the filing thereof; provided further, however, that any Insolvency Proceeding involving Guarantor while any Guaranty is in effect shall not be considered an Event of Default hereunder if such Guarantor is replaced with a substitute Guarantor, as the case may be, reasonably acceptable to Bank (or otherwise previously approved in writing by Bank, pursuant to this Agreement or otherwise) within thirty (30) days; or

(e) Borrower dissolves or liquidates, or any of these events happens to any general partner or limited partner of Borrower, to any Guarantor (if any); or

(f) Any General Partner or any limited partner of Borrower (i) dissolves or liquidates, or (ii) becomes insolvent or the subject of any Insolvency Proceeding; provided, however, that an involuntary Insolvency Proceeding shall not be considered an Event of Default hereunder if it is either (A) consented to in writing by Bank, or (B) has been dismissed within ninety (90) days of the filing thereof, or (iii) ceases for any reason to act in that capacity and is not replaced with a substitute general or limited



partner of Borrower, as the case may be, reasonably acceptable to Bank (or otherwise previously approved in writing by Bank, pursuant to this Agreement or otherwise) within thirty (30) days; or

(g) An Accelerating Transfer occurs; or

(h) Any representation or warranty made or given in any of the Loan Documents proves to be false or misleading in any material respect as of the date made or remade; or

(i) Subject to **Section 9.29** herein, construction of the Improvements is not completed by the Completion Date; or

(j) Construction of the Improvements is halted or abandoned prior to the Completion Date for any period of fifteen (15) consecutive days for any cause not beyond the reasonable control of Borrower or any of its contractors or subcontractors, except as otherwise agreed in writing by Bank; or

(k) Any governmental, judicial or legal authority having jurisdiction over the Property orders or requires that construction of the Improvements be stopped in whole or in part, or any required approval, license or permit is withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect either (i) for the Initial Cure Period, or (ii) for a total period of ninety (90) days, so long as Borrower begins within the Initial Cure Period and continues diligently to take steps to remove the effect of the order, requirement, withdrawal or suspension, and Bank, exercising reasonable judgment, determines that Borrower is reasonably likely to prevail; or

(l) Borrower is in default under the Architecture Contract, the Construction Contract, the Property Management Agreement any other contract for the construction or rehabilitation (as applicable) of the Improvements or any lease of any part of the Land or any space within the Improvements, either (i) for the Initial Cure Period, or (ii) for a total period of ninety (90) days, so long as Borrower begins within the Initial Cure Period and continues diligently to cure the default, and Bank, exercising reasonable judgment, determines that the cure cannot be reasonably completed at or before expiration of the Initial Cure Period; or

(m) Borrower fails for any reason to cause Investor Limited Partner to make any payment as set forth in the Partnership Documents; provided, however, that if no other Unmatured Event of Default or Event of Default has occurred and is then continuing, then such failure shall not constitute an Event of Default until such default has remained uncured for a total period of thirty (30) days; or

(n) A material adverse change in Borrower's, any General Partner's, prior to payment in full of its capital contribution, any limited partner of Borrower's, or any Guarantor's financial condition, or an event or condition materially and adversely impairs Borrower's intended use of the Property which, in Bank's reasonable judgment, could cause a material adverse effect on, or Borrower's, any General Partner's, or any Guarantor's ability to repay the Loan or on the Property; or

(o) Borrower defaults and a final judgment (or other resolution or exercise of remedies against Borrower with regard to the default including, without limitation, acceleration of any monetary obligation) is entered against Borrower under any agreement in connection with any credit in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) or more that Borrower has obtained from anyone else if the default consists of failing to make a payment when due or gives the other lender the right to accelerate the obligation; or

(p) Any of the following occurs: (i) a lawsuit is filed against Borrower, any General Partner, or any Guarantor (if any) where the amount claimed is Fifty Thousand and No/100 Dollars (\$50,000.00) or more and which (A) is not dismissed within sixty (60) days of the filing thereof, and (B) is not Covered by Insurance, (ii) a judgment or judgments are entered against Borrower, any General Partner, or any Guarantor (if any), excepting any judgment(s) entered against Borrower, any General Partner, or any Guarantor after the date of this Agreement that have been promptly disclosed in writing to

Bank and Bank has determined in its reasonable discretion that such judgment(s) will not materially affect Borrower's, any General Partner's, or any Guarantor's ability to pay or perform its obligations under the Loan Documents, or (iii) any government authority takes action materially adversely affecting either (A) the construction of the Improvements, (B) Borrower's intended use of the Property, or (C) Borrower's ability to repay the Loan; or

(q) Bank fails to have an enforceable first-priority lien on or security interest in any property given as security for the Loan (except as otherwise agreed by Bank in writing); or

(r) Under any of the Loan Documents, a default or an Event of Default (as defined in that document, subject to applicable notice and cure periods) occurs.

(s) Borrower ceases its operations or sells or otherwise disposes of all or substantially all of any Property (except as explicitly permitted pursuant to this Agreement), or all or substantially all of any Property is damaged or destroyed (subject to Borrower's right to rebuild as provided in the Deed of Trust, excluding casualties that are covered by the insurance requirements under **Section 3.10** of this Agreement), or a governmental authority condemns or expropriates, or an order is issued by a governmental authority for the condemnation or expropriation of, all or substantially all of any Property.

(t) Borrower is in default under any approved lease or any other lease of any part of any Property and such default is not cured within the time provided for in such approved lease or leases.

(u) If any criminal proceedings against Borrower or any General Partner shall have been instituted or Borrower, Guarantors, or General Partners shall be indicted for any crime, in either case for which a forfeiture of a material amount of any Property or any of its other property or assets is a potential penalty and such proceedings or indictment is not dismissed within sixty (60) days;

(v) An Event of Default (as defined in that document, subject to applicable notice and cure periods) occurs under any Guaranty, or any Guaranty becomes unenforceable for any reason, or any Guarantor purports to revoke or terminate its Guaranty; provided, however, that if a guaranty becomes unenforceable against a Guarantor due to an involuntary act it shall not be considered an Event of Default hereunder if it is either (A) consented to in writing by Bank, or (B) is replaced with a substitute Guarantor acceptable to Bank in its sole and absolute discretion (or otherwise previously approved in writing by Bank, pursuant to this Agreement or otherwise) within thirty (30) days; or

(w) Under any of the Subordinated Loan Documents a default or an Event of Default (as defined in that document, subject to applicable notice and cure periods) occurs; or

(x) Borrower fails to comply with any Tax Credit Covenant and such failure is not cured within the time period provided by TCAC or the applicable governmental authority related to such default, **Section 3.43** herein, or fails to perform its obligations under the Tax Certificate, or failure of any of the representations or warranties contained in the Tax Certificate to be and remain true and correct at any time; or

(y) A material default or an unwaived failure of condition of Borrower occurs under the Takeout Commitment, or the Takeout Lender indicates that it will not make available the Takeout Loan for any reason; or

(z) Borrower fails to comply with any provision contained in this Agreement, other than those events specifically referred to above and thus set out as separate Events of Default in this **Section 7.1**, and does not cure that failure either (i) within the Initial Cure Period after written notice from Bank, or (ii) within ninety (90) days after such written notice, so long as Borrower begins within the Initial Cure Period and continues diligently to cure the failure, and Bank, exercising reasonable judgment,

determines that the cure cannot be reasonably completed at or before expiration of the Initial Cure Period.

## **7.2 Remedies.**

(a) If an Event of Default occurs under this Agreement, Bank may exercise any right or remedy under any of the Loan Documents or otherwise available at law or in equity, and all of Bank's rights and remedies are cumulative. If any Event of Default occurs, Bank's obligation to lend under the Loan Documents automatically terminates, and Bank in its sole and absolute discretion may withhold any one or more disbursements. Bank may also withhold any one or more disbursements after an Unmatured Event of Default occurs and is continuing. No disbursement of Loan funds by Bank will cure any Event of Default unless Bank agrees otherwise in writing in each instance.

(b) If any Event of Default occurs, Bank shall have the right in its sole and absolute discretion to enter the Property and take possession of it, whether in person, by agent or by court-appointed receiver, collect rents and otherwise protect its collateral and rights under the Loan Documents. If Bank exercises any of the rights or remedies provided in this Section, that exercise shall not make Bank a partner or joint venturer of Borrower. All sums which are expended by Bank in preserving its collateral shall be considered an additional loan to Borrower secured by the Deed of Trust and bearing interest at the Default Rate, and shall be secured by the Deed of Trust and any other collateral held by Bank in connection with the Loan.

(c) If Borrower becomes the subject of any Insolvency Proceeding (which, if an involuntary Insolvency Proceeding has not been (i) consented to in writing by Bank, or (ii) dismissed within ninety (90) days of the filing thereof), all of Borrower's obligations under the Loan Documents automatically become immediately due and payable upon the filing of the petition commencing such proceeding, all without notice of default, presentment or demand for payment, protest, or notice of nonpayment or dishonor, or other notices or demands of any kind or character. Upon the occurrence of any other Event of Default, all of Borrower's obligations under the Loan Documents may become due and payable immediately without notice of default, presentment, or demand for payment, protest, or notice of nonpayment or dishonor, or other notices or demands of any kind or character, all at Bank's option, exercisable in its sole and absolute discretion. If such acceleration occurs, Bank may apply any undisbursed Loan funds and any sums in the Account and/or the Borrower's Funds Account to Borrower's obligations under the Loan Documents, in any order and proportions in Bank's sole and absolute discretion.

(d) Also upon any Event of Default that occurs during the course of construction of the Improvements, Bank in its sole and absolute discretion may enter and take possession of the Property, whether in person, by agent or by court-appointed receiver, and take any and all actions that Bank in its sole discretion may consider necessary to complete construction of the Improvements, including making changes in plans, specifications, work or materials and entering into, modifying or terminating any contractual arrangements, all subject to Bank's right at any time to discontinue any work without liability. By choosing to complete the Improvements, Bank does not assume any liability to Borrower or any other person for completing them or for the manner or quality of their construction, and Borrower expressly waives any such liability. If Bank exercises any of the rights or remedies provided in this clause (d), that exercise will not make Bank, or cause Bank to be deemed, a partner or joint venturer of Borrower. Bank in its sole discretion may choose to complete construction in its own name. All sums expended by Bank in completing construction will be considered to have been disbursed to Borrower and will be secured by the Deed of Trust and any other collateral held by Bank in connection with the Loan; any sums of principal will be considered to be an additional loan to Borrower bearing interest at the Default Rate, and shall be secured by the Deed of Trust and any other collateral held by Bank in connection with the Loan. For these purposes Bank, in its sole and absolute discretion, may reallocate any line item or cost category of the Cost Breakdown.

**7.3 Notice to Guarantor and Investor Limited Partner.** Bank shall endeavor to provide Guarantor and Investor Limited Partner with copies of all notices of default sent to Borrower under the

Loan Documents Bank agrees that it shall not complete a foreclosure sale of the Property or record a deed-in-lieu of foreclosure with respect to the Property unless and until Guarantor and Investor Limited Partner have first been given thirty (30) days written notice of the Event(s) of Default giving rise to Bank's right to complete such foreclosure remedy, and Guarantor and Investor Limited Partner have failed, within such thirty (30) day period to cure such Event(s) of Default; provided, however, that Bank shall be entitled during such thirty (30) day period to continue to pursue all of its rights and remedies under the Loan Documents, including but not limited to acceleration of the Note (subject to any de-acceleration provisions specifically set forth in the Loan Documents), commencement and pursuit of foreclosure (but not completion of the foreclosure sale), collection under any Guaranty (subject to any notice and cure provisions contained therein), and/or enforcement of remedies under any other Loan Document. In the event Bank has accelerated the Note and the Guarantor and Investor Limited Partner cures all Events of Default giving rise to such acceleration within the thirty (30) day cure period described above, such cure shall have the effect of de-accelerating the Note; provided, however, that such de-acceleration shall not waive or limit any of Bank's rights to accelerate the Note or exercise any other remedies under the Loan Documents as to any future or continuing Events of Default. It is the express intent of the parties hereunder that Bank shall have the right to pursue all rights and remedies except completion of a foreclosure remedy without liability to Guarantor or Investor Limited Partner for failure to provide notice to Guarantor or Investor Limited Partner, and that Bank's liability hereunder shall be expressly limited to actual damages to Guarantor or Investor Limited Partner directly caused by Bank's completion of a foreclosure remedy without Guarantor or Investor Limited Partner receiving the notice and opportunity to cure described above. Bank's failure to give any such notice for any reason shall not act to impair or waive any remedy or right of Bank under this Agreement or any other Loan Document. Unless expressly prohibited by law, Investor Limited Partner agrees to record a "Request for Notice" or similar appropriate document requesting notice of any foreclosure sale, in the Official Records of the County in which the Property is located, and in the event the Bank has failed to sooner provide notice to Investor Limited partner, the receipt of such notice of foreclosure sale shall be deemed to be notice to the Guarantor or Investor Limited Partner as contemplated hereunder. Bank shall give Guarantor and Investor Limited Partner notice at the address set forth below or such other address as Guarantor or Investor Limited Partner may instruct Bank in writing from time to time:

Investor Limited Partner:

CREA Kristen Court, LLC  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Guarantor:

Pacific West Communities, Inc.  
Pacific West Builders, Inc.  
TPC Holdings V, LLC  
c/o The Pacific Companies  
430 East State Street, Suite 100  
Eagle, ID 83616  
Attn: President

**7.4 Cure By Guarantor or Investor Limited Partner; Replacement of General Partner to Cure Non-Monetary Default.** Borrower hereby authorizes Bank to accept any cure of any default or Event of Default made or tendered by Guarantor or Investor Limited Partner, and Bank hereby agrees that any cure of any default or Event of Default made or tendered by Guarantor or Investor 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. Bank further agrees that for purposes of Guarantor or Investor Limited Partner's notice and cure rights contained in **Section 7.3** above, an Incurable Event of Default shall be curable by Guarantor's Investor Limited Partner's removal and replacement of such General

Partner within thirty (30) days after notice by Bank to Guarantor or Investor Limited Partner of the Event of Default in question; provided, however, that (i) no other defaults or Events of Default shall have occurred and no Unmatured Events of Default shall have occurred and continuing, (ii) Guarantor or Investor Limited Partner shall have the right to remove and replace such General Partner pursuant to the terms of the Partnership Agreement, and (iii) Guarantor or Investor Limited Partner shall promptly pursue and diligently proceed to remove and replace such General Partner in accordance with Section 7.5 below. Nothing herein shall operate to (A) allow Borrower to cure an Incurable Event of Default (other than cure by the Guarantor or Investor Limited Partner by removal and replacement of such General Partner as provided above), (B) extend the time for Borrower to cure any default or Event of Default, (C) delay or limit Bank's right or remedies hereunder or under any Loan Document (except as specifically provided therein), or (D) extend the notice and cure rights of Guarantor or Investor Limited Partner contained Section 7.3 above.

**7.5 Accelerating Transfers.** An "Accelerating Transfer" means any sale, transfer, lease, conveyance, alienation, pledge, assignment, mortgage, encumbrance, hypothecation or other disposition of (a) all or any portion of the Property or the Project, (b) all or any portion of Borrower's right, title and interest in and to the Property or the Project, or (c) any direct or indirect interest in Borrower; provided, however, that notwithstanding anything to the contrary in this Agreement or in the Loan Documents, the following shall not be deemed to be "Accelerating Transfers":

(a) the sale, transfer, conveyance or pledge of Investor Limited Partner's interests in Borrower and the admission of a new limited partner in Borrower shall not constitute a default under the Loan Documents nor cause an acceleration of the Loan by Bank if, and only if: (1) not less than fifty-one percent (51%) of the entire interest in Borrower shall at all times be and remain owned, held managed and controlled by the Tax Credit Investor or one Tax Credit Investor Affiliate; (2) Borrower shall deliver to Bank a written notice of the subject transfer, including a statement that the transfer satisfies the requirements of this Section 7.5(a), not more than thirty (30) days following the transfer, and Borrower shall deliver to Bank copies of all applicable amendments to the Partnership Agreement respecting Borrower; (3) the Loan is current and, except only a default that shall be fully cured immediately upon the consummation of the transfer contemplated in this paragraph, there exists no default under this Agreement or any other Loan Document, and, except only an event that shall be fully cured immediately upon the consummation of the transfer contemplated in this paragraph, there exists no other event, which, with the giving of notice or the passage of time or both, would constitute a default under this Agreement or any other Loan Document; and (4) Borrower pays all third-party costs incurred by Bank relating to the transfer transaction, if any. In the event the above conditions are met, all existing terms of the Loan Documents will remain in effect. The obligations of Bank stated herein are expressly conditioned upon the transfer transaction being in compliance with the applicable laws and regulations of all government agencies having jurisdiction over the Bank at the time of the transfer. The provisions of this Section 7.5(a) shall apply only to the transfer of the Investor Limited Partner interest in Borrower.

(b) in the event Investor Limited Partner exercises its rights under the Partnership Agreement to replace General Partner, as the General Partner of Borrower, then Bank shall consent to such replacement subject to the Loan Documents if: (1) the new General Partner (the "Replacement GP") is (a) Tax Credit Investor or one Tax Credit Investor Affiliate (hereinafter defined), or (b) a nonprofit entity (but not a Tax Credit Investor Affiliate) selected by the Tax Credit Investor (hereinafter defined) and such nonprofit entity and the Subject Property meet Bank's underwriting criteria for a similar type of property in effect at the time of the replacement; (2) the Loan is current and except only a default that shall be fully cured within a reasonable time following the consummation of the transfer contemplated in this paragraph, there exists no event of default under the Deed of Trust or any other Loan Document (nothing in this paragraph shall extend any cure period under the Loan Documents or limit, diminish, delay or affect in any way any of Bank's rights or remedies under the Loan Documents); (3) Bank receives a new Bank's policy of title insurance or endorsement insuring the continued existing lien status of the Loan; and (4) the Replacement GP pays all costs relating to the transaction (credit report fees, notary fees, recording fees, escrow fees, title fees, title insurance premium, legal fees, and any other costs incurred by Bank). In the event the above conditions are met, all existing terms of the Loan Documents will remain in effect. The obligations of Bank stated herein are expressly conditioned upon the assumption transaction

being in compliance with the applicable law and regulations of all government agencies having jurisdiction over Bank at the time of the transfer. The provisions of this Section shall apply only to the replacement of the General Partner of Borrower.

*[Remainder of page left intentionally blank]*

**8. Waiver of Jury Trial, Judicial Reference.**

**8.1 Waiver of Jury Trial.** TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, BORROWER AND BANK EACH HEREBY AGREES TO, AND DOES, WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE LOAN, ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR INSTRUMENT BETWEEN THE PARTIES RELATING TO THE LOAN, THE LOAN DOCUMENTS, THE PROPERTY OR ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF ANY OF THE LOAN DOCUMENTS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES (EACH A "DISPUTE", AND COLLECTIVELY, ANY OR ALL, THE "DISPUTES") OF ANY KIND WHATSOEVER THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THE LOAN, ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR INSTRUMENT BETWEEN THE PARTIES RELATING TO THE LOAN, THE LOAN DOCUMENTS, THE PROPERTY OR ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF ANY OF THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, ANTITRUST CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON-LAW OR STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTERING INTO THIS AGREEMENT AND ALL OTHER AGREEMENTS AND INSTRUMENTS PROVIDED FOR HEREIN, AND THAT EACH WILL CONTINUE TO BE BOUND BY AND RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL OF ITS OWN CHOOSING, OR HAS HAD AN OPPORTUNITY TO DO SO, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR DOCUMENT ENTERED INTO BETWEEN THE PARTIES IN CONNECTION WITH THIS AGREEMENT OR ANY LOAN DOCUMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT WITHOUT A JURY.

Borrower and Bank hereby agree that this Agreement constitutes a written consent to waiver of trial by jury pursuant to the provisions of California Code of Civil Procedure Section 631 and Borrower does hereby appoint Bank its true and lawful attorney-in-fact, and Borrower hereby authorizes and empowers Bank, in the name, place and stead of Borrower, to file this Agreement with the clerk or judge of any court of competent jurisdiction as statutory written consent to waiver of trial by jury. Borrower acknowledges and agrees that this appointment is coupled with an interest.

Bank's Initial: \_\_\_\_\_

Borrower's Initial: \_\_\_\_\_

Borrower's Initial: \_\_\_\_\_

*[Remainder of page left intentionally blank]*

**8.2 Consent to Judicial Reference.** If and to the extent **Section 8.1** immediately above is determined by a court of competent jurisdiction to be unenforceable or is otherwise not applied by any such court, Borrower and Bank each hereby consents and agrees that (a) any and all Disputes shall be heard by a referee in accordance with the general reference provisions of California Code of Civil Procedure Section 638, sitting without a jury in the County of Sacramento, California, (b) such referee shall hear and determine all of the issues in any Dispute (whether of fact or of law), including issues pertaining to a "provisional remedy" as defined in California Code of Civil Procedure Section 1281.8, including without limitation, entering restraining orders, entering temporary restraining orders, issuing temporary and permanent injunctions and appointing receivers, and shall report a statement of decision, provided that, if during the course of any Dispute any party desires to seek such a "provisional remedy" but a referee has not been appointed, or is otherwise unavailable to hear the request for such provisional remedy, then such party may apply to the Sacramento County Superior Court for such provisional relief, and (c) pursuant to California Code of Civil Procedure Section 644, judgment may be entered upon the decision of such referee in the same manner as if the Dispute had been tried directly by a court. The parties shall use their respective commercially reasonable and good faith efforts to agree upon and select such referee, provided that such referee must be a retired California state or federal judge, and further provided that if the parties cannot agree upon a referee, the referee shall be appointed by the Presiding Judge of the Sacramento County Superior Court. Each party hereto acknowledges that this consent and agreement is a material inducement to enter into this Agreement, the Loan Documents and all other agreements and instruments provided for herein or therein, and that each will continue to be bound by and to rely on this consent and agreement in their related future dealings. The parties shall share the cost of the referee and reference proceedings equally; provided that, the referee may award attorneys' fees and reimbursement of the referee and reference proceeding fees and costs to the prevailing party, whereupon all referee and reference proceeding fees and charges will be payable by the non-prevailing party (as so determined by the referee). Each party hereto further warrants and represents that it has reviewed this consent and agreement with legal counsel of its own choosing, or has had an opportunity to do so, and that it knowingly and voluntarily gives this consent and enters into this Agreement having had the opportunity to consult with legal counsel. This consent and agreement is irrevocable, meaning that it may not be modified either orally or in writing, and this consent and agreement shall apply to any subsequent amendments, renewals, supplements, or modifications to this Agreement or any other agreement or document entered into between the parties in connection with this Agreement. In the event of litigation, this Agreement may be filed as evidence of either or both parties' consent and agreement to have any and all Disputes heard and determined by a referee under California Code of Civil Procedure Section 638. Notwithstanding anything to the contrary herein, Borrower and Bank acknowledge and agree that this provision shall have no application to any non-judicial foreclosure of all or any portion of the Property whether pursuant to the provisions of the Loan Documents or applicable law.

Bank's Initial: \_\_\_\_\_

Borrower's Initial: \_\_\_\_\_

Borrower's Initial: \_\_\_\_\_

*[Remainder of page left intentionally blank]*



**8.3 Not Applicable to Non-Judicial Foreclosures/Realization on Collateral.**

Notwithstanding anything to the contrary, the parties hereto understand, acknowledge and agree that (i) the provisions of the consent to judicial reference set forth in this paragraph above shall have no application to any non-judicial foreclosure and/or private (i.e., non-judicial) sale under the California Commercial Code, California Civil Code or California Code of Civil Procedure or other applicable law as to all or any portion of the Property whether pursuant to the provisions of the Loan Documents or applicable law; provided, however, in the event Borrower contests the same, then the provisions of the consent to judicial reference set forth in the paragraph above shall apply to any Dispute arising therefrom (but not the non-judicial foreclosure proceeding, which may remain pending), and (ii) the provisions of the consent to judicial reference set forth in this paragraph above shall not be deemed to be a waiver by, or a limitation upon, the rights of Bank to proceed with a non-judicial foreclosure or private sale under said Commercial Code, California Civil Code or California Code of Civil Procedure or other applicable law as a permitted remedy hereunder or under applicable law. THE PARTIES ACKNOWLEDGE THAT JUDICIAL REFERENCE PROCEEDINGS CONDUCTED IN ACCORDANCE WITH THIS **SECTION 8.3** would be CONDUCTED BY A PRIVATE JUDGE ONLY, SITTING WITHOUT A JURY.

**9. Miscellaneous Provisions.**

**9.1 No Waiver; Consents.** Each waiver by Bank must be in writing, and no waiver may be construed as a continuing waiver. No waiver shall be implied from Bank's delay in exercising or failure to exercise any right or remedy against Borrower or any security. Bank's consent to any act or omission by Borrower shall not be construed as a consent to any other or subsequent act or omission or as a waiver of the requirement for Bank's consent to be obtained in any future or other instance. All Bank's rights and remedies are cumulative.

**9.2 Purpose and Effect of Bank Approval.** Bank's approval of any matter in connection with the Loan is for the sole purpose of protecting Bank's security and rights. No such approval shall result in a waiver of any default of Borrower. In no event shall Bank's approval be a representation of any kind with regard to the matter being approved.

**9.3 No Third Parties Benefited.** This Agreement is made and entered into for the sole protection and benefit of Bank and Borrower and their permitted successors and assigns. No trust fund is created by this Agreement, and no other persons or entities have any right of action under this Agreement or any right to the Loan funds.

**9.4 Joint and Several Liability.** If more than one person or entity executes this Agreement as Borrower, each shall be jointly and severally liable to Bank for the faithful performance of the obligations of Borrower under this Agreement and the other Loan Documents.

**9.5 Notices.** All notices given under this Agreement shall be in writing and be given by personal delivery, overnight receipted courier (such as Airborne or Federal Express) or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below its signature. Notices shall be effective upon the first to occur of receipt, when proper delivery is refused, or the expiration of forty-eight (48) hours after deposit in registered or certified United States mail as described above. Addresses for notice may be changed by any party by notice to any other party in accordance with this Section. If Borrower is a partnership, service of any notice on any general partner of Borrower is effective service on Borrower for all purposes. If more than one person or entity executes this Agreement as Borrower, service of any notice on any one Borrower shall be effective service on all Borrower parties for all purposes. Bank agrees to provide a copy of all written notices required to be delivered pursuant to the terms of the Loan Documents to Investor Limited Partner at the address specified in **Section 7.3**.

**9.6 Actions.** Bank shall have the right, but not the obligation, to commence, appear in, and defend any action or proceeding that might affect its security or its rights, duties, or liabilities relating to the Loan, the Property, or any of the Loan Documents. Borrower shall pay promptly on demand all of

Bank's out-of-pocket costs, expenses, and reasonable legal fees and expenses of Bank's counsel incurred in those actions or proceedings.

**9.7 Attorneys' Fees.** In any lawsuit, reference, or arbitration arising out of or relating to this Agreement, the Loan Documents or the Loan, the prevailing party will be entitled to recover from each other party such sums as the court, referee, or arbitrator adjudges to be reasonable attorneys' fees in the action, reference, or arbitration, in addition to costs and expenses otherwise allowed by law. In all other actions or proceedings, including any matter arising out of or relating to any Insolvency Proceeding, Borrower agrees to pay all of Bank's costs and expenses, including reasonable attorneys' fees, incurred in enforcing or protecting Bank's rights or interests. From the time(s) incurred until paid in full to Bank, all such sums shall bear interest at the Default Rate.

**9.8 In-House Counsel Fees.** Whenever Borrower is obligated to pay or reimburse Bank for any attorneys' fees, those fees include the allocated costs for services of in-house counsel, if any, to the extent not prohibited by applicable law.

**9.9 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to the choice of law rules of that State, except to the extent that any of such laws may now or hereafter be preempted by Federal law. Borrower consents to the jurisdiction of any Federal or State court within the State of California, submits to venue in such state, and also consents to service of process by any means authorized by Federal law or the law of such state. Without limiting the generality of the foregoing, Borrower hereby waives and agrees not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) Borrower is not subject to the jurisdiction of the courts of the above-referenced state or the United States District Court for such state, or (ii) such suit, action, or proceeding is brought in an inconvenient forum, or (iii) the venue of such suit, action, or proceeding is improper.

**9.10 Heirs, Successors, and Assigns; Participations.** The terms of this Agreement shall bind and benefit the heirs, legal representatives, successors, and assigns of the parties; provided, however, that Borrower may not assign this Agreement or any Loan funds, or assign or delegate any of its rights or obligations, without the prior written consent of Bank in each instance. Bank in its sole and absolute discretion may sell or assign the Loan or participations or other interests in all or part of the Loan on the terms and subject to the conditions of the Loan Documents, all without notice to or the consent of Borrower. Also without notice to or the consent of Borrower, Bank or its affiliates may disclose to any actual or prospective purchaser of any securities issued or to be issued by Bank and to any actual or prospective purchaser or assignee of any participation or other interest in the Loan or any other loans made by Bank to Borrower (whether under this Agreement or otherwise), any financial or other information, data or material in Bank's possession relating to Borrower, any partners of Borrower, the Loan, the Improvements, or the Property.

**9.11 Relationships With Other Bank Customers.** From time to time, Bank may have business relationships with Borrower's customers, suppliers, contractors, tenants, partners, members, shareholders, officers, or directors, or with businesses offering products or services similar to those of Borrower, or with persons seeking to invest in, borrow from, or lend to Borrower. Borrower agrees that Bank may extend credit to such parties and take any action it deems necessary to collect the credit, regardless of the effect that such extension or collection of credit may have on Borrower's financial condition or operations. Borrower further agrees that in no event shall Bank be obligated to disclose to Borrower any information concerning any other Bank customer.

**9.12 Disclosure to Title Company.** Without notice to or the consent of Borrower, Bank may disclose to any title insurance company insuring any interest of Bank under the Deed of Trust (whether as primary insurer, coinsurer or reinsurer) any information, data, or material in Bank's possession relating to Borrower, the Loan, the Improvements, or the Property.

**9.13 Improvement District.** Borrower shall not consent to, vote in favor of, or directly or indirectly advocate or assist in, the incorporation of any part of the Project into any improvement or

community facilities district, special assessment district or other district without Bank's prior written consent in each instance.

**9.14 Restriction on Personal Property.** Except for the replacement of personal property made in the ordinary course of Borrower's business with items of equal or greater value, Borrower shall not sell, convey or otherwise transfer or dispose of its interest in any personal property in which Bank has a security interest, or contract to do any of the foregoing, without the prior written consent of Bank in each instance.

**9.15 Severability.** The invalidity or unenforceability of any one or more provisions of this Agreement shall in no way affect any other provision. If any court of competent jurisdiction determines any provision of this Agreement or any of the other Loan Documents to be invalid, illegal or unenforceable, that portion shall be deemed severed from the rest, which shall remain in full force and effect as though the invalid, illegal or unenforceable portion had never been a part of the Loan Documents.

**9.16 Interpretation.** Whenever the context requires, all words used in the singular shall be construed to have been used in the plural, and vice versa, and each gender shall include any other gender. The captions of the sections of this Agreement are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Agreement. Whenever any provision of this Agreement, including any representation, covenant, or Event of Default contained herein, applies to a guarantor, third party pledgor, or any other party to any Loan Document other than Borrower, such provision only applies to such party during the time that such party's guaranty, pledge, or other Loan Document, as applicable, remains in effect.

**9.17 Amendments.** This Agreement may not be modified or amended except by a written agreement signed by the party against whom enforcement is sought.

**9.18 Counterparts.** This Agreement and any attached consents or exhibits requiring signatures may be executed in counterparts, and all counterparts constitute but one and the same document.

**9.19 Language of Agreement.** The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party.

**9.20 General Partners.** If applicable, any person or entity signing this Agreement as general partner of the Borrower agrees that he, she or it is jointly and severally liable for performance of Borrower's obligations under the Loan Documents.

**9.21 Publicity.** Borrower hereby agrees that Bank, at its expense, may publicize the financing of the Project and, in connection therewith, may use the address, description and photographs or other illustrative drawings of the Project.

**9.22 Exchange of Information.** Borrower agrees that Bank may exchange or disclose financial and other information about Borrower or the Property with or to any of Bank's affiliates or other related entities and with any party that acquires a participation or other interest in all or part of the Loan. Borrower further agrees that Bank may exchange or disclose financial and other information about Borrower or the Property with or to Investor Limited Partner, and that Investor Limited Partner, General Partner or Junior Lender may exchange or disclose financial and other information about Borrower or the Property with or to Bank.

**9.23 Survival.** The representations, warranties, acknowledgments, and agreements set forth herein shall survive the date of this Agreement.

**9.24 Further Performance.** Borrower, whenever and as often as they shall be requested by Bank, shall execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered to Bank, such further instruments and documents, and do any and all things as may be requested, in order to carry out the intent and purpose of this Agreement and the other Loan Documents.

**9.25 Time is of the Essence.** Time is of the essence in the performance of this Agreement and the other Loan Documents by Borrower, and each and every term thereof.

**9.26 Recitals; Exhibits.** The Recitals to this Agreement set forth above are true, complete, accurate, and correct, and such recitals are incorporated hereby by reference. The exhibits to this Agreement are incorporated hereby by reference.

**9.27 Loan Commission.** Except as otherwise agreed in writing by Bank: (a) Bank shall not be obligated to pay any brokerage commission or fee in connection with or arising out of the Loan, and (b) Borrower shall pay any and all brokerage commissions or fees arising out of or in connection with the Loan.

**9.28 Authority to File Notices.** Borrower irrevocably appoints Bank as its attorney-in-fact, with full power of substitution, to file or record, at Borrower's cost and expense, and in Borrower's name, any notices of completion, notices of cessation of labor, or any other notices that Bank in its sole and absolute discretion considers necessary or desirable to protect its security, if Borrower fails to do so. The appointment granted in this Section shall be deemed to be a power coupled with an interest.

**9.29 Force Majeure.** If the work of construction is affected and delayed directly by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot, insurrection or governmental regulation of the sale or transportation of materials, supplies, or labor, Borrower shall notify Bank in writing within five (5) calendar days after the event causing the delay. So long as no Event of Default has occurred and is continuing, Bank shall extend the Completion Date by a period of time equal to the period of the delay, but not more than a total of thirty (30) days, and not extending beyond the Maturity Date. Such an extension shall not affect the time for performance of, or otherwise modify, any of Borrower's other obligations under the Loan Documents or the Maturity Date.

**9.30 No Commitment to Increase Loan.** From time to time, Bank may approve changes to the Plans and Specifications at Borrower's request and also require Borrower to make corrections to the work of construction, all on and subject to the terms and conditions of this Agreement. Borrower acknowledges that no such action or other action by Bank will in any manner commit or obligate Bank to increase the amount of the Loan.

**9.31 Integration and Relation to Loan Commitment.** The Loan Documents (a) integrate all the terms and conditions mentioned in or incidental to this Agreement, (b) supersede all oral negotiations and prior writings with respect to their subject matter, including Bank's loan commitment to Borrower, and (c) are intended by the parties as the final expression of the agreement with respect to the terms and conditions set forth in those documents and as the complete and exclusive statement of the terms agreed to by the parties. No representation, understanding, promise or condition shall be enforceable against any party unless it is contained in the Loan Documents. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other agreement or instrument, including any other Loan Document, the terms, conditions and provisions of this Agreement shall prevail.

**9.32 Sale of Loan in Secondary Market.** Borrower acknowledges the intention of the parties to facilitate the marketability of all or part of the Loan to purchasers in the secondary market, and Borrower agrees to execute such other document as are required to effectuate such resale of the Loan by Bank.

*[Remainder of page left intentionally blank. Signature pages follow.]*

IN WITNESS WHEREOF, Borrower and Bank have executed this Agreement as of the date first above written.

**“BORROWER”**

**LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP,**  
a California limited partnership

Address for notices to Borrower:

Live Oak Pacific Associates,  
A California Limited Partnership  
c/o The Pacific Companies, Inc.  
430 East State Street, Suite 100  
Eagle, Idaho 83616  
Attn: Caleb Roope

By: TPC Holdings V, LLC,  
an Idaho limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Caleb Roope  
Manager

With a copy to:

Sutter Community Affordable Housing

By: Sutter Community Affordable Housing,  
a California nonprofit public benefit  
corporation,  
its Managing General Partner

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and a copy to:

By: \_\_\_\_\_  
Martha Griese  
Vica President

CREA Kristen Court, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**"BANK"**

**RABOBANK, N.A.**

Address for notices to Bank:

By: \_\_\_\_\_  
Name: Debi Engelbrecht  
Title: Assistant Vice President

Rabobank, N.A.  
Attention: Community Development Finance  
618 West Main Street  
Visalia, California 93291

**EXHIBIT A**

Description of Property

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SUTTER, CITY OF LIVE OAK, AND IS DESCRIBED AS FOLLOWS:

**EXHIBIT B**  
**Cost Breakdown**



**PROMISSORY NOTE SECURED BY DEED OF TRUST**

\$10,700,000

November \_\_, 2015

**1. Borrower's Promise To Pay.**

FOR VALUE RECEIVED, **LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP**, a California limited partnership ("Borrower"), promises to pay to the order of **RABOBANK, N.A.**, its successors, transferees and assigns ("Bank"), at 618 West Main Street, Visalia, California 93291, Attention: Community Development Finance, or at such other place as the holder of this Note may from time to time designate, the principal sum of \$10,700,000.00 ("Maximum Loan Amount"), or such lesser amount as may be advanced and outstanding under this promissory note (this "Note"), plus interest as specified in this Note. Bank shall not be required to make any advance if that would cause the outstanding principal of this Note to exceed the Maximum Loan Amount. This Note evidences a construction loan (the "Loan") made by Bank to Borrower pursuant to the terms of a Construction Loan Agreement (the "Loan Agreement") between Bank and Borrower.

This Note is secured by that certain Deed of Trust (as defined in the Loan Agreement) covering certain real and personal property, as therein described (the "Property"). It may also be secured by other collateral. This Note, the Deed of Trust, and the Loan Agreement, together with all of their exhibits, and all other documents which evidence, guaranty, secure, or otherwise pertain to the Loan collectively constitute the "Loan Documents." Some or all of the Loan Documents, including the Loan Agreement, contain provisions for the acceleration of the maturity of this Note. This Note is subject to the terms and conditions of the Loan Agreement. Capitalized terms used but not defined herein shall have the meanings set forth in the Loan Agreement.

**2. Maturity Date.**

**2.1 Maturity Date.** All principal and all accrued and unpaid interest and other sums due hereunder shall be due and payable on November \_\_, 2017 (the "Maturity Date"), subject to possible extension in accordance with Section 2.9 of the Loan Agreement.

**3. Interest Rate and Payment Terms.**

**3.1 Interest Only Payments.** Borrower shall make monthly interest only payments in arrears on the first day of each month beginning on December 1, 2015 (which payment shall also include any interest due for the stub period from the Closing Date to such payment date).

**3.2 Interest Rate.** The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the one (1) month "London Interbank Offered Rate" (LIBOR) as published in any nationally recognized index as determined by Bank in its reasonable discretion (the "LIBOR Index"). The LIBOR Index is not necessarily the lowest rate charged by Bank on its loans. If the LIBOR Index becomes unavailable during the term of this Note, Bank may designate a substitute index after notifying Borrower. Bank will tell Borrower the current LIBOR Index rate upon Borrower's request. The interest rate change will not occur more often than once per month. Borrower understands that Bank may make loans based on other rates as well. The interest rate to be applied to the unpaid principal balance of this Note will be the greater of: (i) a rate of 2.85% percentage points over the LIBOR Index, or (ii) a floor of \_\_\_\_%. **NOTICE:** Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law.

**4. General Interest Rate and Payment Terms.**

**4.1 Note Rate.** Each interest rate in effect from time to time under this note is herein referred to as a "Note Rate."

**4.2 Effective Contracted Rate.** Borrower agrees to pay an effective contracted for rate of interest equal to the rate of interest resulting from all interest payable as provided in this Note plus the additional rate of interest resulting from (a) the Loan Fee (if any, as such term is defined in the Loan Agreement), and (b) all Other Sums. For purposes hereof, the "Other Sums" shall mean all fees, charges, goods, things in action, or any other sums or things of value (other than interest payable as provided in this Note and the Loan Fee (if any)) paid or payable by Borrower, whether pursuant to this Note, any of the other Loan Documents, or any other document or instrument in any way pertaining to this lending transaction, that may be deemed to be interest for the purpose of any law of the State of California that may limit the maximum amount of interest to be charged with respect to this lending transaction. The Other Sums shall be deemed to be interest and part of the "contracted for rate of interest" for the purposes of any such law only.

**4.3 Usury Savings Clause.** It is expressly stipulated and agreed to be the intent of Borrower and Bank at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Bank to contract for, charge, take, reserve, or receive greater amount of interest than under state law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal law should at any time be judicially interpreted so as to render usurious any amount charged, taken, reserved, or received with respect to the Loan, or if Bank's exercise of the option to accelerate the maturity of the Loan, or if any prepayment by Borrower, results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Bank's express intent that all such excess amounts theretofore collected by Bank shall be credited to the principal balance of this Note and all other indebtedness, and that the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Bank for the use, forbearance, or detention of the Loan shall, to the extent not prohibited by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

**4.4 Calculation of Interest.** Interest will be computed on the basis of a three hundred sixty (360) day year and actual days elapsed, which results in more interest than if a three hundred sixty-five (365) day year were used.

**4.5 Payments.** All principal, interest, and all other amounts owing in connection herewith shall be paid by Borrower in lawful money of the United States of America, such that Bank has received immediately available funds for the credit of Borrower not later than 3:00 p.m. Pacific time on the date that such payment is due. Checks and drafts constitute payment only when collected. All payments made under this Note shall be made without offset, demand, counter-claim, deduction or recoupment (each of which is hereby waived), and acceptance by Bank of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, notwithstanding any notation on or accompanying such partial payment to the contrary, and shall not constitute a waiver by Bank of any Event of Default. Except as otherwise set forth herein or in any other Loan Document, payments shall be applied in such order and manner as Bank may determine in its sole and absolute discretion. A "Banking Day" means a day, other than a Saturday or Sunday, on which Bank is open for business for all banking functions.

**5. Principal Prepayments.** Borrower may prepay all or a part of the Loan without fee or premium at any time prior to the Maturity Date.

**6. Late Payments; Default Rate.**

**6.1 Late Charge for Overdue Payments.** If Bank has not received the full amount of any payment scheduled to be made under this Note, other than the final principal payment, Borrower shall pay a late charge to Bank in the amount of five percent (5%) of the overdue payment if Bank has not received the full amount of any payment scheduled to be made under this Note, other than the final principal

payment, by the end of fifteen (15) calendar days after the date it is due; provided, however, in no event shall any late charge be payable hereunder without Bank first having provided Borrower with any notice required by applicable law. Borrower shall pay this late charge only once on any late payment. This late charge shall not be construed as in any way extending the due date of any payment, and is in addition to (and not in lieu of) any other remedy Bank may have.

**6.2 Default Rate.** Upon the occurrence of any Event of Default (subject to any applicable notice and cure periods), the Loan shall bear interest at the rate which is five percent (5%) above the current Note Rate (the "Default Rate"). Additionally, from and after the Maturity Date, or any extended Maturity Date, if applicable, or such earlier date as all sums owing on this Note become due and payable by acceleration or otherwise, the Loan shall bear interest at the Default Rate. Accrued interest, at the Note Rate, if not paid when due, shall accrue interest at the Default Rate, as hereinabove provided, which may result in compounding of interest. Except as otherwise set forth herein or in any other Loan Document, payments under this Note or under any other Loan Document that are due on demand, shall bear interest at the Default Rate (i) from the date costs or expenses are incurred by Bank that give rise to the demand or (ii) if there is no such date, then from the date of demand, until Borrower pays the full amount of such payment, including interest.

**7. Events of Default.** If any of the following "Events of Default" occur, any obligation of the holder to make advances under this Note terminates and, at the holder's option, exercisable in its sole and absolute discretion, all sums of principal and interest under this note immediately become due and payable without notice of default, presentment, demand for payment, protest, or notice of nonpayment or dishonor, or other notices or demands of any kind or character:

**7.1** Borrower fails to perform any obligation under this Note to pay principal or interest within five (5) days from the date when due; or

**7.2** Borrower fails to perform any other obligation under this Note to pay money, and does not cure that failure within five (5) days after written notice from Bank; or

**7.3** Under any of the Loan Documents, an Event of Default (as defined in the applicable document subject to applicable notice and cure periods) occurs, except as provided in **Section 8** below.

**8. Insolvency.** It is an "Event of Default" under this Note if Borrower becomes the subject of any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships ("Insolvency Proceeding"), and as to any involuntary Insolvency Proceeding, it either: (i) is consented to or (ii) has not been dismissed within ninety (90) days. Upon such an Event of Default, all sums of principal and interest under this Note automatically become immediately due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character. If Borrower becomes the subject of any Insolvency Proceeding, any obligation of the holder to make advances under this Note shall automatically terminate, and in the case of an involuntary Insolvency Proceeding which is dismissed within ninety (90) days, the holder's obligation to make advances under this Note shall resume upon the dismissal thereof.

**9. Miscellaneous.**

**9.1 Waivers.** Borrower hereby waives presentment, demand, notice of dishonor, notice of default or delinquency, notice of acceleration, notice of nonpayment, notice of costs, expenses, or losses and interest thereon; and notice of interest on interest and late charges.

**9.2 Delay In Enforcement.** If Bank delays in exercising or fails to exercise any of its rights under this Note, that delay or failure does not constitute a waiver of any of Bank's rights, or of any breach, default or failure of condition of or under this Note. No waiver by Bank of any of its rights, or of any breach, default or failure of condition is effective, unless the waiver is expressly stated in writing by Bank.

**9.3 Joint and Several Liability.** If more than one person or entity is signing this Note as Borrower, their obligations under this Note shall be joint and several. As to any Borrower that is a partnership, the obligations of Borrower under this Note are the joint and several obligations of each general partner thereof.

**9.4 Heirs, Successors, and Assigns; Participations.** This Note inures to and binds the heirs, legal representatives, successors and assigns of Borrower and Bank; provided, however, Borrower may not assign this Note or any Loan funds, or assign or delegate any of its rights or obligations, without the prior written consent of Bank in each instance, which consent is at the sole and absolute discretion of Bank. Bank, in its sole and absolute discretion, may transfer this Note, and may sell or assign participations or other interests in all or part of the Loan, on the terms and subject to the conditions of the Loan Documents, all without notice to or the consent of Borrower. Without notice to or the consent of Borrower, Bank may disclose to any actual or prospective purchaser of any securities issued or to be issued by Bank or its affiliates, and to any actual or prospective purchaser or assignee of any participation or other interest in this Note, the Loan, or any other loans made by Bank to Borrower (whether evidenced by this Note or otherwise), any financial or other information, data or material in Bank's possession relating to Borrower, the Loan, or the Property, including any improvements thereon.

**9.5 Cumulative Remedies.** All of Bank's remedies in connection with this Note or under applicable law are cumulative, and Bank's exercise of any one or more of those remedies shall not constitute an election of remedies.

**9.6 Governing Law.** This Note shall be governed by the laws of the State of California, without regard to the choice of law rules of that state.

**9.7 Attorney's Fees and Costs.** In any lawsuit, reference, or arbitration arising out of or relating to this Note, the Loan Documents or the Loan, the prevailing party will be entitled to recover from each other party such sums as the court, referee, or arbitrator adjudges to be reasonable attorneys' fees in the action, reference, or arbitration, in addition to costs and expenses otherwise allowed by law. In all other actions or proceedings, including any matter arising out of or relating to any Insolvency Proceeding, Borrower agrees to pay all of Bank's costs and expenses, including reasonable attorneys' fees, incurred in enforcing or protecting Bank's rights or interests. From the time(s) incurred until paid in full to Bank, all such sums shall bear interest at the Default Rate.

**9.8 In-House Counsel Fees.** Whenever Borrower is obligated to pay or reimburse Bank for any attorneys' fees, those fees shall include the allocated costs for services of in-house counsel.

**9.9 Holder's Rights.** Borrower agrees that the holder of this Note may accept additional or substitute security for this Note, or release any security or any party liable for this Note, or extend or renew this Note, all without notice to Borrower and without affecting the liability of Borrower.

**9.10 Interpretation.** As used in this Note, the terms "Bank," "holder" and "holder of this Note" are interchangeable. As used in this Note, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

**9.11 Time of the Essence.** Time is of the essence with regard to all payment obligations under this Note.

**9.12 Amendments.** This Note may not be modified or amended except by a written agreement signed by the parties.

**9.13 Counterparts.** This Note may be executed in counterparts, and all counterparts constitute but one and the same document.

*[Remainder of page left intentionally blank.  
Signature page follows.]*

**IN WITNESS WHEREOF**, Borrower has duly executed and delivered this Note to Bank as of the date first above written.

**BORROWER:**

LIVE OAK PACIFIC ASSOCIATES,  
A CALIFORNIA LIMITED PARTNERSHIP,  
a California limited partnership

By: TPC Holdings V, LLC,  
an Idaho limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Caleb Roope  
Manager

By: Sutter Community Affordable Housing,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Martha Griese  
Vice President

LIVE OAK PACIFIC ASSOCIATES,  
A CALIFORNIA LIMITED PARTNERSHIP  
c/o The Pacific Companies, Inc.  
430 East State Street, Suite 100  
Eagle, Idaho 83616  
Attn: Caleb Roope

With a copy to:

Sutter Community Affordable Housing

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and a copy to:

CREA Kristen Court, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Recording Requested By  
And When Recorded Mail To:

Rabobank, N.A.  
Attention: Community Development Finance  
618 West Main Street  
Visalia, California 93291

Space Above For Recorder's Use

**CONSTRUCTION DEED OF TRUST,  
with Assignment of Leases and Rents, Security Agreement, and Fixture Filing**

THIS DEED OF TRUST SERVES AS A FIXTURE FILING UNDER THE CALIFORNIA UNIFORM COMMERCIAL CODE.

TRUSTOR'S ORGANIZATIONAL IDENTIFICATION NUMBER IS: CA-201518200008.

THIS DEED OF TRUST SECURES A VARIABLE RATE PROMISSORY NOTE WHICH VARIES ACCORDING TO CHANGES IN CERTAIN CONTRACT RATES OF INTEREST IN ACCORDANCE WITH THE TERMS OF THE PROMISSORY NOTE AND THE LOAN AGREEMENT BETWEEN TRUSTOR AND BENEFICIARY.

The parties to this Construction Deed of Trust, with Assignment of Leases and Rents, Security Agreement, and Fixture Filing (this "Deed of Trust"), dated for reference purposes as of November \_\_, 2015, are **LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP**, a California limited partnership ("Trustor"), **FIRST AMERICAN TITLE COMPANY** ("Trustee"), and **RABOBANK, N.A.**, its successors, transferees and assigns, as beneficiary and secured party (the "Beneficiary"). The parties mailing addresses are set forth on the signature page(s) below.

This Deed of Trust secures, among other things, repayment of a Loan (the "Loan"), as such Loan is further described in **Section 1.2(a)** below, which Loan is made pursuant to a certain construction loan agreement entered into by Trustor and Beneficiary (the "Loan Agreement") dated as of the date hereof. This Deed of Trust and the Loan Agreement, together with all of their exhibits, and all other documents which evidence, secure, or otherwise pertain to the Loan, collectively constitute the "Loan Documents." Capitalized terms used above and elsewhere in this Deed of Trust without definition have the meanings given them in the Loan Agreement referred to and defined above. All terms not defined herein or in the Loan Agreement shall have the meaning given them in the Uniform Commercial Code, as enacted in the State of California, or under the Uniform Commercial Code in any other state to the extent the same is applicable law (collectively, as amended, recodified, and in effect from time to time, the "UCC"). If a term is defined differently in Article 9 of the UCC than in another Article, Article 9 shall control.

**1. Grant in Trust and Secured Obligations.**

**1.1 Grant in Trust.** In consideration and for the purpose of securing payment and performance of the Secured Obligations (as defined below), Trustor hereby irrevocably and unconditionally grants, bargains, conveys, sells, transfers, and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title, and interest which Trustor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):

(a) The real property located in Sutter County, California, as more fully described in **Exhibit A** attached hereto and made a part hereof, together with all rights, privileges, easements, appurtenances, tenements, hereditaments, rights of way, appendages, projections, water rights including riparian and littoral rights and whether or not appurtenant, streets, ways, alleys, and strips and gores of

land, now or hereafter in any way belonging, adjoining, crossing or pertaining to such real property (the "Land"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Land (the "Improvements"); together with

(c) All articles of personal property (including those specified below) and any software imbedded therein, now owned or hereafter acquired by Trustor and attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise a "fixture" under applicable law (each a "Fixture," collectively "Fixtures"); together with

(d) All existing and future as-extracted collateral produced from or allocated to the Land, including, all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and any other commercially valuable substances which may be in, under or produced from any part of the Land, and all products processed or obtained therefrom, and the proceeds thereof, and all development rights and credits, air rights, water, water courses, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, easements, rights-of-way, gores or strips of land, and any land lying in the streets, ways, alleys, passages, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements; together with

(e) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements, concessions, and other agreements of any kind relating to the use or occupancy of all or any portion of the Property, whether now in effect or entered into in the future (each a "Lease," collectively, the "Leases") relating to the use and enjoyment of all or any part of the Land and Improvements, all amendments, extensions, renewals, or modifications thereof (subject to Beneficiary's right to approve same pursuant to the terms of the Loan Documents), and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; together with

(f) All rents (and payments in lieu of rents), royalties, issues, profits, income, proceeds, payments, and revenues of or from the Property, and/or at any time payable under any and all Leases, including all rent loss insurance proceeds, prepaid rents and any and all security deposits received or to be received by Trustor pursuant to any and all Leases, and all rights and benefits accrued, or to accrue, to Trustor under any and all Leases (some or all collectively, as the context may require, "Rents"); together with

(g) All rights to the name, signs, trade names, trademarks, trademark applications, service marks, licenses, software, and symbols used in connection with the Land and Improvements; together with

(h) All goods, materials, supplies, chattels, furniture, fixtures, machinery, apparatus, fittings, equipment, and articles of personal property of every kind and nature whatsoever, including consumable goods, now or hereafter located in or upon the Property or any part thereof, or to be attached to or placed in or on, or used or useable in connection with any present or future use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including by way of description but without limiting the generality of the foregoing, all computer systems, telephone and telecommunication systems, televisions and television systems, pumps or pumping plants, tanks, motors, conduits, engines, pipes, ditches and flumes, and also all gas and electrical apparatus (including, but not limited to, all electrical transformers, switches, switch boxes, and equipment boxes), cooking, heating, cooling, air conditioning, sprinkler equipment, lighting, power equipment, ventilation, incineration, refrigeration and plumbing apparatus, fixtures and equipment, screens, storm doors and windows, stoves, wall beds, refrigerators, attached cabinets, partitions, ovens, ranges, disposals, dishwashers, carpeting, plants and shrubbery, ground maintenance equipment, ducts and compressors; together with all building materials, goods and personal property on or off the Property intended to be affixed



to or incorporated in the Property but not yet affixed to or incorporated in the Property, all which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; together with

(i) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; together with

(j) All deposit accounts of Trustor, including but not limited to, the Account (if any), the Borrower's Funds Account (if any), the Reserve Accounts, and all Loan funds deposited into any such account, whether disbursed or not, and Trustor's own funds now or later to be held on deposit in all such accounts; together with

(k) To the extent not expressly prohibited by law, any federal, state, and local tax credits and all proceeds thereof, and other tax benefits related to the Property; together with

(l) All rights to the payment of money and all guaranties thereof and judgments therefor, and all accounts, accounts receivable, reserves, deferred payments, refunds of real property and personal property taxes and other refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), warranty rights, contract rights, management contracts, service contracts, construction and architectural contracts, contracts for the purchase and sale of the Property or any part thereof, end-loan or other financing commitments, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, promissory notes, drafts, letters of credit (other than letters of credit in favor of Beneficiary), letter of credit rights (whether or not the letter of credit is evidenced by a writing), supporting obligations, and general intangibles, including payment intangibles, whether any of the foregoing are tangible or electronic, which arise from or relate to construction, maintenance, operation, management or occupancy of the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally; together with

(m) All insurance policies (and the unearned premiums therefor) and bonds required by the Loan Documents and all proceeds thereof, and all proceeds (including all claims to and demands for them) of the voluntary or involuntary conversion of any of the Land, the Improvements, or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to, or defect in, the Land, the Improvements, or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud, misrepresentation, or concealment of a material fact; together with

(n) All books, records, and all recorded data of any kind or nature (regardless of the medium of recording) pertaining to any and all of the property described above, including records relating to tenants under any leases, and the qualification of such tenants, and all certificates, vouchers, and other documents in any way related thereto, and all records relating to the application and allocation of any federal, state, and local tax credits or benefits, including computer-readable memory and any computer hardware or software necessary to access and process such memory (collectively, the "Books and Records"); together with

(o) All commercial tort claims Trustor now has or hereafter acquires relating to any of the property described above; together with

(p) All software embedded within or used in connection with any of the property described above; together with

(q) All products, accounts, and proceeds (cash or non-cash) of, additions, betterments, extensions, accessions and accretions to, substitutions, renewals and replacements for, and changes in any of the property described above, including all proceeds of any voluntary or involuntary disposition or claim respecting any such property (arising out of any judgment, condemnation or award, or otherwise arising) and all supporting obligations ancillary to or arising in connection therewith, general intangibles (including payment intangibles) arising in connection therewith, and all goods, accounts, instruments, documents, promissory notes, chattel paper, deposit accounts, supporting obligations, and general intangibles (including payment intangibles) (whether any of the foregoing are tangible or electronic), wherever located, acquired with cash proceeds of any of the foregoing or its proceeds.

Trustor shall and will warrant and forever defend the above-bargained Property in the quiet and peaceable possession of Trustee, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof. Trustor agrees that any greater title to the Property hereafter acquired by Trustor during the term hereof shall be subject hereto.

## **1.2 Secured Obligations.**

(a) Trustor makes the grant, bargain, conveyance, sale, transfer, and assignment set forth above and grants the security interest set forth in **Section 3** below for the purpose of securing the following obligations (the "Secured Obligations") in such order of priority as Beneficiary may determine:

(i) Payment of all obligations at any time owing under that certain Promissory Note Secured by Deed of Trust (the "Note") dated as of the date hereof, payable by Trustor as maker to the order of Beneficiary in the stated principal amount of \$10,700,000.00 to the order of Beneficiary, including principal, interest and all other amounts payable under the terms of the Note and performance of each covenant and agreement of Trustor in the Note and all modifications, amendments, replacements, extensions and renewals thereof and substitution therefore; and

(ii) Payment and performance of all obligations of Trustor under this Deed of Trust; and

(iii) Payment and performance of all obligations of Trustor under the Loan Agreement, under any Loan Documents, or any rate lock agreement or interest rate protection agreement (such as any interest rate swap agreement, International Swaps and Derivatives Association, Inc. Master Agreement, or similar agreement or arrangements now existing or hereafter entered into by Trustor and Beneficiary in connection with the Loan evidenced by the Note to hedge the risk of variable rate interest volatility or fluctuations in interest rates as any such agreement or arrangement may be modified, supplemented and in effect from time to time) executed by Trustor in connection with the Loan; provided, however, that this Deed of Trust does not secure any Loan Document or other document, or any provision of any Loan Document or other document, that is expressly stated to be unsecured, including, without limitation, the Environmental Indemnity and the Guaranties; and

(iv) Payment and performance of all future advances and other obligations that Trustor, or any successor in interest to Trustor, and/or any other obligor (if different than Trustor), or any successor in ownership of all or part of the Property, may agree to pay and/or perform (whether as principal, surety, or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this Deed of Trust; and

(v) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations, including any successor agreements or instruments which restate and supersede any agreements or instruments evidencing the Secured Obligations; and

(vi) Payment of all sums advanced by Beneficiary to protect the security of this Deed of Trust or the Property, with interest at the Default Rate as defined in the Note.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Loan Agreement which permit borrowing, repayment, and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

## **2. Assignment of Lessor's Interest in Leases and Assignment of Rents.**

**2.1 Absolute Assignment.** Effective upon the recordation of this Deed of Trust, Trustor hereby irrevocably, absolutely, presently, and unconditionally assigns, transfers, and sets over to Beneficiary:

(a) All of Trustor's right, title, and interest in, to, and under any and all Leases, all amendments, extensions, renewals, or modifications thereof (subject to Beneficiary's right to approve same pursuant to the terms of the Loan Documents), and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; and

(b) All Rents.

In the event that anyone establishes and exercises any right to develop, bore for, or mine for any water, gas, oil, or mineral on or under the surface of the Property, any sums that may become due and payable to Trustor as bonus or royalty payments, and any damages or other compensation payable to Trustor in connection with the exercise of any such rights, shall also be considered Rents assigned under this Section.

### **THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY.**

**2.2 Grant of License.** Beneficiary hereby confers upon Trustor a license (the "License") to collect and retain the Rents as they become due and payable, so long as no Event of Default (as such term is defined below) shall remain uncured beyond any applicable cure period. Upon the existence of an Event of Default beyond all applicable cure periods, the License shall terminate (automatically and without notice or demand of any kind and without regard to the adequacy of Beneficiary's security under this Deed of Trust).

**2.3 Collection and Application of Rents and Enforcement of Leases.** Subject to the License granted to Trustor above and the other provisions of this Section, Beneficiary has the right, power, and authority, either in person or by a receiver appointed by the court, to collect any and all Rents and enforce the provisions of any Lease, and to enforce any and all of the rights and remedies of an assignee under Section 2938 of the California Civil Code. In connection with the provisions of this Section, Trustor hereby constitutes and irrevocably appoints Beneficiary its attorney-in-fact, with full power of substitution, to perform any and all of the following acts, if and at the times when Beneficiary in its sole and absolute discretion may so choose:

(a) Demand, receive, and enforce payment of any and all Rents, and endorse all checks and other payment instruments related thereto;

(b) Give receipts, releases, and satisfactions for any and all Rents;

(c) Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents;

(d) Enforce the provisions of any and all Leases;

- (e) Enter into Leases; and/or
- (f) Perform and discharge any and all undertakings of Trustor or otherwise under any Lease.

The appointment granted in this Section shall be deemed to be a power coupled with an interest. Beneficiary's rights under this Section do not depend on whether or not Beneficiary takes possession of the Property as permitted under this Deed of Trust. In Beneficiary's sole and absolute discretion, Beneficiary may choose to collect Rents or enforce any and all Leases either with or without taking possession of the Property and either in person or through a court-appointed receiver. Beneficiary's rights and powers under this Section are in addition to the other remedies herein provided for upon the occurrence of an Event of Default and may be exercised independently of or concurrently with any other such remedies.

**2.4 Notice.** All lessees under any and all Leases are hereby irrevocably authorized and notified by Trustor to rely upon and to comply with (and will be fully protected in so doing) any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of lessees' undertakings under the Leases, and lessees have no right or duty to inquire whether any Event of Default has actually occurred or is then existing hereunder or to obtain Trustor's consent.

**2.5 Proceeds.** Beneficiary has the right to apply all amounts received by it pursuant to this assignment to pay any of the following in the amounts and in the order Beneficiary deems appropriate: (a) any and all Secured Obligations, in any order and proportions as Beneficiary in its sole and absolute discretion may choose, and (b) the costs and expenses of operation of the Property and collection of Rents and other sums that may be incurred by Trustee, Beneficiary, and/or any receiver, including but not limited to reasonable attorneys' fees and any and all expenses of leasing, operating, maintaining, and managing the Property, and all other costs and charges incident to the Property; including, without limitation, (i) salaries, fees, commissions and wages of a managing agent, and other employees, agents, or independent contractors; (ii) taxes, charges, claims, assessments, any other liens, and premiums for all insurance; and (iii) the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property. In addition, Beneficiary may hold the same as security for the payment of the Secured Obligations. Beneficiary shall have no liability for any funds that it does not actually receive.

**2.6 Beneficiary Not Responsible.** Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land and the Improvements, Beneficiary is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose;
- (b) Responsible for performing any of the obligations of the Trustor as lessor under any lease;
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

**2.7 Leasing.** Trustor shall not accept any deposit or prepayment of Rents for any rental period exceeding one (1) month without Beneficiary's express prior written consent. Trustor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement. Trustor shall apply all Rents received by it in the manner required by the Loan Agreement.

**3. Grant of Security Interest.**

**3.1 Security Agreement.** The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property and some of the Rents and Leases may be determined under applicable law to be personal property or fixtures. To the extent that any Property, Rents, or Leases may be or be determined to be personal property, Trustor, as debtor, hereby grants to Beneficiary, as secured party, a security interest in all such Property, Rents, and Leases, to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the UCC, covering all such Property, Rents, and Leases. To the extent such Property, Rents, or Leases are not real property encumbered by the lien granted above, and are not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property, Rents, and/or Leases shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

**3.2 Financing Statements; Authorization to File; Power of Attorney.** Trustor hereby authorizes Beneficiary, at any time and from time to time, to file any initial financing statements, amendments thereto, and continuation statements, with or without the signature of Trustor, as authorized by applicable law, as applicable to the Property or any part thereof. Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require and all other reasonable fees and costs Beneficiary incurs in connection with perfection of its security interests. For purposes of such filings, Trustor agrees to promptly furnish any information requested by Beneficiary. Trustor also ratifies its authorization for Beneficiary to have filed any like initial financing statements, amendments thereto, or continuation statements if filed prior to the date of this Deed of Trust. Trustor hereby irrevocably constitutes and appoints Beneficiary, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Trustor to execute in Trustor's name any such documents and to otherwise carry out the purposes of this Section, to the extent that Trustor's authorization above is not sufficient. Such power is deemed to be coupled with an interest, and is therefore irrevocable. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real estate encumbered by this Deed of Trust regardless of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in the Financing Statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, shall be filed in the UCC records.

**4. Effective as a Financing Statement; Fixture Filing and Construction Mortgage.**

This Deed of Trust constitutes a financing statement filed as a fixture filing under the applicable section of the UCC, covering any Property which now is or later may become fixtures attached to the Land or Improvements. The parties' mailing addresses are set forth on the signature page(s) below. This Deed

of Trust shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts, and general intangibles under the UCC, which will be financed at the wellhead or minehead of the wells or mines located on the Land and is to be filed of record in the real estate records of each county where any part of the Land is situated. This Deed of Trust shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Trustor is the address of Trustor set forth at the end of this Deed of Trust, and the address of Beneficiary from which information concerning the security interests hereunder may be obtained is the address of Beneficiary set forth at the end of this Deed of Trust. A carbon, photographic, or other reproduction of this Deed of Trust or of any financing statement related to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section. This Deed of Trust is also a "Construction Mortgage," as defined in the UCC to the extent it secures an obligation incurred for the construction of an improvement on the Land (including the acquisition cost of the Land), or the refinancing of an obligation incurred for the construction of an improvement on the Land (including the acquisition cost of the Land).

## **5. Rights and Duties of the Parties.**

**5.1 Representations and Warranties.** Trustor represents and warrants that, except as previously disclosed to Beneficiary in writing:

(a) Trustor is indefeasibly seized of and lawfully possesses and holds good and marketable fee simple title to all of the Land and the Improvements, unless any portion of Trustor's present interest in the Land is described in **Exhibit A** as a leasehold interest, in which case Trustor lawfully possesses and holds a leasehold interest in such portion of the Land as stated in **Exhibit A**; and Trustor and its successors and assigns warrant and shall forever defend title to the Property, subject only to such exceptions and conditions to title as Beneficiary has approved in its sole and absolute discretion (the "Permitted Title Exceptions") (and any later such encumbrances approved by Beneficiary in writing), unto Trustee and Trustee's successors and assigns against the claims and demands of all persons claiming or to claim the same or any part thereof;

(b) Trustor has the full and unlimited power, right, and authority to encumber the Property and assign the Rents;

(c) This Deed of Trust creates a first and prior lien on the Property free and clear of all liens, encumbrances, and claims whatsoever, subject only to the Permitted Title Exceptions;

(d) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and the Improvements;

(e) Trustor owns any Property which is personal property free and clear of all liens, encumbrances, and claims whatsoever, as well as any security agreements, reservations of title, or conditional sales contracts, and there is no presently effective financing statement affecting such personal property on file in any public office nor is any of such personal property subject to a security interest having priority over Beneficiary's priority to the same except with respect to junior indebtedness, if any, approved and permitted by Beneficiary as a Permitted Title Exception and Trustor has the right to convey and encumber such property and will warrant and defend such property against the claims of all persons and parties;

(f) The Property has frontage on and direct access for ingress and egress to publicly dedicated streets;

(g) Electricity (and gas, if available), water facilities, sewer facilities and any other necessary utilities are, and at all times hereafter shall be, available in sufficient capacity to service the

Property satisfactorily and any easements necessary to the furnishing of such utilities are or will be granted and duly recorded;

(h) Trustor's exact legal name, and, if Trustor is not an individual, organizational identification number (if any assigned by Trustor's state of incorporation or organization) are correctly set forth in this Deed of Trust. If Trustor is an individual, Trustor's principal residence has for the preceding four months been and will continue to be (unless Trustor notifies Beneficiary of any change in writing at least thirty (30) days prior to the date of such change) the address of the principal residence of Trustor as set forth at the end of this Deed of Trust. If Trustor is not an individual, Trustor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. If Trustor is an unregistered entity (including a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. Trustor's principal place of business and chief executive office and the place where it keeps its Books and Records has for the preceding four months (or, if less, the entire period of the existence of Trustor) been and will continue to be (unless Trustor notifies Beneficiary of any change in writing at least thirty (30) days prior to the date of such change) the address of Trustor set forth at the end of this Deed of Trust; and

(i) There are no actions, suits or proceedings pending, or to the knowledge of Trustor threatened, against or affecting the Property of any nature; and

(j) The Property, including, without limitation, the Improvements thereon, comply with and will continue throughout the term hereof to comply with all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health, disability and Environmental Laws and regulations and all other applicable laws, ordinances, rules and regulations, including permits, licenses and/or certificates that may be necessary from time to time to comply with any of these requirements.

## **5.2 Taxes and Assessments.**

(a) Trustor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on appurtenant water stock (individually and collectively, an "Imposition"), imposed by any public or quasi-public authority or utility company that are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or that, if not paid, may cause any decrease in the value of the Property or any part of it. If any Imposition becomes delinquent, Beneficiary may require Trustor to present evidence that it has been paid in full, on ten (10) days' written notice by Beneficiary to Trustor. Notwithstanding the foregoing provisions of this Section, Trustor may, at its expense, contest the validity or application of any Imposition by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may be reasonably required from time to time by Beneficiary; and provided further that if at any time payment of any obligation imposed upon Trustor by this Section becomes necessary to prevent a lien foreclosure sale or forfeiture or loss of the Property, or any part thereof, then Trustor must pay the same in sufficient time to prevent such sale, forfeiture, or loss.

(b) If an Event of Default has occurred and is continuing after the applicable cure period, Trustor shall, upon demand of Beneficiary, pay monthly to Beneficiary an amount sufficient, as estimated by Beneficiary, to accumulate the sum required to pay thirty (30) days prior to the due date thereof the annual cost of any real property taxes and any assessments or other Impositions and the estimated next premiums for hazard and other required insurance on the Property. These funds will be held by Beneficiary (and may be commingled with other funds of Beneficiary) without interest and will be released to Trustor for payment of Impositions and insurance premiums, or directly applied to such costs by Beneficiary, as Beneficiary may elect.

(c) Notwithstanding anything to the contrary in subsection (b) above, if a property tax reserve account, taxes and insurance reserve account, or similar reserve for real property taxes is required pursuant to the terms of the Loan Agreement or other Loan Documents, then, if and at all such times as such reserve is required pursuant to the terms of the Loan Agreement, Trustor shall pay to Beneficiary the reserve deposits, including, if applicable, any initial reserve deposit and any monthly or periodic reserve deposits, as described in the Loan Agreement or other applicable Loan Document, and all terms and conditions set forth therein related to such reserve shall apply and are herein incorporated by reference.

**5.3 Performance of Secured Obligations.** Trustor shall promptly pay and perform each and all of the Secured Obligations in accordance with its terms.

**5.4 Liens, Charges, and Encumbrances.** Trustor shall immediately discharge any lien on the Property that Beneficiary has not expressly consented to in writing. Trustor shall pay when due each obligation secured by or reducible to a lien, charge, or encumbrance which now does or later may encumber all or part of the Property or any interest in it, whether the lien, charge, or encumbrance is or would be senior or subordinate to this Deed of Trust. This Section is subject to any right granted to Trustor in the Loan Agreement to contest in good faith claims and liens for labor done and materials and services furnished in connection with construction of the Improvements. Trustor shall pay, perform and observe all obligations under any Permitted Title Exceptions, and will not modify or permit modification of them without Beneficiary's prior written consent.

**5.5 Damages and Insurance and Condemnation Proceeds.**

(a) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, the following claims, causes of action, awards, payments, and rights to payment (whether awarded or to be awarded or which may be awarded because of judicial action, private action, settlement, or compromise):

(i) All awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it; and

(ii) All other awards, claims, and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; and

(iii) All proceeds of any insurance policies payable because of loss sustained to all or part of the Property, whether or not such insurance policies are required by Beneficiary; and

(iv) All interest which may accrue on any of the foregoing.

(b) Trustor shall immediately notify Beneficiary in writing if:

(i) Any damage occurs or any injury or loss is sustained to all or any part of the Property, or any action or proceeding relating to any such damage, injury, or loss is commenced; or

(ii) Any offer is made, or any action or proceeding is threatened or commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

(c) If Beneficiary chooses to do so, Beneficiary may (but is not obligated to) in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury, or loss to all or part of the Property, and Beneficiary may make any compromise or



settlement of the action or proceeding with respect to its rights and interests. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Trustor in adjusting any loss covered by insurance, and in connection therewith, Beneficiary shall have the right to be represented by counsel of its choice.

(d) All proceeds of these assigned claims and all other property and rights which Trustor may receive or be entitled to shall be paid to Beneficiary. In each instance, Beneficiary shall apply such proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including reasonable attorneys' fees. If, in any instance, each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Trustor to use the balance of such proceeds (the "Net Claims Proceeds") to pay costs of repairing or reconstructing the Property in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract, construction schedule, contractor and payment and performance bond for the work of repair or reconstruction shall all be reasonably acceptable to Beneficiary; and

(ii) Beneficiary shall receive evidence reasonably satisfactory to it that after repair or reconstruction, the Property would be at least as valuable as it was immediately before the damage or condemnation occurred, and in this regard and notwithstanding any other provisions of the Loan Documents, Beneficiary may order an appraisal from an appraiser acceptable to Beneficiary, the cost of which shall be borne by Trustor; and

(iii) The Net Claims Proceeds (together with the net proceeds of any rental interruption insurance and reasonably projected rental receipts during the repair or reconstruction period) shall be sufficient in Beneficiary's determination to pay for the total cost of repair or reconstruction, including all associated development costs and interest and other sums projected to be payable on the Secured Obligations until the repair or reconstruction is complete; or Trustor shall provide its own funds in an amount equal to the difference between the Net Claims Proceeds and a reasonable estimate, made by Trustor and found acceptable by Beneficiary, of the total cost of repair or reconstruction; and

(iv) Unless otherwise agreed to by Beneficiary, Beneficiary shall receive evidence satisfactory to it that, after the repair or reconstruction is complete, (1) all non-residential leases acceptable to Beneficiary will continue (or a replacement therefor reasonably satisfactory to Beneficiary immediately commences); and (2) the Property will continue to operate in substantially the same manner, and will generate the same debt service coverage as immediately before the damage or condemnation occurred; and

(v) Beneficiary shall be satisfied that the repair or reconstruction can be completed prior to the maturity date of the Note; and

(vi) No default or Event of Default (as defined in the applicable document, subject to applicable notice and cure periods) shall have occurred and be continuing under this Deed of Trust, the Note, the Loan Agreement or any other Loan Document.

If Beneficiary finds that such conditions have been met, Beneficiary shall hold the Net Claims Proceeds, and any funds which Trustor is required to provide, in an account and shall disburse them to Trustor to pay costs of repair or reconstruction upon presentation of evidence reasonably satisfactory to Beneficiary that repair or reconstruction has been completed satisfactorily and lien-free, including partial progress payments of Net Claims Proceeds from time to time, in accordance with a cost breakdown approved by Beneficiary and the same procedures and subject to the same conditions as are set forth in the Loan Agreement for Loan disbursements. However, if Beneficiary finds that one or more of such conditions have not been satisfied, Beneficiary may apply the Net Claims Proceeds to pay or prepay some or all of the Secured Obligations in such order and proportions as Beneficiary may determine, all without affecting the lien and security interest created by this Deed of Trust.

(e) Notwithstanding the foregoing, in the event any governmental agency or authority shall require, or commence any proceedings for, the demolition of any buildings or structures comprising a substantial part of the Improvements, or shall commence any proceedings to condemn or otherwise take pursuant to the power of eminent domain a material portion of the Land or Improvements, Beneficiary may, at its option, declare the Secured Obligations to be immediately due and payable and apply any condemnation awards or proceeds to the Secured Obligations.

(f) Trustor hereby specifically, unconditionally, and irrevocably waives all rights of a property owner granted under any applicable law that provides for allocation of condemnation proceeds between a property owner and a lienholder, and any other law or successor statute of similar import.

#### **5.6 Surety Bond Proceeds.**

(a) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, all payments, rights to payment, and all other compensation payable, directly or indirectly, under any payment, performance, or other bond (each a "Surety Bond") related to, or issued in connection with, the construction of any Improvements or the performance of any acts, related to the Property or any interest in it, whether or not such Surety Bonds are required by Beneficiary.

(b) Trustor shall immediately notify Beneficiary in writing of:

(i) Any threatened or actual default or breach of any obligation under any Surety Bond; or

(ii) Any action or inaction, including a breach by any contractor under their contract (if applicable), which would give rise to the obligation of the payor/surety to pay any sums or perform any acts pursuant to the terms of any Surety Bond.

(c) If Beneficiary chooses to do so, Beneficiary may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on any claim under a Surety Bond, and Beneficiary may make any compromise or settlement of any such action or proceeding.

(d) All proceeds of these assigned payments, rights to payment, and compensation payable, directly or indirectly, under any Surety Bond which Trustor may receive or be entitled to, shall be paid to Beneficiary. In each instance, Beneficiary shall apply such proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including reasonable attorneys' fees. If Trustor desires to use the balance of such proceeds (the "Net Bond Proceeds") to pay the costs of completing all or a part of the construction of certain of the Improvements, and each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Trustor to pay such costs of construction, in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract (including any replacement contract), construction schedule (including all revisions thereto), contractor (including any replacement contractor), and, if required by Beneficiary, any replacement payment and performance bond for the construction work, shall all be acceptable to Beneficiary; and

(ii) To the extent allowed pursuant to the terms of the Surety Bond, Beneficiary shall have approved any replacement contractor(s); and

(iii) Beneficiary shall receive evidence satisfactory to it that after the construction is complete, the Property would be at least as valuable as it would have been if completed pursuant to the original construction contract, and in this regard and notwithstanding any other provisions of the Loan Documents, Beneficiary may order an appraisal from an appraiser acceptable to Beneficiary, the cost of which shall be borne by Trustor; and

(iv) The Net Bond Proceeds shall be sufficient in Beneficiary's determination to pay for the total cost of the applicable construction, including all associated development costs and interest and other sums projected to be payable on the Secured Obligations until the applicable construction is complete; or Trustor shall provide its own funds in an amount equal to the difference between the Net Bond Proceeds and a reasonable estimate, made by Trustor and found acceptable by Beneficiary, of the total cost of such construction; and

(v) Beneficiary shall be satisfied that the repair or reconstruction can be completed prior to the maturity date of the Note; and

(vi) No default or Event of Default (as defined in the applicable document, subject to applicable notice and cure periods) shall have occurred and be continuing under this Deed of Trust, the Note, the Loan Agreement or any other Loan Document.

If Beneficiary finds that such conditions have been met, Beneficiary shall hold the Net Bond Proceeds, and any funds which Trustor is required to provide, in a non-interest-bearing account and shall disburse them to Trustor to pay costs of construction upon presentation of evidence reasonably satisfactory to Beneficiary that the construction has been completed satisfactorily and lien-free, including partial progress payments of Net Bond Proceeds from time to time, in accordance with a cost breakdown approved by Beneficiary and the same procedures and subject to the same conditions, as are set forth in the Loan Agreement for Loan disbursements. However, if Beneficiary finds that one or more of such conditions have not been satisfied, Beneficiary may apply the Net Bond Proceeds to pay or prepay some or all of the Secured Obligations in such order and proportions as Beneficiary may choose, all without affecting the lien and security interest created by this Deed of Trust.

(e) Notwithstanding anything herein to the contrary, to the extent that any of the terms of this Section conflict with the terms of any Surety Bond which has been approved in writing by Beneficiary, the terms of such Surety Bond shall control.

#### **5.7 Maintenance and Preservation of Property.**

(a) Trustor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Trustor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except as permitted or required by the Loan Documents or with Beneficiary's express prior written consent in each instance.

(c) If all or part of the Property becomes damaged or destroyed, Trustor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices and notwithstanding the unavailability (for whatever reason) of insurance proceeds from any Property insurer; provided, however, this subsection is subject to the provisions of **Sections 5.5** and **5.6** above.

(d) Trustor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable law or order of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under the Loan Documents.

(e) Trustor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Agreement as waste that arise out of Hazardous Substances (as such term is defined in the Loan Agreement).

(f) Trustor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value and utility.

(g) If any part of Trustor's interest in the Property is a leasehold interest, Trustor shall observe and perform all obligations of Trustor under any such lease or leases and shall refrain from taking any actions prohibited by any lease or leases, and Trustor shall preserve and protect such leasehold estate and its value.

(h) If any easement or right of way appurtenant to, or recorded agreement which benefits, the Property exists or is hereafter entered into, Trustor shall perform its obligations and duties under such easement, right of way, or agreement, and shall take all such actions as may be necessary to prevent such easement, right of way, or agreement from being terminated for Trustor's non-performance. Trustor irrevocably appoints Beneficiary its attorney-in-fact, with full power of substitution, for the purpose of performing any act to be performed by Trustor under any such easement, right of way, or agreement, such power deemed to be coupled with an interest and therefore irrevocable.

(i) Trustor shall protect and defend the Property against all claims and demands of all persons at any time claiming the same or any interest therein, and preserve and protect Beneficiary's security interest in the Property.

(j) Trustor shall permit Beneficiary's representatives to inspect and make copies of all Books and Records relating to the Property, wherever such Books and Records are located, and to conduct an audit relating to the Property at any reasonable time or times upon reasonable advance notice.

**5.8 Trustee's Acceptance of Trust.** Trustee accepts this trust when this Deed of Trust is recorded.

**5.9 Releases, Extensions, Modifications, and Additional Security.**

(a) From time to time, Beneficiary may perform any of the following acts without incurring any liability or giving notice to any person:

(i) Release any person liable for payment of any Secured Obligation; or

(ii) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation; or

(iii) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or

(iv) Alter, substitute or release any property securing the Secured Obligations.

(b) From time to time, when requested to do so by Beneficiary in writing, Trustee may perform any of the following acts without incurring any liability or giving notice to any person:

(i) Consent to the making of any plat or map of the Property or any part of it;  
or

(ii) Join in granting any easement or creating any restriction affecting the Property; or

(iii) Join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or

- (iv) Reconvey the Property or any part of it without any warranty.

**5.10 Reconveyance; Release.** When all of the Secured Obligations have been paid and performed in full, and no further commitment to extend credit continues under the Secured Obligations, then (except to the extent expressly provided herein with respect to the survival of any indemnifications, representations, warranties, and other rights which are to continue following the release or reconveyance hereof) Trustee shall reconvey the Property from the liens, security interests, conveyances and assignments herein, and this Deed of Trust and all promissory notes and instruments evidencing the Secured Obligations shall be returned to the appropriate party or parties. Any such reconveyance shall be without warranty to the person or persons legally entitled to it. Such person or persons shall pay any costs of recordation. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance.

**5.11 Compensation, Exculpation, Indemnification.**

(a) Trustor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary and Trustee when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including Beneficiary's providing a statement of the Secured Obligations or Trustee's rendering of services in connection with a release or reconveyance (full or partial). Trustor shall also pay or reimburse all of Beneficiary's and Trustee's costs and expenses which may be incurred in rendering any such services. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses, and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including the exercise of any rights or remedies afforded to Beneficiary or Trustee or both of them under the remedies section below, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs (which shall include reimbursement for the allocated costs of in-house counsel used by Beneficiary and/or Trustee to the extent not prohibited by law), costs of any Trustee's Sale (as described below), any judicial foreclosure of this Deed of Trust, and any cost of evidence of title. If Beneficiary chooses to dispose of Property through more than one Trustee's Sale or judicial foreclosure, Trustor shall pay all costs, expenses, or other advances that may be incurred or made by Trustee or Beneficiary in each of such Trustee's Sales or judicial foreclosure actions.

(b) Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

(i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust;

(ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust;

(iii) Any waste committed by lessees of the Property or any other parties, or any dangerous or defective condition of the Property; or

(iv) Any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property, or from any other act or omission of Beneficiary in operating or managing the Property, after an Event of Default, unless the loss is caused solely by the gross negligence or willful misconduct of Beneficiary.

Trustor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary.

(c) Trustor agrees to indemnify, defend, and hold Trustee and Beneficiary harmless, for, from, and against, and reimburse them for, all losses, damages, liabilities, claims, causes of action,

judgments, penalties, court costs, reasonable attorneys' fees and other legal expenses and expenses of professional consultants and experts, cost of evidence of title, cost of evidence of value, and other costs and expenses, including the settlement of any such matter, excepting those arising out of, or resulting, solely from Beneficiary's or Trustee's, as the case may be, gross negligence or willful misconduct, which either may suffer or incur:

(i) In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law;

(ii) Because of any failure of Trustor to perform any of Trustor's obligations;  
or

(iii) Because of any alleged obligation of or undertaking by Beneficiary to perform or discharge any of the representations, warranties, conditions, covenants, or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Trustor to indemnify Trustee and Beneficiary shall survive payoff, termination, or the release and cancellation of any or all of the Secured Obligations, and the full or partial release and/or reconveyance of this Deed of Trust.

(d) Trustor shall pay all obligations to pay money arising under this Section immediately upon written demand by Trustee or Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate (as such term may be defined in the Note), or if no Default Rate is specified, at five percent (5%) in excess of the Stated Rate. For purposes hereof, "Stated Rate" means the stated interest rate in effect from time to time under the Note and/or other debt instrument evidencing the Loan; provided that if more than one rate of interest is in effect, the highest rate shall be used.

**5.12 Defense and Notice of Claims and Actions.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing if any claim is asserted which does or could affect any of such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

**5.13 Subrogation.** Beneficiary shall be subrogated to the liens of all encumbrances affecting the Property, whether released or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust or with the proceeds of any loan secured by this Deed of Trust.

**5.14 Site Visits, Observation and Testing.** Beneficiary and its agents and representatives and the other Indemnified Parties (as such term is defined in the Loan Agreement), and their agents and representatives, shall have the right at any reasonable time to enter and visit the Property for the purposes of observing the Property, performing appraisals, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. The Indemnified Parties have no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation, or testing by any Indemnified Party shall impose any liability on any Indemnified Party. In no event shall any site visit, observation, or testing by any Indemnified Party be a representation that Hazardous Substances (as such term is defined in the Loan Agreement) are or are not present in, on, or under the Property, or that there has been or shall be compliance with any law, regulation, or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Trustor nor any other party is entitled to rely on any site visit, observation, or testing by any Indemnified Party. The Indemnified Parties owe no duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. The Indemnified Parties may in their discretion disclose to Trustor or any other party any report or findings made as a result of, or in connection with, any site visit, observation, or testing by the Indemnified Parties. Trustor understands and agrees that the Indemnified Parties make no representation or warranty to Trustor or any other party regarding the truth, accuracy, or

completeness of any such report or findings that may be disclosed. Trustor also understands that, depending on the results of any site visit, observation, or testing by any Indemnified Party which are disclosed to Trustor, Trustor may have a legal obligation to notify one or more environmental agencies of the results. Any Indemnified Party shall give Trustor reasonable notice before entering the Property. Such Indemnified Party shall make reasonable efforts to avoid interfering with Trustor's use of the Property in exercising any rights provided in this Section. In connection with any such site visit, observation, or testing, Trustor shall have any rights with respect to the release and/or disclosure of environmental reports as set forth in the Loan Agreement. The right of entry and inspection granted pursuant to this Section shall include all rights made available to a secured lender under California Civil Code § 2929.5, and the right to appoint a receiver to enforce such right of entry and inspection pursuant to this Section shall include the authority given to a secured lender under California Code of Civil Procedure § 564(c).

**5.15 Notice of Change.** Trustor will not cause or permit any change to be made in (a) its name, identity, or corporate, partnership, limited liability company, or other entity structure, (b) its jurisdiction of organization (c) its organizational identification number, (d) its place of business or, if more than one, its chief executive office, (e) its mailing address, or (f) any change in the location of any Property, unless Trustor shall have notified Beneficiary in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Beneficiary for the purpose of further perfecting or protecting the lien and security interest of Beneficiary in the Property. Unless otherwise approved by Beneficiary in writing, all Property that consists of personal property (other than Books and Records) will be located on the Land and all Books and Records will be located at Trustor's place of business or chief executive office if Trustor has more than one place of business.

**5.16 Further Assurances.** Trustor shall, promptly on request of Beneficiary, (a) correct any defect, error or omission which may be discovered in the contents, execution, or acknowledgment of this Deed of Trust or any other Loan Document; (b) execute, authenticate, acknowledge, deliver, procure, and record and/or file and/or authorize the filing of such further documents (including, without limitation, further deeds of trust, security agreements, financing statements, financing statement amendments, continuation statements, and assignments of rents or leases) and do such further acts as may be necessary, desirable, or proper (i) to carry out more effectively the purposes of this Deed of Trust and the other Loan Documents, (ii) to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property), or (iii) as deemed advisable by Beneficiary to protect the lien or security interest hereunder against the rights or interests of third persons; (c) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper to enable Beneficiary to comply with the requirements or requests of any agency having jurisdiction over Beneficiary or any examiners of such agencies with respect to the Secured Obligations, the Trustor, or the Property; (d) continue, perfect, or protect any security interest granted or purported to be granted hereby, and (e) enable Beneficiary to exercise and enforce any of its rights and remedies hereunder with respect to any Property. Such actions may include but not be limited to executing, acknowledging, delivering, procuring, and recording and/or filing such further documents (including, without limitation, further security agreements, financing statements, financing statement amendments, and continuation statements), and doing such further acts as may be necessary, desirable, or proper to (A) carry out more effectively the purposes of this Deed of Trust or (B) more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property), (C) protect the lien or the security interest hereunder against the rights or interests of third persons, and/or (D) enable Beneficiary to exercise and enforce any of its rights and remedies hereunder with respect to any of the Property, provided that Trustor shall not be required to execute any document or take any action that increases the liability of Trustor. Trustor shall pay all costs connected with any of the foregoing within five (5) days after the written demand by Trustee or Beneficiary. If not paid when due, such costs shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date of such written demand at the Default Rate (as such term may be defined in the Note), or if no Default Rate is specified, at five percent (5%) in excess of the Stated Rate.

## **6. Accelerating Transfers, Default and Remedies.**

### **6.1 Accelerating Transfers.**

(a) "Accelerating Transfer" has the meaning given to it in **Section 7.5** of the Loan Agreement.

(b) Trustor acknowledges that Beneficiary is making one or more advances under the Loan Agreement in reliance on the expertise, skill, and experience of Trustor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Beneficiary's reliance, Trustor agrees that Trustor shall not make any Accelerating Transfer, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole and absolute discretion. If any Accelerating Transfer occurs, an Event of Default will occur under the Loan Agreement, and Beneficiary may implement available rights and remedies under the Loan Agreement and the other Loan Documents including declaration of all of the Secured Obligations to be immediately due and payable, and Beneficiary and Trustee may invoke any rights and remedies under this Deed of Trust. Trustor acknowledges the materiality of the provisions of this Section as a covenant of Trustor, given individual weight and consideration by Beneficiary in entering into the Secured Obligations, and that any Accelerating Transfer in violation of the prohibited transfer provisions herein set forth shall result in a material impairment of Beneficiary's interest in the Property and be deemed a breach of the foregoing covenant.

(c) Notwithstanding the foregoing, Beneficiary acknowledges and agrees that any transfer specifically allowed or permitted by, and made in accordance with, the terms of the Loan Agreement, if any, shall not be an Accelerating Transfer under this Section.

**6.2 Events of Default.** Trustor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default;" any one singly, an "Event of Default"):

(a) Trustor fails to perform any obligation to pay money which arises under this Deed of Trust, and does not cure that failure within five (5) days after written notice from Beneficiary or Trustee; or

(b) Trustor is in default under any obligation arising under this Deed of Trust other than one to pay money, and does not cure that default either within thirty (30) days (the "Initial Cure Period") after written notice from Beneficiary or Trustee, or within sixty (60) days after such written notice, so long as Trustor begins within the Initial Cure Period, and Beneficiary, exercising reasonable judgment, determines that the cure cannot reasonably be completed at or before expiration of the Initial Cure Period; or

(c) A default or Event of Default (as such term is defined in the applicable document, subject to any applicable notice and cure periods) has occurred and is continuing under the Loan Agreement or any other Loan Document; or

(d) Trustor makes or permits the occurrence of an Accelerating Transfer; or

(e) Any material default occurs (after expiration of all applicable notice and cure periods) and is continuing under any other mortgage, deed of trust, security deed, or other security instrument on all or any part of the Property, or under any obligation secured by such security instrument, whether such security instrument is prior to or subordinate to this Deed of Trust.

**6.3 Remedies.** Except as otherwise expressly set forth in the Loan Agreement or any other Loan Document, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below or permitted by applicable law or in equity. All of



such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately and may terminate any Loan Document in accordance with its terms.

(b) Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain an appointment of, a receiver, custodian, trustee, liquidator, or conservator of the Property without regard for the adequacy of the security for the Secured Obligations and without regard the solvency of Trustor or any Person liable for the payment of the Secured Obligations; and Trustor and any Person so liable hereby waives and shall be deemed to have waived the foregoing and any other objections to the fullest extent permitted by Laws and for the Property. Trustor hereby consents and shall be deemed to have consented to such appointment.

(c) Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and in its own name or in the name of Trustor sue for or otherwise collect any and all Rents, including those that are past due, and may also do any and all other things in connection with those actions that Beneficiary may in its sole and absolute discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Trustor's or the then owner's Books and Records; entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents (but not in excess of any applicable maximum low income rents for residential tenants); collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; contracting for and making repairs and alterations; and/or performing such acts of cultivation or irrigation as necessary to conserve the value of the Property. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact, with full power of substitution, to perform such acts and execute such documents as Beneficiary in its sole and absolute discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments. The appointment granted in this Section shall be deemed to be a power coupled with an interest. Regardless of any provision of this Deed of Trust, or any other Loan Document, Beneficiary shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any obligation of Trustor to Beneficiary, unless Beneficiary has given express written notice of Beneficiary's election of that remedy in accordance with applicable law. Trustor agrees to deliver to Beneficiary all Books and Records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access or process such memory, as may reasonably be requested by Beneficiary in order to enable Beneficiary to exercise its rights under this Section.

(d) Cure; Protection of Security. Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things that it may, in its sole and absolute discretion, consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding that purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien, which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Documents; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section either with or without giving notice to any person.

(e) Cure Rights of Limited Partner. The Investor Limited Partner (as defined in the Loan Agreement) shall have the notice and cure rights set forth in Section 7 of the Loan Agreement.

(f) UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

(g) Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for the foreclosure of deeds of trusts or mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust. If Beneficiary brings such an action, Trustor agrees to pay Beneficiary's reasonable attorneys' fees (including the allocated costs of in-house counsel to the extent not prohibited by applicable law) and court costs as determined by the court.

(h) Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) Sales of Personal Property.

(A) For purposes of this power of sale, and to the extent not prohibited by applicable law, Beneficiary may elect to treat as personal property any Property which is intangible or which can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Beneficiary may dispose of any personal property separately from the sale of real property, in any manner permitted by the UCC, including any public or private sale, or in any manner permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation.

(B) In connection with any sale or other disposition of such personal property disposed of separately from the sale of the real property, Trustor agrees that the following procedures constitute a commercially reasonable sale. Beneficiary shall mail written notice of the sale to Trustor not later than ten (10) days prior to the date of public sale of the Property or prior to the date after which a private sale of the Property will be made, and such notice shall constitute reasonable notice; provided that, if Beneficiary fails to comply with this subsection in any respect, its liability for such failure shall be limited to the liability, if any, imposed on it as a matter of law under the UCC. Upon receipt of any written request, Beneficiary will make the personal property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Beneficiary shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equal the fair value of the personal property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(ii) Trustee's Sales of Real Property or Mixed Collateral.

(A) Beneficiary may choose to dispose of some or all of the Property which consists solely of real property in any manner then permitted by applicable law. In its sole and absolute discretion, and to the extent not prohibited by applicable law, Beneficiary may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as may be permitted by the UCC. Trustor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property. For purposes of this power of sale, either a sale of real property alone, or a sale of both real and personal property together in accordance with the UCC, will sometimes be referred to as a "Trustee's Sale."

(B) Before any Trustee's Sale, Beneficiary or Trustee shall give such statement of breach or nonperformance, notice of sale, and/or notice of default as may

then be required by applicable law. When all time periods then legally mandated have expired, and after such notice of sale and/or other notice as may then be legally required has been given, Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Trustor before any Trustee's Sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any Trustee's Sale by public announcement at the time and place noticed for that Trustee's Sale, unless otherwise required by applicable law.

(C) At any Trustee's Sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, payable at the time of sale unless otherwise required by applicable law. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Trustee's Sale, shall be conclusive proof of their truthfulness, absent manifest error. Absent manifest error, any such deed shall be (1) conclusive against all persons as to the facts recited in it; and (2) conclusive evidence in favor of purchasers and encumbrancers for value and without actual notice, that all requirements of this Deed of Trust and all requirements of law were met relating to the exercise of the power of sale and the Trustee's Sale of the Property conveyed by such deed. Knowledge of the Trustee shall not be imputed to the Beneficiary.

(i) Attorney-in-Fact. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact, with full power of substitution, to perform such acts and execute such documents as Beneficiary in its sole and absolute discretion may consider to be appropriate (1) to effect the purpose of this Deed of Trust; and (2) in connection with taking the measures described in this Section, including endorsement of Trustor's name on any instruments. This appointment granted in this Section shall be deemed to be a power coupled with an interest, and is therefore irrevocable.

(j) Single or Multiple Foreclosure Sales. Unless prohibited by applicable law, Beneficiary may elect to dispose of the Property, or any portion thereof, including but not limited to lots, parcels, and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted above, or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Beneficiary may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" any two or more, "Foreclosure Sales"). If the Property consists of more than one lot, parcel or item of property, Beneficiary may designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition. If Beneficiary chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Beneficiary may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the lien of this Deed of Trust on any part of the Property which has not been sold, until all of the Secured Obligations have been paid and performed in full.

**6.4 Personal Property.** It shall not be necessary that Beneficiary take possession of all or any part of the Property that is personal property or fixture property prior to the time that any sale pursuant to the provisions of this Section is conducted, and it shall not be necessary that such Property or any part thereof be present at the location of such sale. With respect to application of proceeds from disposition of such Property, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses (including, without limitation, the allocated costs for in-house counsel to the extent not prohibited by applicable law) incurred by Beneficiary. Any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Obligations or as to the occurrence of any default or Event of Default, or as to Beneficiary having declared all of such indebtedness to be due and payable, or as to notice of time, place, and terms of sale, and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so

stated and recited (absent manifest error). Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary. Beneficiary may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Property or any part thereof, and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of such Property. Beneficiary may sell all or any portion of the Property without giving any warranties as to such Property, and may specifically disclaim any warranties of title, merchantability, fitness for a specific purpose, or the like, and this procedure will not be considered to affect adversely the commercial reasonableness of any sale of such Property. Trustor acknowledges that a private sale of all or any part of the Property may result in less proceeds than a public sale, and Trustor acknowledges that the Property may be sold at a loss to Trustor, and that, in such event, Beneficiary shall have no liability or responsibility to Trustor for such loss. In addition to the rights granted elsewhere in this Deed of Trust, after the occurrence of any default or Event of Default, Beneficiary may at any time notify the account debtors or obligors of any accounts, chattel paper (whether tangible or electronic), general intangibles (including payment intangibles), negotiable instruments, promissory notes, or other evidences of indebtedness included in the Property to pay Beneficiary directly.

**6.5 Credit Bids.** At any Trustee's Sale, Foreclosure Sale, or any sale of personal property collateral under this Deed of Trust, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property being sold or any part of it to the extent not expressly prohibited by then applicable law. Instead of paying cash for such property, Beneficiary shall have the benefit of any applicable law permitting credit bids.

**6.6 Application of Trustee's Sale or Foreclosure Sale Proceeds.** Except as may be otherwise required by law, Beneficiary and Trustee shall apply the proceeds of any Trustee's Sale, Foreclosure Sale, or any other sale of personal property collateral under this Deed of Trust, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, including all costs and expenses of exercising the power of sale and other costs of sale, including, but not limited to, trustee's fees and reasonable attorneys' fees, the costs of any action, and any other sums for which Trustor is obligated to reimburse Beneficiary or Trustee under this Deed of Trust; and

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary or Trustee under the terms of this Deed of Trust or any other Loan Documents which then remains unpaid; and

(c) Third, to pay all other Secured Obligations, to the extent not expressly prohibited by applicable law, in any order and proportions as Beneficiary in its sole and absolute discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it, or, if permitted or required by applicable law, to the clerk of the court of the county in which the Trustee's Sale, Foreclosure Sale, or any other sale of personal property collateral under this Deed of Trust, took place.

If the Secured Obligations include more than one loan or line of credit, by cross-collateralization or otherwise, it is specifically agreed that the proceeds of any Trustee's Sale or other foreclosure action shall not be applied pro-rata unless such application is directed by Beneficiary, but instead shall be applied to all such Secured Obligations in any order, proportions and manner as Beneficiary in its sole and absolute discretion may choose.

**6.7 Application of Rents and Other Sums.** Beneficiary shall apply any and all Rents collected by it in such order as set forth in **Section 2.5** above, and any and all other sums, other than proceeds of a Trustee's Sale or a judicial foreclosure sale under this Deed of Trust, which Beneficiary may receive or collect under this Section, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation of the Property and collection of Rents and other sums that may be incurred by Trustee, Beneficiary, and/or any receiver, including but not limited to reasonable attorneys' fees and any and all expenses of leasing, operating, maintaining, and managing the Property, and all other costs and charges incident to the Property; and

(b) Second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole and absolute discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds which it does not actually receive.

## **7. Miscellaneous Provisions.**

**7.1 Additional Provisions.** The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also grant further rights to Beneficiary and certain of them contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property.

### **7.2 No Waiver or Cure.**

(a) Each waiver by Beneficiary or Trustee shall be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. Reinstatement after an Event of Default shall not constitute a waiver of any Event of Default then existing or subsequently occurring, nor impair the right of Beneficiary to declare other Events of Default, nor otherwise affect this Deed of Trust or any of the Loan Documents, or any of the rights, obligations, or remedies of Beneficiary or Trustee under this Deed of Trust or any of the Loan Documents.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default, or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Deed of Trust; or prejudice Beneficiary, Trustee, or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust.

(i) Beneficiary, its agent, or a receiver takes possession of all or any part of the Property in the manner provided this Deed of Trust; or

(ii) Beneficiary collects and applies Rents and enforces any Lease provision as permitted under this Deed of Trust, either with or without taking possession of all or any part of the Property; or

(iii) Beneficiary receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, surety bond proceeds, or other claims, property or rights assigned to Beneficiary under this Deed of Trust; or

(iv) Beneficiary makes a site visit, observes the Property, and/or conducts tests as permitted under this Deed of Trust; or

(v) Beneficiary receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations; or

(vi) Beneficiary, Trustee, any agent of either of them, or any receiver performs any act which it is empowered or authorized to perform, or invokes any right or remedy provided under this Deed of Trust.

### **7.3 Powers of Beneficiary and Trustee.**

(a) Trustee shall have no obligation to perform any act which it is empowered to perform under this Deed of Trust unless it is requested to do so in writing and is reasonably indemnified against loss, cost, liability and expense.

(b) If either Beneficiary or Trustee performs any act which it is empowered or authorized to perform under this Deed of Trust, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding or the lien of this Deed of Trust on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Trustor shall not be released or changed if Beneficiary grants any successor in interest to Trustor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Beneficiary shall not be required to comply with any demand by the original Trustor that Beneficiary refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(c) Beneficiary may take any of the actions permitted under this Deed of Trust, including without limitation appointment of a receiver, regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

(d) From time to time, Beneficiary or Trustee may apply to any court of competent jurisdiction for aid and direction in executing the trust and enforcing the rights and remedies created under this Deed of Trust. Beneficiary or Trustee may from time to time obtain orders or decrees directing, confirming, or approving acts in executing this trust and enforcing such rights and remedies.

**7.4 Merger.** No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Property unless Beneficiary consents to a merger in writing.

**7.5 Joint and Several Liability.** If more than one person has executed this Deed of Trust as Trustor, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust

**7.6 Governing Law.** This Deed of Trust shall be governed by the laws of the State of California, without regard to the choice of law rules of that state.

**7.7 Successors in Interest.** The terms, covenants, and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, and permitted successors, and assigns of the parties; provided, however, that this Section shall not waive or modify the provisions of **Section 6.1** above.

**7.8 Statute of Limitations.** To the extent not expressly prohibited by law, Trustor hereby waives the right to plead the statute of limitations as a defense to any and all obligations secured by this Deed of Trust.

**7.9 Substitution of Trustee.** From time to time, Beneficiary may substitute a successor to any Trustee named in or acting under this Deed of Trust in any manner now or later to be provided at law, or by a written instrument executed and acknowledged by Beneficiary and recorded in the office(s) of the

recorder(s) of the county or counties where the Land and the Improvements are situated. Any such instrument shall be conclusive proof of the proper substitution of the successor Trustee, who shall automatically upon recordation of the instrument succeed to all estate, title, rights, powers and duties of the predecessor Trustee, without conveyance from it.

**7.10 Time of Essence.** Time is of the essence of this Deed of Trust and each and every term thereof.

**7.11 Interpretation.**

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed, and contingent obligations. It further includes all principal, interest, prepayment fees, late charges, loan fees, and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items, or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibits to this Deed of Trust are hereby incorporated by reference in this Deed of Trust.

(d) No course of prior dealing, usage of trade, or parol or extrinsic evidence of any nature shall be used to supplement, modify, or vary any of the terms hereof.

**7.12 Attorneys Fees; In-House Counsel Fees.** In any lawsuit, reference, or arbitration arising out of or relating to this Deed of Trust the prevailing party will be entitled to recover from each other party such sums as the court, referee, or arbitrator adjudges to be reasonable attorneys' fees in the action, reference, or arbitration, in addition to costs and expenses otherwise allowed by law. Whenever Trustor is obligated to pay or reimburse Beneficiary or Trustee for any attorneys' fees, those fees shall include the allocated costs for services of in-house counsel to the extent not prohibited by applicable law.

**7.13 Waiver of Marshaling.** Trustor waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust. Each successor and assign of Trustor, including any holder of a lien subordinate to this Deed of Trust, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

**7.14 Severability.** If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Deed of Trust, except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

**7.15 Notices.** Trustor hereby requests that a copy of any notice of default, notice of sale, and/or other notices prescribed by applicable law, be mailed to it at the address set forth below. If any Trustor fails to insert an address, that failure will constitute a designation of Trustor's last known address as the address of such notice. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address given below is the address for Beneficiary as secured party under the UCC.

**7.16 Partial Releases.** Trustor may, regardless of consideration, cause the release of any part of the Property from the lien of this Deed of Trust without in any manner affecting or impairing the lien or priority of this Deed of Trust as to the remainder of the Property. Notwithstanding anything contained herein

to the contrary, this Deed of Trust is subject to any partial release provisions set forth in the Loan Agreement.

**7.17 Reporting Compliance.** Trustor agrees to comply with any and all reporting requirements applicable to Secured Obligations which are set forth in any law, statute, ordinance, rule, regulation, order, or determination of any governmental authority, and further agrees to furnish Beneficiary with evidence of such compliance upon the request of Beneficiary.

**7.18 Release Fee.** Unless expressly prohibited by applicable law, Trustor shall pay to Beneficiary, at the time of each partial or complete release of the lien of this Deed of Trust, a reasonable release fee, as determined by Bank.

**7.19 CCP Section 726.5.** In the event that any portion of the Property is determined to be 'environmentally impaired' (as 'environmentally impaired' is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an 'affected parcel' (as 'affected parcel' is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting Beneficiary's or Trustee's rights and remedies under this Deed of Trust, Beneficiary may elect to exercise its right under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (i) the rights and remedies of an unsecured creditor, including reduction of its claim against Trustor to judgment, and (ii) any other rights and remedies permitted by law. For purposes of determining Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant or user of any portion of the Property and Trustor knew or should have known of the activity by such lessee, occupant or user which caused or contributed to the release or threatened release. All costs and expenses, including, but not limited to, attorneys' fees, incurred by Beneficiary in connection with any action commenced under this Section, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the rate specified in the Note until paid, shall be added to the indebtedness secured by this Deed of Trust and shall be due and payable to Beneficiary upon its demand made at any time following the conclusion of such action.

**7.20 CCP Section 1265.225(a).** Trustor hereby unconditionally and irrevocably waives all rights of a property owner under Section 1265.225(a) of the California Code of Civil Procedure or any successor statute providing for the allocation of condemnation proceeds between a property owner and a lien holder.

**7.21 Extended Use Agreement.** Notwithstanding anything contained in the Loan Documents, Beneficiary hereby acknowledges and agrees that the State of California, acting through the Tax Credit Allocating Body, intends to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the "Code"). As of the date hereof, Code Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Code Section 42 for a period of three (3) years after the date the Property is acquired by foreclosure or by instrument in lieu of foreclosure, even though such foreclosure or instrument in lieu of foreclosure would cause the termination of any such extended use agreement required by the Tax Credit Allocating Body. In the event the extended use agreement required by the Tax Credit Allocating Body is recorded against the Property, Beneficiary agrees to comply with the provisions set forth in Code Section 42(h)(6)(E)(ii).

**7.22 Beneficiary and Trustee Rights.** Notwithstanding anything to the contrary contained in this Deed of Trust, and without limitation of any other rights and remedies of Beneficiary or Trustee, Beneficiary and Trustee shall have each and all of the rights and remedies under California Civil Code Section 2929.5 and California Code of Civil Procedure Sections 564, 726.5 and 736. Without limiting any of the remedies provided in the Loan Documents, Trustor acknowledges and agrees that certain provisions of the Loan Documents are environmental provisions, as that term is defined in Section 736(f)(2) of the



California Code of Civil Procedure, made by the Trustor relating to the real property security, and that Trustor's failure to comply with the terms of such environmental provisions is a breach of contract such that Beneficiary shall have the remedies provided under Section 736 of the California Code of Civil Procedure ("Section 736") for the recovery of damages and for the enforcement thereof. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of such environmental provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency, or a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, or 726(b) of the California Code of Civil Procedure. Trustor agrees that Beneficiary will have the same right, power and authority to enter and inspect the Property as is granted to the secured lender under Section 2929.5 of the California Civil Code, and that Beneficiary will have the right to appoint a receiver to enforce this right to enter and inspect the Property to the extent such authority is provided under California Law, including, without limitation, the authority given to the secured lender under Section 564(c) of the California Code of Civil Procedure.

*[Remainder of page left intentionally blank.  
See the following page for signatory and notary jurat.]*

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust the date first above written.

“TRUSTOR”

**LIVE OAK PACIFIC ASSOCIATES,  
A CALIFORNIA LIMITED PARTNERSHIP,**  
a California limited partnership

Address for notices to Trustor:

Live Oak Pacific Associates,  
A California Limited Partnership  
c/o The Pacific Companies, Inc.  
430 East State Street, Suite 100  
Eagle, Idaho 83616  
Attn: Caleb Roope

By: TPC Holdings V, LLC,  
an Idaho limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Caleb Roope  
Manager

with a copy to:

Sutter Community Affordable Housing

By: Sutter Community Affordable Housing  
a California nonprofit public benefit  
corporation,  
its Managing General Partner

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and a copy to:

CREA Kristen Court, LLC

By: \_\_\_\_\_  
Martha Griese  
Vice President

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for notices to Trustee:

First American Title Company  
211 East Caldwell Avenue  
Visalia, CA 93277  
Attn: Ann Kay

Address for notices to Beneficiary:

Rabobank, N.A.  
Attention: Community Development Finance  
618 West Main Street  
Visalia, California 93291

*[All signatures must be acknowledged by a notary.]*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**Exhibit A to DEED OF TRUST**

Description of Property

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SUTTER,  
CITY OF LIVE OAK, AND IS DESCRIBED AS FOLLOWS:

## ASSIGNMENT OF CONTRACTS, PLANS AND SPECIFICATIONS

This Assignment of Contracts, Plans and Specifications (this "Assignment") is made to be effective as of November \_\_, 2015, by **LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP**, a California limited partnership ("Borrower"), to and for the benefit of **RABOBANK, N.A.**, its successors, transferees and assigns ("Bank").

**A.** Bank is making a construction loan (the "Loan") to Borrower in the principal amount \$10,700,000.00.00. The Loan is being made under a construction loan agreement (the "Loan Agreement") between Bank and Borrower dated as of the date hereof. Pursuant to the Loan Agreement, Bank has agreed to finance rehabilitation of some or all of the Improvements on the Land (as such terms are defined in the Loan Agreement) owned by Borrower and described in **Exhibit A** attached to the Loan Agreement.

**B.** The Loan is evidenced by a Promissory Note Secured by Deed of Trust (the "Note") made payable to Bank in the principal amount of the Loan. The Note is secured by a Construction Deed of Trust, with Assignment of Leases and Rents, Security Agreement, and Fixture Filing (the "Deed of Trust") covering certain real and personal property, as therein described (all collectively, the "Property"). The Note may also be secured by other collateral, as more fully explained in the Loan Agreement.

**C.** This Assignment is one of several "Loan Documents," as that term is defined in the Loan Agreement. The Loan Documents include the Loan Agreement, the Note, the Deed of Trust, and all other documents that evidence, guaranty, secure, or otherwise pertain to the Loan. The term "Loan," as used herein, is broadly defined as the loan to Borrower evidenced by the Loan Documents. All capitalized terms used herein and not defined shall have the meanings set forth in the Loan Agreement.

**D.** As a requirement of, and as a material consideration for making the Loan, Bank has required that Borrower execute and deliver this Assignment to Bank as security for the performance of Borrower's obligations under the Loan Documents.

**THEREFORE**, Borrower hereby agrees as follows:

1. **Assignment.** Borrower hereby assigns, conveys, and transfers to Bank, as security for Borrower's obligations under the Loan Documents and all other obligations of Borrower which are secured by the Deed of Trust, all of Borrower's respective rights, title, interest, privilege, benefits, and remedies in, to and under the following:

1.1 the construction contract, architect contract(s), engineer contract(s), development contracts, management contracts, and any other agreements listed in **Exhibit A** attached hereto;

1.2 all other agreements now or hereafter entered into by Borrower with any contractor in connection with rehabilitation of or on the Property; and

1.3 all other agreements now or hereafter entered into by Borrower with any architect, engineer, or other consultant in connection with the design, engineering, construction of or on, or management of the Property;

1.4 all plans, specifications, and drawings with respect to the Property (collectively, the "Project Plans"), which shall include, without limitation, the plans, specifications, and drawings for any and all improvements, streets, sewers, water, and drainage, and all tentative and final tract maps pertaining to the Property; and

1.5 any and all present and future amendments, modifications, supplements, change orders, and addenda to any of the items described above.

A complete, true, and correct copy of each document listed on **Exhibit A** has previously been provided to Bank or shall be provided to Bank concurrently with delivery of this Assignment. Each of the agreements described above is referred to herein as a "Contract", and all of such agreements are collectively referred to herein as the "Contracts." The other party to each Contract with Borrower is referred to herein as a "Contract Party."

2. **Consents to Assignment.**

2.1 Borrower agrees to obtain and deliver to Bank, concurrently with its delivery of this Assignment, consents to assignment substantially in the form of **Exhibit B** attached hereto, or in such other form satisfactory to Bank in its sole and absolute discretion (each, a "Consent"), from each Contract Party which is a party to the Contracts listed in **Exhibit A**. Upon Bank's request, Borrower shall promptly obtain and deliver to Bank (a) a Consent from each Contract Party for Contracts not listed in **Exhibit A**, and (b) a true, complete, and correct copy of each such Contract.

2.2 This Assignment and the Consents to it do not relieve Borrower of its obligations under the Contracts. Bank does not hereby assume any of Borrower's obligations or duties concerning any Contract, including, without limitation, any obligation to pay for the work done pursuant thereto.

3. **Rights Upon Default.** Upon the existence of an Event of Default by Borrower under the Loan Documents beyond any applicable cure period, Bank may, at its option, exercisable in its sole and absolute discretion, upon written notice to the appropriate Contract Party, exercise any or all of the rights and remedies granted to Borrower under the Contract with the Contract Party as if Bank had been an original party to such Contract. Unless otherwise agreed in writing by Bank, Bank may elect to assume some or all of the obligations of Borrower under the Contract by giving notice to that effect to the Contract Party; provided however, that Bank shall not be responsible for any default, liability, or obligation of Borrower under the Contract occurring prior to the time Bank gives such notice to the Contract Party, and Bank shall thereafter be responsible only to the extent expressly set forth in said notice.

4. **Appointment.** Effective during the continuance of an Event of Default, Borrower hereby irrevocably constitutes and appoints Bank as its attorney-in-fact, which power is coupled with an interest, so that Bank shall have the right upon the continuance of an uncured Event of Default by Borrower under the Loan Documents to demand, receive, and enforce Borrower's rights with respect to the Contracts, to give appropriate receipts, releases, and satisfactions for and on behalf of Borrower, and to do any and all acts in the name of Borrower or in the name of Bank with the same force and effect as Borrower could have done.

5. **Representations and Warranties.** Borrower hereby represents and warrants to Bank that no previous assignment of the Contracts have been made by Borrower, and Borrower agrees not to assign, sell, pledge, transfer, or otherwise encumber its interest in any of the Contracts without Bank's consent so long as this Assignment is in effect. Borrower represents and warrants that the copy of each Contract provided by Borrower to Bank shall be the complete and entire agreement between the parties thereto. Borrower agrees not to modify the Contracts without Bank's prior written consent, except to the extent otherwise permitted in the Loan Agreement.

6. **Enforceability; Modifications.** If any provision of this Assignment shall be invalid, illegal, or unenforceable, it shall not affect or impair the validity, legality, and enforceability of the other provisions of this Assignment or of the other Loan Documents. This Assignment may not be amended, modified, or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought.

7. **Indemnity.** Borrower shall indemnify, defend, and hold Bank harmless, for, from, and against any and all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages (including foreseeable and unforeseeable consequential damages), costs or expenses, fines, penalties, and losses, including sums paid in settlement of claims and all consultant, expert, and legal fees and expenses of Bank's counsel (including the allocated cost of in-house counsel), directly or indirectly arising

out of or resulting from this Assignment or Bank's exercise of its rights hereunder, excepting those arising out of, or resulting, solely from Bank's gross negligence or willful misconduct.

8. **Heirs, Successors, and Assigns.** This Assignment shall be binding upon Borrower and its successors and assigns, and shall inure to the benefit of Bank, its successors and assigns. Bank's successors and assigns include, without limitation, any financial institution that may now, or hereafter, purchase or participate in the Loan. Bank may assign all or any portion of its interest in the Contracts or its rights created hereunder and, in such event, Borrower, at its sole expense, shall promptly execute, acknowledge, and deliver such additional documents, instruments, and agreements as may be required by Bank in connection with any such assignment.

9. **Survival; Termination.** This Assignment shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the exercise of any remedy by Bank under the Deed of Trust or any of the other Loan Documents, including, without limitation, any foreclosure or deed in lieu thereof. This Assignment shall terminate upon the first to occur of the following: (a) by a writing signed by Bank; or (b) all obligations of Borrower to Bank under the Loan Documents have been paid and performed in full and the due recordation of the release or reconveyance of all deeds of trust now or hereafter securing the Loan.

10. **Governing Law.** This Assignment shall be governed by the laws of the State of California, without regard to the choice of law rules of that state.

11. **Costs and Expenses.** If any lawsuit, reference, or arbitration is commenced which arises out of, or which relates to this Assignment, the prevailing party shall be entitled to recover from each other party such sums as the court, referee, or arbitrator may adjudge to be reasonable attorneys' fees in the action or proceeding, in addition to costs and expenses otherwise allowed by law. In all other actions or proceedings, including any matter arising out of or relating to any Insolvency Proceeding, Borrower agrees to pay all of Bank's costs and expenses, including attorneys' fees which may be incurred in any effort to enforce its rights or interests under this Assignment. From the time(s) incurred until paid in full to Bank, all such sums shall bear interest at the Default Rate (as such term is defined in the Note).

12. **Authorization; No Violation.** Borrower is authorized to execute, deliver and perform under this Assignment, which is a valid and binding obligation of Borrower. No provision or obligation of Borrower contained in this Assignment violates any applicable law, regulation, or ordinance, or any order or ruling of any court or governmental agency. No such provision or obligation conflicts with, or constitutes a breach or default under, any agreement to which Borrower is a party. No consent, approval, authorization of, or notice to any person or entity is required in connection with Borrower's execution of and obligations under this Assignment.

13. **Amendments.** This Assignment may not be modified or amended except by a written agreement signed by the parties.

14. **Time is of the Essence.** Time is of the essence in the performance of this Assignment by Borrower, and each and every term thereof.

15. **Recitals; Exhibits.** The Recitals to this Assignment set forth above are true, complete, accurate, and correct, and such recitals are incorporated hereby by reference. The exhibits to this Assignment are incorporated hereby by reference.

16. **Counterparts.** This Assignment and any attached consents or exhibits requiring signatures may be executed in counterparts, and all counterparts constitute but one and the same document.

*[Remainder of page left intentionally blank.  
Signature page follows.]*

IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed as of the date first above written.

**“BORROWER”**

**LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP,**  
a California limited partnership

Address for notices to Borrower:

Live Oak Pacific Associates,  
A California Limited Partnership  
c/o The Pacific Companies, Inc.  
430 East State Street, Suite 100  
Eagle, Idaho 83616  
Attn: Caleb Roope

By: TPC Holdings V, LLC,  
an Idaho limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Caleb Roope  
Manager

With a copy to:

Sutter Community Affordable Housing

By: Sutter Community Affordable Housing,  
a California nonprofit public benefit  
corporation,  
its Managing General Partner

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and a copy to:

By: \_\_\_\_\_  
Martha Griese  
Vice President

CREA Kristen Court, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for notices to Bank:

Rabobank, N.A.  
Attention: Community Development Finance  
618 West Main Street  
Visalia, California 93291



**EXHIBIT A  
LIST OF CONTRACTS**

1. That certain contract entitled AIA Standard Form of Agreement Between Owner and Architect dated as of \_\_\_\_\_, between Borrower and **DG GROUP ARCHITECTURE, PLLC, dba Pacific West Architecture**, as architect, in connection with the design and construction of the Improvements.
2. That certain contract entitled AIA Standard Form of Agreement Between Owner and Contractor dated as of \_\_\_\_\_, between Borrower and **PACIFIC WEST BUILDERS, INC., dba Idaho Pacific West Builders, Inc.**, as contractor, covering certain services of the Contractor in connection with the construction of the Improvements.
3. That certain contract entitled Property Management Agreement executed on \_\_\_\_\_, by and between Borrower and \_\_\_\_\_, as property manager, in connection with the management of the Property.

**EXHIBIT B  
FORM OF CONSENT TO ASSIGNMENT OF CONTRACTS**

This Consent to Assignment of Contracts (this "Consent") is made to be effective as of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (the "Contract Party") to and for the benefit of **RABOBANK, N.A.**, its successors, transferees and assigns (the "Bank"). Contract Party hereby consents to the foregoing Assignment of Contracts, Plans and Specifications (the "Assignment"), and agrees to perform pursuant to the terms and conditions of the Contract Party's agreement with Borrower (the "Contract") described in **Exhibit A** attached to said Assignment, notwithstanding a foreclosure of the Deed of Trust (as such term is defined in the Assignment) by Bank. If requested by Bank in the exercise of its rights under the Assignment, Contract Party shall continue to perform its obligations under its Contract for which Contract Party shall be compensated in accordance with its Contract. The Contract Party agrees that, upon request by Bank, Contract Party shall provide a complete list of all of its subcontractors in connection with work for or on the Property and shall cooperate to provide and permit access to Bank or its agent for inspection of the Property and the work in process. Contract Party also agrees that, in the event of a breach or default by Borrower of any of the terms and conditions of said Contract, Contract Party will give prompt written notice of such breach or default to Bank at Bank's address below or such address otherwise provided to Contract Party by Bank. Bank shall have sixty (60) days from the receipt of such notice of breach or default to remedy or cure said breach or default; provided, however, that neither the Assignment nor this Consent shall require Bank to cure said breach or default, but Bank shall, in its sole and absolute discretion, have the option to do so. The Contract Party, agrees that if Bank becomes the owner of the Property, or otherwise becomes involved with the construction of the Project, Bank shall have the right to use same without any cost or expense and without payment of any additional fees or charges to the Contract Party. The undersigned acknowledges that Bank is relying on this Consent and the assurances herein in making its Loan to Borrower and this Consent shall also be for the benefit of and bind any assignee or successors of Bank and the Contract Party. All capitalized terms used in this Consent shall have the same meaning as in the Assignment. The Contract between Borrower and the undersigned is in full force and effect as of the date hereof.

**IN WITNESS WHEREOF**, Contract Party has caused this Consent to be executed and to be effective as of the date first above written.

**"CONTRACT PARTY"**

\_\_\_\_\_  
a \_\_\_\_\_

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

Address for notices to Contract Party:

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

Address for notices to Bank:

Rabobank, N.A.  
Attention: Community Development Finance  
618 West Main Street  
Visalia, California 93291

## ENVIRONMENTAL INDEMNITY (UNSECURED)

This **Environmental Indemnity (Unsecured)** (this "Indemnity") is made as of November \_\_, 2015, by **LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP**, a California limited partnership ("Borrower"), **PACIFIC WEST COMMUNITIES, INC., dba IDAHO PACIFIC WEST COMMUNITIES, INC.**, an Idaho corporation, **PACIFIC WEST BUILDERS, INC., dba IDAHO PACIFIC WEST BUILDERS, INC.**, an Idaho corporation and **TPC HOLDINGS V, LLC**, a California limited liability company (each, a "Guarantor" and together with Borrower, individually and collectively, "Indemnitor"), to **RABOBANK, N.A.**, its successors, transferees and assigns ("Bank").

### RECITALS:

A. Bank is making a loan (the "Loan") to Borrower pursuant to a Construction Loan Agreement of even date herewith (the "Loan Agreement"). The Loan shall be evidenced by a Promissory Note Secured by Deed of Trust (the "Note") of even date herewith in the principal sum of \$10,700,000.00, made by Borrower and payable to Bank. The Note is secured by a Construction Deed of Trust, with Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Deed of Trust") of even date herewith from Borrower, as trustor, for the benefit of Bank, as beneficiary, encumbering the property in the City of Live Oak, County of Sutter, California, described in the Deed of Trust (the "Real Property").

B. Bank would not make the Loan if, as a result, Bank might incur any liability under any Environmental Laws (as hereinafter defined) for any past, present or future Release or threatened Release (as hereinafter defined) of any Hazardous Substances (as hereinafter defined) in, on or under the Real Property or any past, present or future failure to comply with any Environmental Laws at the Real Property. In order to evaluate the risk of such liability and as further assurance against such liability, Bank requires this Indemnity from Indemnitor. Bank and Indemnitor intend this Indemnity to be fully enforceable to the maximum extent permitted by law.

**NOW, THEREFORE**, for valuable consideration, receipt of which is acknowledged, Indemnitor agrees as follows:

1. Definitions. As used in this Indemnity, the following definitions shall apply:

(a) "Environmental Laws" shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Hazardous Substance Account Act, California Health and Safety Code Section 25300, et seq., the Hazardous Waste Control Law, California Health and Safety Code Section 25100, et seq., the Medical Waste Management Act, California Health and Safety Code Section 25015, et seq., and the Porter-Cologne Water Quality Control Act, California Water Code Section 13000, et seq.

(b) "Hazardous Substances" means and includes any substance, material, or waste, including asbestos, petroleum, and petroleum products (including crude oil), that is or becomes designated, classified, or regulated as "toxic" or "hazardous" or a "pollutant," or that is or becomes similarly designated, classified, or regulated, under any federal, state, or local law, regulation, or ordinance, but does not include any such substance that is a customary and ordinary household, cleaning, or office product used on the Property by Borrower or any tenant or agent of Borrower, or customary construction materials used during the course of construction of Improvements on the Property by Borrower or Contractor, provided such use is in accordance with applicable hazardous materials laws and regulations.

(c) "Person" shall mean any natural person, any organization or legal entity of any kind, and any government or governmental agency or authority of any kind, including the U.S. Environmental Protection Agency and the California Department of Health Services.

(d) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including continuing migration, of Hazardous Substances into or through soil, surface water or groundwater.

(e) The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The words "approval," "consent" and "notice" shall be deemed to be preceded by the word "written."

(f) Other capitalized terms used but not defined in this Indemnity shall have the meanings contemplated in the Loan Agreement.

2. Representations and Warranties. Indemnitor represents and warrants to Bank, as of the date of this Indemnity, that, subject to anything contained in any environmental assessment report theretofore furnished to Bank by Indemnitor or any other person or entity in respect to the Real Property, (a) no Hazardous Substances are present in, on or under the Real Property or any nearby real property which could migrate to the Real Property, and there is no present Release or threatened Release of Hazardous Substances in, on or under the Real Property, (b) Indemnitor has never used the Real Property or any part thereof, and has never permitted any Person to use the Real Property or any part thereof, for the production, processing, manufacture, generation, treatment, handling, storage or disposal of Hazardous Substances, (c) no underground storage tanks of any kind are located in the Real Property, (d) the Real Property and every part thereof, and all operations and activities therein and thereon and the use and occupancy thereof, comply with all applicable Environmental Laws, and neither Indemnitor nor any Person using or occupying the Real Property or any part thereof is violating any Environmental Laws, (e) Indemnitor has all permits, licenses and approvals required by all applicable Environmental Laws for the use and occupancy of, and all operations and activities in, the Real Property, indemnitor is in full compliance with all such permits, licenses and approvals, and all such permits, licenses and approvals were duly issued and are in full force and effect, (f) the Real Property has not been designated as "hazardous waste property" or "border zone property" pursuant to California Health and Safety Code Section 25220 et seq., no proceedings for a determination as to whether the Real Property should be so designated are pending or threatened, and no portion of the Real Property is located within two thousand (2,000) feet of a significant disposal of "hazardous waste" within the meaning of California Health and Safety Code Section 25221, which could cause the Real Property to be classified as a "border zone property," (g) no claim, demand, action or proceeding of any kind relating to any past or present Release or threatened Release of any Hazardous Substances in, on or under the Real Property or any past or present violation of any Environmental Laws at the Real Property has been made or commenced, or is pending, or is being threatened or contemplated by any Person, and (h) Indemnitor has made written disclosure to Bank of every past or present Release or threatened Release of any Hazardous Substances in, on or under the Real Property and every past or present failure to comply with any Environmental Laws at the Real Property of which Indemnitor has knowledge or notice concerning the environmental condition of the Real Property.

3. Covenants.

(a) Indemnitor shall not use, produce, process, manufacture, generate, treat, handle, store or dispose of any Hazardous Substances in, on or under the Real Property, or use the Real Property for any such purposes, or Release any Hazardous Substances into any air, soil, surface water or groundwater comprising the Real Property, or permit any Person using or occupying the Real Property or any part thereof to do any of the foregoing. The preceding sentence shall not prohibit the ordinary use of Hazardous Substances normally used in the operation or maintenance of properties similar to the Real Property, provided the amount of such Hazardous Substances does not exceed the quantity necessary for the normal operation and maintenance of the Real Property in the ordinary course of business and the use, storage and disposal of such Hazardous Substances strictly complies with all applicable Environmental Laws. Indemnitor shall comply, and shall cause all Persons using or occupying the Real Property or any part

thereof to comply, with all Environmental Laws applicable to the Real Property, or the use or occupancy thereof, or any operations or activities therein or thereon, Indemnitor shall duly obtain all permits, licenses and approvals required by all applicable Environmental Laws for the use and occupancy of, and all operations and activities in, the Real Property, comply fully with all such permits, licenses and approvals, and keep all such permits, licenses and approvals in full force and effect.

(b) Immediately after Indemnitor obtains any information indicating that any Hazardous Substances may be present or any Release or threatened Release of Hazardous Substances may have occurred in, on or under the Real Property (or any nearby real property which could migrate to the Real Property) or that any violation of any Environmental Laws may have occurred at the Real Property, Indemnitor shall give notice thereof to Bank with a reasonably detailed description of the event, occurrence or condition in question. Indemnitor shall immediately furnish to Bank copies of all written communications received by Indemnitor from any Person (including notices, claims or citations that any Release or threatened Release of any Hazardous Substances or any violation of any Environmental Laws has actually or allegedly occurred) or given by Indemnitor to any Person concerning any past or present Release or threatened Release of Hazardous Substances in, or under the Real Property (or any nearby real property which could migrate to the Real Property), or any past or present violation of any Environmental Laws at the Real Property. If Bank obtains any information that Bank believes in good faith indicates a reasonable possibility that any Hazardous Substances may be present or any Release or threatened Release of any Hazardous Substances may have occurred in, on or under the Real Property (or any nearby real property which could migrate to the Real Property) or any violation of any Environmental Laws may have occurred at the Real Property, then Indemnitor shall, at the expense of Indemnitor, promptly after a request by Bank, have a qualified environmental engineer investigate the presence, Release or threatened Release of such Hazardous Substances and the existence of such violation of Environmental Laws and prepare and submit to Bank a written report containing the findings and conclusions resulting from such investigation. The environmental engineer who will prepare the report, the scope of the investigation to be undertaken (which may include soil and groundwater sampling) and the methodology to be used shall be subject to the prior approval of Bank.

(c) Bank (and its representatives) shall have the right, at all reasonable times and after reasonable prior notice (except no notice shall be required in an emergency), to inspect the Real Property and every part thereof and to review all books, records and files of Indemnitor relating to any past or present Release or threatened Release of any Hazardous Substances in, on or under the Real Property or any past or present violation of any Environmental Laws at the Real Property. Indemnitor shall give Bank (and its representatives) access to the Real Property and every part thereof at all reasonable times (and at any time in an emergency) for such purposes. Indemnitor shall promptly furnish in writing to Bank all information concerning any past or present Release or threatened Release of any Hazardous Substances in, on or under the Real Property or any past or present violation of any Environmental Laws at the Real Property that is requested from time to time by Bank. Indemnitor acknowledges that all inspections and reviews undertaken by Bank are solely for the benefit and protection of Bank and agrees that Bank shall have no duty to Indemnitor with respect to Hazardous Substances or Environmental Laws as a result of any such inspections or reviews.

4. Remediation Work. If any Release or threatened Release of Hazardous Substances in, on or under the Real Property exists or occurs, Indemnitor shall immediately give notice of the condition to Bank, and Indemnitor shall promptly clean up and remove all Hazardous Substances and restore the Real Property (the "Remediation Work"). Indemnitor shall comply with the orders and directives of all Persons having jurisdiction over the Real Property or the Remediation Work. Indemnitor shall submit to Bank, for Bank's prior approval, complete plans and specifications for all Remediation Work to be done by Indemnitor before any Remediation Work is performed, except in an emergency. Such plans and specifications shall be prepared by qualified licensed engineers or contractors approved in writing by Bank, shall comply with all applicable Environmental Laws and other applicable laws, ordinances, rules and regulations, shall be in a form sufficient to secure the approval of all Persons with jurisdiction over the Real Property or the Remediation Work, and shall be otherwise satisfactory to Bank. Indemnitor shall cause all Remediation Work to be performed in a good and workmanlike manner by a qualified licensed contractor approved in writing by Bank, in accordance with the plans and specifications for the Remediation Work approved in

writing by Bank, and in compliance with all applicable Environmental Laws and other applicable laws, ordinances, rules and regulations. Indemnitor shall duly obtain all required permits, licenses and approvals for the Remediation Work, prosecute the Remediation Work diligently, and complete the Remediation Work in a timely manner. Indemnitor shall pay for all Remediation Work, including the costs of plans and specifications, utilities, permits, fees, taxes and insurance premiums in connection therewith. Indemnitor shall, on demand, pay to Bank all direct costs and reimburse Bank for all expenses incurred by Bank in connection with any review, approval or inspection by Bank relating to any Remediation Work, together with interest thereon from the date incurred until paid by Indemnitor at the annual interest rate after maturity set forth in the Note. Under no circumstances shall Bank be liable to Indemnitor for any damage, loss, cost or expense incurred by Indemnitor on account of any plans and specifications for the Remediation Work, the performance of any Remediation Work, or any delay in completion of any Remediation Work. Indemnitor shall furnish to Bank, promptly upon receipt or preparation, copies of all reports, studies, analyses, investigations, contracts, correspondence, claims, complaints, pleadings and other information and communications received or prepared by Indemnitor at any time in connection with any Remediation Work, or any past or present Release or threatened Release of any Hazardous Substances in, on or under the Real Property (or any nearby real property which could migrate to the Real Property), or any past or present violation of any Environmental Laws at the Real Property. Bank shall have the right, but no obligation, to participate in any action or proceeding relating to any past or present Release or threatened Release of any Hazardous Substances in, on or under the Real Property, or any past or present violation of any Environmental Laws at the Real Property, or the necessity for or adequacy of any Remediation Work.

5. Indemnification. Indemnitor shall indemnify and defend Bank (and its directors, officers, employees, agents and representatives) against and hold Bank (and its directors, officers, employees, agents and representatives) harmless from all claims, demands, liabilities, losses, damages, costs and expenses in any way arising from, relating to or connected with the existence, location, nature, use, generation, manufacture, storage, disposal, handling, or past, present or future Release or threatened Release of any Hazardous Substances in, on or under the Real Property, or any past, present or future violation of any Environmental Laws at the Real Property, or any breach of any representation or warranty made by Indemnitor in this Indemnity, or any failure to perform any obligation of Indemnitor in accordance with this Indemnity. The foregoing indemnification shall include, without limitation, the following: (i) all expenses of investigation and monitoring, costs of containment, abatement, removal, repair, clean up, restoration and remedial work, penalties, and fines, attorneys' fees and disbursements, and other response costs and (ii) any and all losses in connection with the exercise of Bank's rights (a) to enter and inspect the Real Property pursuant to California Civil Code Section 2929.5 including, without limitation, the cost of repair of any physical injury to the Real Property caused by such entry and inspection, (b) to appoint a receiver pursuant to California Code of Civil Procedure Section 564, and (c) pursuant to California Code of Civil Procedure Section 726.5 including, without limitation, costs to determine the value of the Real Property and to establish the degree to which the Real Property is environmentally impaired as required by California Code of Civil Procedure Section 726.5(b). If Indemnitor fails to perform any obligation of Indemnitor in accordance with this Indemnity, Bank shall have the right, but no obligation, to perform such obligation on behalf of Indemnitor. Indemnitor shall, on demand, pay to Bank all sums expended by Bank in the performance of any such obligations of Indemnitor, together with interest thereon from the date of expenditure until paid by Indemnitor at the annual interest rate after maturity set forth in the Note. If any default occurs under the Deed of Trust, Bank shall have the right, but no obligation, at the expense of Indemnitor, at any time before or after foreclosure of the Deed of Trust, to have a comprehensive environmental assessment of the Real Property, including soil and groundwater sampling and in scope satisfactory to Bank, prepared by an engineer selected by Bank in order to ascertain whether any Hazardous Substances are present or any Release or threatened Release of Hazardous Substances has occurred in, on or under the Real Property (or any nearby real property which could migrate to the Real Property) or any violation of any Environmental Laws existed at the Real Property. Indemnitor shall, on demand, pay to Bank all sums expended by Bank in connection with any such comprehensive environmental assessment, together with interest thereon from the date of expenditure until paid by Indemnitor at the annual interest rate after maturity set forth in the Note.

6. Separate Obligations. The purpose of this Indemnity is to protect Bank against liability, loss, damage, cost or expense with respect to Hazardous Substances and Environmental Laws relating to

the Real Property as provided in this Indemnity, and not as security for payment of the indebtedness evidenced by the Note or performance of the obligations under the Deed of Trust and the other Loan Documents. This Indemnity is not a Loan Document. The obligations of Indemnitor under this Indemnity are separate from, independent of and in addition to the indebtedness and obligations under the Note and the Deed of Trust. The liability of Indemnitor under this Indemnity shall not be limited to or measured by the amount of the indebtedness owed under the Note, the Deed of Trust or the Loan Documents, or to the value of the Real Property. This Indemnity is not, and shall not be deemed to be, secured by the Deed of Trust or any other Loan Document. Indemnitor shall be fully and personally liable for all obligations of Indemnitor under this Indemnity and a separate action may be brought and prosecuted against Indemnitor on this Indemnity. The liability of Indemnitor under this Indemnity shall not be subject to any limitation set forth in the Note, the Deed of Trust or the Loan Documents, on personal liability for the payment of the indebtedness evidenced by the Note, or the remedies of Bank for enforcement of the obligations under the Note, the Deed of Trust or any other Loan Document, or the recourse of Bank for satisfaction of such obligations. Indemnitor agrees that no action for the enforcement of or recovery of damages under this Indemnity shall constitute an action within the meaning of California Code of Civil Procedure Section 726, which shall not apply to this Indemnity, and no judgment against Indemnitor in any action pursuant to this Indemnity shall constitute a money judgment or a deficiency judgment within the meaning of California Code of Civil Procedure Sections 580a, 580b, 580d or 726. This Indemnity and the obligations of Indemnitor hereunder shall survive, and remain in full force and effect after, any reconveyance of the Deed of Trust or any foreclosure of the Deed of Trust (whether by judicial action, exercise of the power of sale, deed in lieu of foreclosure, or otherwise) with respect to any past, present or future Release or threatened Release of any Hazardous Substances in, on or under the Real Property or any past, present or future violation of any Environmental Laws at the Real Property which occurred, or the onset of which occurred, before such reconveyance or foreclosure, and Bank shall have the right to enforce this Indemnity after any such reconveyance or foreclosure. Indemnitor waives the right to assert any statute of limitations as a bar to the enforcement of this Indemnity or to any action brought to enforce this Indemnity. This Indemnity shall not affect, impair or waive any rights or remedies of Bank or any obligations of Indemnitor with respect to Hazardous Substances created or imposed by Environmental Laws (including Bank's rights of reimbursement or contribution under Environmental Laws). The remedies in this Indemnity are cumulative and in addition to all remedies provided by law.

7. Notices. All notices and demands given pursuant to the terms hereof shall be given in writing delivered in person, by commercial courier, or by registered or certified mail, return receipt requested, with all postage and fees fully prepaid. Notices shall be considered delivered upon receipt, as indicated by the return receipt if mailed; except that, upon an attempt to effectuate service of notice as provided herein, if the party being given notice either (a) refuses to accept delivery, or (b) has moved and the most recent address given to receive notice has no current registered forwarding address or a registered forwarding address only to a post office or other box, that party shall be deemed to have received the notice. Alternatively, notices may be served by facsimile transmission sent to the party intended to receive the notice, and shall be deemed served upon telephonic or return facsimile acknowledgment by the party receiving the notice that a complete and legible copy of the notice has been received. Notices shall be addressed as set forth in the Loan Agreement.

8. Attorneys' Fees. If there is any legal action or proceeding between Indemnitor and Bank arising from or based on this Indemnity, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees and disbursements incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses, attorneys' fees and disbursements shall be included in and as a part of such judgment.

9. Partial Invalidity and Waiver. If any provision of this Indemnity is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Indemnity and this Indemnity shall remain in full force and effect without such invalid, illegal or unenforceable provisions. Failure to demand strict performance by Indemnitor or to exercise or enforce any right or remedy of Bank under this Indemnity shall not constitute a waiver of any provision of this Indemnity by Bank. No waiver of any provision of this Indemnity or any breach of this Indemnity shall

be effective unless such waiver is in writing and signed by Bank and any such waiver shall not be deemed a waiver of any other provision of this Indemnity or any other or subsequent breach of this Indemnity.

10. General. Indemnitor agrees to pay all costs and expenses, including reasonable attorneys' fees and disbursements, which are incurred by Bank in the enforcement of this Indemnity. Time is of the essence of this Indemnity. This Indemnity may not be amended or modified in any respect except by a written agreement signed by Indemnitor and Bank. As used in this Indemnity, the singular shall include the plural and vice versa. If there is more than one Indemnitor, all obligations and liabilities of Indemnitor under this Indemnity shall be the joint and several obligations and liabilities of each Indemnitor. This Indemnity shall bind and inure to the benefit of Indemnitor and Bank and their respective transferees, personal representatives, heirs, successors and assigns. This Indemnity shall be governed by and construed in accordance with the laws of the State of California.

11. Guarantor's Waivers. Except as may be prohibited by applicable law, Guarantor waives:

11.1 All statutes of limitations as a defense to any action or proceeding brought against Guarantor by Bank pursuant to this Indemnity;

11.2 Any right it may have to require Bank to proceed against Borrower, proceed against or exhaust any security held from Borrower, or pursue any other remedy in Bank's power to pursue, and any defense based on any homestead exemption or other exemption under applicable law, whether available to Borrower or Guarantor;

11.3 Any defense based on any limitation of liability or recourse in any other Loan Document or arising under law or any claim that Guarantor's obligations exceed or are more burdensome than those of Borrower;

11.4 Any defense based on: (a) any legal disability of Borrower, (b) any release, discharge, modification, impairment or limitation of the liability of Borrower to Bank from any cause, whether consented to by Bank or arising by operation of law or from any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, including any proceeding under the Bankruptcy Reform Act of 1978, as amended or recodified (the "Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Laws") (any such proceeding referred to as an "Insolvency Proceeding"), or (c) any rejection or disaffirmance of the Loan, or any part of it, or any security held for it, in any such Insolvency Proceeding;

11.5 Any defense based on any action taken or omitted by Bank in any Insolvency Proceeding involving Borrower, including any election to have Bank's claim allowed as being secured, partially secured or unsecured, any extension of credit by Bank to Borrower in any Insolvency Proceeding, and the taking and holding by Bank of any security for any such extension of credit;

11.6 All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of intention to accelerate, notices of acceleration, notices of any suit or any other action against Borrower or any other person, notices of default, notices of dishonor, notices of acceptance of this Indemnity and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind except for any demand or notice by Bank to Guarantor expressly provided for elsewhere in this Indemnity;

11.7 Any defense based on or arising out of any defense that Borrower may have to the payment or performance of the Loan Obligations or any part of them; and

11.8 Any defense based on any lack of authority of the officers, directors, partners, members or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower.



12. Waivers of Subrogation and Other Rights and Defenses.

12.1 Upon a default by Borrower under the Loan Documents, Bank in its sole discretion, without prior notice to or consent of Guarantor, may elect to: (a) foreclose either judicially or nonjudicially (as allowed by applicable law) against any real or personal property security it may hold for the Loan; (b) accept a transfer of any such security in lieu of foreclosure; (c) compromise or adjust the Loan or any part of it or make any other accommodation with Borrower or Guarantor; or (d) exercise any other remedy available against Borrower or any security. No such action by Bank shall release or limit the liability of Guarantor, who shall remain liable under this Indemnity after the action, even if the effect of the action is to deprive Guarantor of any subrogation rights, rights of indemnity, or other rights to collect reimbursement from Borrower for any sums paid to Bank, whether contractual or arising by operation of law or otherwise. Guarantor expressly agrees that under no circumstances shall it be deemed to have any right, title, interest or claim in or to any real or personal property to be held by Bank or any third party after any foreclosure or transfer in lieu of foreclosure of any security for the Loan.

12.2 Regardless of whether Guarantor may have made any payments to Bank, Guarantor hereby waives: (a) all rights of subrogation, indemnification, contribution, and any other rights to collect reimbursement from Borrower or any other party for any sums paid to Bank, whether contractual or arising by operation of law (including, without limitation, under any provisions of the Bankruptcy Code, or any successor or similar statutes) or otherwise; (b) all rights to enforce any remedy that Bank may have against Borrower; and (c) all rights to participate in any security now or later to be held by Bank for the Loan. Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification, and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement, indemnification, and contribution Guarantor may have against Borrower or against any collateral or security, shall be junior and subordinate to any rights Bank may have against Borrower, and to all right, title and interest Bank may have in any such collateral or security. If any amount shall be paid to Guarantor on account of any such subrogation, reimbursement, indemnification, or contribution rights at any time when all obligations under the Loan have not been paid in full, such amount shall be held in trust for Bank and shall forthwith be paid over to Bank to be credited and applied against the Loan, whether matured or unmatured, in accordance with the terms of the Loan Documents. The covenants and waivers of Guarantor contained in this Section 12.2 shall be effective until the Loan Obligations have been paid and performed in full, and are made for the benefit of Bank, Borrower, and any other person against whom Guarantor shall at any time have any rights of subrogation, reimbursement, indemnification, or contribution with respect to Guarantor's obligations under this Indemnity.

12.3 Guarantor understands and acknowledges that if Bank forecloses judicially or nonjudicially against any real property security for the Loan, that foreclosure could impair or destroy any ability that Guarantor may have to seek reimbursement, contribution, or indemnification from Borrower or others based on any right Guarantor may have of subrogation, reimbursement, contribution or indemnification for any amounts paid by Guarantor under this Indemnity. Guarantor further understands and acknowledges that in the absence of this Section 12, such potential impairment or destruction of Guarantor's rights, if any, may entitle Guarantor to assert a defense to this Indemnity. By executing this Indemnity, Guarantor freely, irrevocably, and unconditionally: (a) waives and relinquishes that defense and agrees that Guarantor shall be fully liable under this Indemnity even though Bank may foreclose judicially or nonjudicially against any real property security for the Loan; (b) agrees that Guarantor shall not assert that defense in any action or proceeding which Bank may commence to enforce this Indemnity; (c) acknowledges and agrees that the rights and defenses waived by Guarantor under this Indemnity include any right or defense that Guarantor may have or be entitled to assert based upon or arising out of any one-action, anti-deficiency, reimbursement, or other borrower or guarantor protective statute (including, without limitation, any defense that any exercise by Bank of any right or remedy hereunder or under the Loan Documents violates, or would, in combination with the previous or subsequent exercise by Guarantor of any rights of subrogation, reimbursement, contribution, or indemnification against Borrower or any other person, directly or indirectly result in, or be deemed to be, a violation of, any of such statutory provisions); and (d) acknowledges and agrees that Bank is relying on this waiver in making the Loan, and that this waiver is a material part of the consideration which Bank is receiving for making the Loan.

12.4 Guarantor waives any rights and defenses that are or may become available to Guarantor by reason of any statute governing guarantees or suretyship, including but not limited to Sections 2787 to 2855, inclusive of the California Civil Code, as such may be amended or recodified from time to time.

12.5 Guarantor waives all rights and defenses that Guarantor may have because Borrower's Loan is secured by real property or personal including any homestead exemption or other exemptions under applicable law. This means, among other things:

(a) Bank may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower.

(b) If Bank forecloses on any real property collateral pledged by Borrower:

(i) The amount of the Loan may be reduced only by the net price for which the collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(ii) Bank may collect from Guarantor even if Bank, by foreclosing on the real property collateral, has destroyed any ability Guarantor may have to collect from Borrower.

This **Section 12.5** is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because Borrower's Loan is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d, or 726 of the California Code of Civil Procedure, as such may be amended or recodified from time to time.

12.6 Guarantor waives any right or defense it may have at law or in equity, including California Code of Civil Procedure Section 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

12.7 Guarantor waives any right or defense it may have at law or in equity, which may provide, among other things: that a creditor must file a complaint for deficiency within a specified period of time after a nonjudicial foreclosure sale or judicial foreclosure sale, as applicable; that a fair market value hearing must be held; and that the amount of the deficiency judgment shall be limited to the amount by which the unpaid debt exceeds the fair market value of the security, but not more than the amount by which the unpaid debt exceeds the sale price of the security.

12.8 No provision or waiver in this Indemnity shall be construed as limiting the generality of any other provision or waiver contained in this Indemnity.

12.9 Guarantor agrees that the payment or performance of any act which tolls any statute of limitations applicable to the Loan Documents shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

*[Remainder of page left intentionally blank]*

13. Waiver of Jury Trial, Judicial Reference.

13.1 Waiver of Jury Trial. TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, INDEMNITOR AND BANK EACH HEREBY AGREES TO, AND DOES, WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE LOAN, ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR INSTRUMENT BETWEEN THE PARTIES RELATING TO THE LOAN, THE LOAN DOCUMENTS, THE PROPERTY OR ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF ANY OF THE LOAN DOCUMENTS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES (EACH A "DISPUTE", AND COLLECTIVELY, ANY OR ALL, THE "DISPUTES") OF ANY KIND WHATSOEVER THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THE LOAN, ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR INSTRUMENT BETWEEN THE PARTIES RELATING TO THE LOAN, THE LOAN DOCUMENTS, THE PROPERTY OR ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF ANY OF THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, ANTITRUST CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON-LAW OR STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTERING INTO THIS INDEMNITY AND ALL OTHER AGREEMENTS AND INSTRUMENTS PROVIDED FOR HEREIN, AND THAT EACH WILL CONTINUE TO BE BOUND BY AND RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL OF ITS OWN CHOOSING, OR HAS HAD AN OPPORTUNITY TO DO SO, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS INDEMNITY OR ANY OTHER LOAN DOCUMENT OR DOCUMENT ENTERED INTO BETWEEN THE PARTIES IN CONNECTION WITH THIS INDEMNITY OR ANY LOAN DOCUMENT. IN THE EVENT OF LITIGATION, THIS INDEMNITY MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT WITHOUT A JURY.

Indemnitor and Bank hereby agree that this Indemnity constitutes a written consent to waiver of trial by jury pursuant to the provisions of California Code of Civil Procedure Section 631 and Indemnitor does hereby appoint Bank its true and lawful attorney-in-fact, and Indemnitor does hereby authorize and empower Bank, in the name, place and stead of Indemnitor, to file this Indemnity with the clerk or judge of any court of competent jurisdiction as statutory written consent to waiver of trial by jury. Indemnitor acknowledges and agrees that this appointment is coupled with an interest.

Bank's Initial: \_\_\_\_\_

Indemnitor's Initial: \_\_\_\_\_

Indemnitor's Initial: \_\_\_\_\_

Indemnitor's Initial: \_\_\_\_\_

*[Remainder of page left intentionally blank]*

13.2 Consent to Judicial Reference. If and to the extent **Section 13.1** immediately above is determined by a court of competent jurisdiction to be unenforceable or is otherwise not applied by any such court, Indemnitor and Bank each hereby consents and agrees that (a) any and all Disputes shall be heard by a referee in accordance with the general reference provisions of California Code of Civil Procedure Section 638, sitting without a jury in the County of Sacramento, California, (b) such referee shall hear and determine all of the issues in any Dispute (whether of fact or of law), including issues pertaining to a "provisional remedy" as defined in California Code of Civil Procedure Section 1281.8, including without limitation, entering restraining orders, entering temporary restraining orders, issuing temporary and permanent injunctions and appointing receivers, and shall report a statement of decision, provided that, if during the course of any Dispute any party desires to seek such a "provisional remedy" but a referee has not been appointed, or is otherwise unavailable to hear the request for such provisional remedy, then such party may apply to the Sacramento County Superior Court for such provisional relief, and (c) pursuant to California Code of Civil Procedure Section 644, judgment may be entered upon the decision of such referee in the same manner as if the Dispute had been tried directly by a court. The parties shall use their respective commercially reasonable and good faith efforts to agree upon and select such referee, provided that such referee must be a retired California state or federal judge, and further provided that if the parties cannot agree upon a referee, the referee shall be appointed by the Presiding Judge of the Sacramento County Superior Court. Each party hereto acknowledges that this consent and agreement is a material inducement to enter into this Indemnity, the Loan Documents and all other agreements and instruments provided for herein or therein, and that each will continue to be bound by and to rely on this consent and agreement in their related future dealings. The parties shall share the cost of the referee and reference proceedings equally; provided that, the referee may award attorneys' fees and reimbursement of the referee and reference proceeding fees and costs to the prevailing party, whereupon all referee and reference proceeding fees and charges will be payable by the non-prevailing party (as so determined by the referee). Each party hereto further warrants and represents that it has reviewed this consent and agreement with legal counsel of its own choosing, or has had an opportunity to do so, and that it knowingly and voluntarily gives this consent and enters into this Indemnity having had the opportunity to consult with legal counsel. This consent and agreement is irrevocable, meaning that it may not be modified either orally or in writing, and this consent and agreement shall apply to any subsequent amendments, renewals, supplements, or modifications to this Indemnity or any other agreement or document entered into between the parties in connection with this Indemnity. In the event of litigation, this Indemnity may be filed as evidence of either or both parties' consent and agreement to have any and all Disputes heard and determined by a referee under California Code of Civil Procedure Section 638. Notwithstanding anything to the contrary herein, Indemnitor and Bank acknowledge and agree that this provision shall have no application to any non-judicial foreclosure of all or any portion of the Property whether pursuant to the provisions of the Loan Documents or applicable law.

Bank's Initial: \_\_\_\_\_

Indemnitor's Initial: \_\_\_\_\_

Indemnitor's Initial: \_\_\_\_\_

Indemnitor's Initial: \_\_\_\_\_

*[Remainder of page left intentionally blank]*

13.3 Not Applicable to Non-Judicial Foreclosures/Realization on Collateral.

Notwithstanding anything to the contrary, the parties hereto understand, acknowledge and agree that (i) the provisions of the consent to judicial reference set forth in this paragraph above shall have no application to any non-judicial foreclosure and/or private (i.e., non-judicial) sale under the California Commercial Code, California Civil Code or California Code of Civil Procedure or other applicable law as to all or any portion of the Property whether pursuant to the provisions of the Loan Documents or applicable law; provided, however, in the event Indemnitee contests the same, then the provisions of the consent to judicial reference set forth in the paragraph above shall apply to any Dispute arising therefrom (but not the non-judicial foreclosure proceeding, which may remain pending), and (ii) the provisions of the consent to judicial reference set forth in this paragraph above shall not be deemed to be a waiver by, or a limitation upon, the rights of Bank to proceed with a non-judicial foreclosure or private sale under said Commercial Code, California Civil Code or California Code of Civil Procedure or other applicable law as a permitted remedy hereunder or under applicable law. THE PARTIES ACKNOWLEDGE THAT JUDICIAL REFERENCE PROCEEDINGS CONDUCTED IN ACCORDANCE WITH THIS **SECTION 13.3** WOULD BE CONDUCTED BY A PRIVATE JUDGE ONLY, SITTING WITHOUT A JURY.

[Remainder of page left intentionally blank.  
Signature page follows.]

IN WITNESS WHEREOF, Indemnitor has executed this Indemnity as of the date first hereinabove written.

**INDEMNITOR:**

LIVE OAK PACIFIC ASSOCIATES,  
A CALIFORNIA LIMITED PARTNERSHIP,  
a California limited partnership

By: TPC Holdings V, LLC,  
an Idaho limited liability company, its  
Administrative General Partner

By: \_\_\_\_\_  
Caleb Roope  
Manager

By: Sutter Community Affordable Housing,  
a California nonprofit public benefit  
corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Martha Griese  
Vice President

PACIFIC WEST COMMUNITIES, INC.  
dba Idaho Pacific West Communities, Inc.  
an Idaho corporation

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

PACIFIC WEST BUILDERS, INC.  
dba Idaho Pacific West Builders, Inc.  
an Idaho corporation

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

Address for notices to Indemnitor:

c/o The Pacific Companies, Inc.  
430 East State Street, Suite 100  
Eagle, ID 83616

With a copy to:

Sutter Community Affordable Housing

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

And a copy to:

CREA Kristen Court, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TPC HOLDINGS V, LLC  
an Idaho limited liability company

By: \_\_\_\_\_  
Caleb Roope  
Manager





## AGREEMENT FOR DISBURSEMENT PRIOR TO RECORDING AND AMENDMENT TO NOTE

This Agreement For Disbursement Prior to Recording and Amendment to Note ("Agreement") is entered into as of November \_\_\_\_, 2015, by **LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP**, a California limited partnership ("Borrower"), for the benefit of **RABOBANK, N.A.**, and its successors and assigns ("Bank").

### RECITALS

**A.** Pursuant to that certain Construction Loan Agreement (the "Loan Agreement") dated as of even date herewith and executed by Borrower and Bank. Bank has agreed to make a loan in the principal amount of \$10,700,000.00 (the "Loan") to Borrower. The Loan is evidenced by a Promissory Note Secured by Deed of Trust (the "Note") executed by Borrower in favor of Bank in the aggregate principal amount of the Loan, and is further evidenced by the documents described in the Loan Agreement as the "Loan Documents." The Note is secured by, among other things, the Deed of Trust (as defined in the Loan Agreement) encumbering the real property and any and all improvements thereon described on **Exhibit A** attached to the Loan Agreement and incorporated herein by this reference (the "Property"). Capitalized terms used above and elsewhere in this Indemnity without definition have the meanings given them in the Loan Agreement.

**B.** Under Section 12413.1 et seq. of the California Insurance Code, effective January 1, 1990, title insurance companies are not permitted to disburse funds from an escrow account until funds equivalent thereto have been received and are available for the immediate use of such title company.

**C.** The provisions of this law may require the disbursement by Bank of all or part of the Loan proceeds to the title company prior to the recording of the Deed of Trust by the title company.

**D.** Borrower and Bank hereby confirm their understanding and agreement regarding said disbursement and the rights and obligations of Borrower and Bank relating to the Note and said disbursement.

**THEREFORE**, notwithstanding any contrary provisions of the Note, the Loan Agreement, or any of the other Loan Documents, and in consideration of Bank's agreement to disburse all or part of said Loan proceeds to the title company prior to the Effective Date of the Loan Documents, Borrower and Bank covenant and agree as follows:

### AGREEMENT

**1.** Pursuant to Section 1.1 of the Loan Agreement and provided Borrower has satisfied all conditions to closing the Loan under the Loan Agreement, except those requiring the recording of the Deed of Trust, Bank agrees to disburse proceeds Loan proceeds prior to the recording of the Deed of Trust in an amount set forth in that certain Disbursement Request Authorization dated as of the date hereof and executed by Borrower and on an executed Settlement Statement prepared by the title company, executed by Borrower and approved, in writing, by Bank. Said disbursement shall be made in accordance with and subject to Bank's closing instructions to the title company which shall provide, among other things, that the funds so disbursed may be held by the title company and only for the benefit of Borrower when the Deed of Trust is recorded and the conditions set forth in said escrow instructions can be complied with.

**2.** For purposes of this Agreement, all terms and provisions of the Note, and Borrower's obligations thereunder, shall be deemed effective and in full force and effect on the date the requested disbursement is made to the title company, except as those terms and provisions are amended by this Agreement.

3. Interest shall commence and accrue at the rate provided in the Note on any and all Loan proceeds disbursed by Bank from the date of such disbursement including, without limitation, the funds so disbursed and withheld for fees as set forth in **Section 1** above, irrespective of when or if the Deed of Trust is recorded or when or if such Loan proceeds are disbursed to or for the benefit of Borrower.

4. Unless and until the Deed of Trust is recorded, the Note shall be deemed unsecured and, if the Deed of Trust is not recorded within three (3) Business Days following the date of said disbursement, the principal amount of such disbursement, and all interest accrued thereon in accordance with Paragraph 3, above, shall be due and payable by Borrower to Bank upon Bank's demand made at any time after said third Business Day. Until the Deed of Trust is recorded, the Note shall be deemed amended to conform to the provisions of this Paragraph 4.

5. This Agreement is intended to cover the rights and obligations of the parties relative to the disbursement of Loan proceeds prior to recording of the Deed of Trust and, except as to the provisions hereof relating to commencement of interest, this agreement shall be deemed cancelled and of no further effect upon the recording of the Deed of Trust.

*[Remainder of Page is Intentionally Left Blank.  
Signatures on Following Page.]*

WHEREFORE, Borrower and Bank have executed this agreement as of the date shown first above.

**"BORROWER"**

**LIVE OAK PACIFIC ASSOCIATES,  
A CALIFORNIA LIMITED PARTNERSHIP,**  
a California limited partnership

Address for notices to Borrower:

Live Oak Pacific Associates,  
a California limited partnership

By: TPC Holdings V, LLC,  
an Idaho limited liability company,  
its Administrative General Partner

c/o The Pacific Companies, Inc.  
430 East State Street, Suite 100  
Eagle, Idaho  
Attn: Caleb Roope

By: \_\_\_\_\_  
Caleb Roope  
Manager

with a copy to:

Sutter Community Affordable Housing

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: Sutter Community Affordable Housing,  
a California nonprofit  
public benefit corporation,  
its Managing General Partner

and a copy to:

CREA Kristen Court, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Martha Griese  
Vice President



**DISBURSEMENT REQUEST AND AUTHORIZATION**

This Disbursement Request and Authorization is hereby delivered to **RABOBANK, N.A.** (hereinafter referred to as "Bank") by the undersigned (hereinafter referred to as "Borrower"), in reference to the following:

1. Bank and Borrower have entered into that certain Construction Loan Agreement dated concurrently herewith (the "Loan Agreement"), whereby Bank has agreed to make a loan to Borrower in the amount of TEN MILLION SEVEN HUNDRED THOUSAND and NO/100 DOLLARS (\$10,700,000.00) (the "Loan"), on the terms and for the purposes set forth in the Loan Agreement, which is hereby incorporated herein by this reference.
2. The Loan is evidenced by a Promissory Note Secured by Deed of Trust (the "Note"), and is secured by a Construction Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing, with the Loan Agreement, these documents are collectively referred to as the Loan Documents, all executed between the Bank and Borrower concurrently.
3. Borrower understands that none of the proceeds of the Loan will be distributed until all of the Bank's conditions for making the Loan have been satisfied.

In consideration of the foregoing, Borrower hereby requests and authorizes Bank to disburse the proceeds of the Loan in the following manner:

Funds to be wired to _____	
Escrow # _____	\$ _____
Funds to be withheld by Rabobank for Loan Fees:	\$ _____
Undisbursed Funds	\$ _____
<b>Note Principal:</b>	<b>\$ _____</b>

<b>Funds Due to Bank for payment of Rabobank Loan fees:</b>	
Loan Fee	\$ _____ .00
Loan Processing Fee	\$2,500.00
<b>Sub-Total Loan Fees:</b>	<b>\$ _____ .00</b>
<b>Other Fees:</b>	
Cost Analysis Fee	\$ _____ .00
Appraisal and Review Fees	\$ _____ .00
Environmental Review Fee	\$ _____ .00
<b>Total Fees</b>	<b>\$ _____ .00</b>
Less: Credit for Good Faith Deposit	(\$ _____ .00)
Less: Amount withheld from Rabobank Loan Funds for Loan Fees	(\$ _____ .00)
<b>Net Amount due at Closing</b>	<b><u>\$0.00</u></b>

By signing this authorization, Borrower represents and warrants to Bank that the information provided above is true and correct and that there has been no material adverse change in Borrower's financial condition as disclosed in Borrower's most recent financial statement to Bank. This Authorization is dated as of **November \_\_, 2015**.

**BORROWER:**

LIVE OAK PACIFIC ASSOCIATES,  
A CALIFORNIA LIMITED PARTNERSHIP,  
a California limited partnership

By: TPC Holdings V, LLC,  
an Idaho limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Caleb Roope  
Manager

By: Sutter Community Affordable Housing,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Martha Griese  
Vice President

Address for notices to Borrower:

Live Oak Pacific Associates,  
A California Limited Partnership  
c/o The Pacific Companies, Inc.  
430 East State Street, Suite 100  
Eagle, Idaho 83616  
Attn: Caleb Roope

with a copy to:

Sutter Community Affordable Housing  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and a copy to:

CREA Kristen Court, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE OF THE GENERAL PARTNERS OF**  
**LIVE OAK PACIFIC ASSOCIATES,**  
**A CALIFORNIA LIMITED PARTNERSHIP**

The undersigned, being all of the general partners of **LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP** (the "Borrower"), hereby certifies as follows:

1. That attached hereto as **Exhibit A** is a true and correct copy of the Agreement of Limited Partnership Agreement of the Borrower dated \_\_\_\_\_, as amended and restated on November \_\_, 2015 (the "Partnership Agreement"), and that the Partnership Agreement has not been amended, modified or rescinded or supplemented in whole or in part as of the date of execution of this Certificate.
2. That attached hereto as **Exhibit B** is a true and correct copy of Borrower's Certificate of Limited Partnership, as filed with the Secretary of State for the State of California, and all amendments, modifications, and supplements thereto.
3. That attached hereto as **Exhibit C** is a true and correct copy of certain resolutions adopted by all of the partners of the Borrower on November \_\_, 2015, authorizing and approving the loan transaction contemplated therein and the consummation of the other agreements and transactions contemplated thereby. Such resolutions are in full force and effect on the date hereof and have not been amended, modified, repealed, or rescinded.
4. That attached hereof as **Exhibit D** is a true and correct certificate of Incumbency for each partner of the Borrower.
5. That the good standing certificate from the State of formation of Company is attached as **Exhibit E** hereto.

IN WITNESS WHEREOF, the undersigned have executed this Certificate on and as of November \_\_, 2015.

[Signatures on following Page]

TPC HOLDINGS V, LLC,  
an Idaho limited liability company

By: \_\_\_\_\_  
Caleb Roope  
Manager

SUTTER COMMUNITY AFFORDABLE HOUSING,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Martha Griese  
Vice President



**Exhibit A**  
**LP Agreement**

**Exhibit B**  
**Certificate of LP**

**Exhibit C  
Resolutions**

RESOLUTION OF THE GENERAL PARTNERS  
OF  
LIVE OAK PACIFIC ASSOCIATES,  
A CALIFORNIA LIMITED PARTNERSHIP

The undersigned, being all the General Partners (collectively, the “Partners”) of **LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP** (the “Partnership”), hereby adopt the following resolutions on behalf of the Partnership.

WHEREAS, the Partners wish to approve various matters in connection with the development and construction of the project located at 9027 N Street, Live Oak, California to consist of a 56-unit low-income apartment project (the “Project”).

**Construction Loans**

WHEREAS, the Partnership wishes to obtain the following construction loan(s) from the following Lenders: (i) Rabobank, N.A., as lender (“Construction Lender”) under that certain construction loan in the maximum amount of \$10,700,000, (the “Loan”), (ii) the City of Live Oak under that certain Acquisition and Fee Deferral Loan Agreement (“City Loan Agreement”) in the maximum amount of \$293,000 (the “City Acquisition Loan”), (iii) the City of Live Oak under the City Loan Agreement in the amount of \$373,349 (the “City Fee Deferral Loan”), (iv) the Regional Housing Authority of Sutter and Nevada Counties (“Housing Authority”), under that certain Acquisition and Capital Loan Agreement (“Housing Authority Loan Agreement) in the maximum amount of \$823,000 (“Housing Authority Acquisition Loan”) and (v) the Housing Authority under the Housing Authority Loan Agreement in the maximum amount of \$337, 143 (“Housing Authority Capital Funds Loan”). The Loan, the City Acquisition Loan, the City Fee Deferral Loan, the Housing Authority Acquisition Loan and the Housing Authority Capital Funds Loan are collectively referred to as the “Loans” all such lenders are collectively herein the “Lenders”).

WHEREAS, the Partners deem it to be in the best interests of the Partnership to take all actions to facilitate the consummation of the Loans by entering into the Construction Loan Documents (as defined below), which term shall include any and all agreements with the Lenders, TCAC, and other project entities, and to take any and all further actions to facilitate the consummation of the Loans.

WHEREAS, in order to consummate the Loans, the Lenders have required that the Partnership enter into various documents relating to the Loans (such documents are referred to herein as the “Construction Loan Documents”). The form, terms, and provisions of the Construction Loan Documents are in substantially the form of the drafts reviewed by the Partners, and the Partnership’s obligations under the Construction Loan Documents are, in all respects, approved. The Partnership hereby is authorized and empowered to execute and deliver the Construction Loan Documents, in the name of the

Partnership, with such changes, modifications, amendments, renewals, or extensions thereto as the Partners may approve, which approval shall be conclusively evidenced by his execution thereof.

RESOLVED, that the Partnership is hereby authorized to enter into, execute and deliver, on its own behalf and on behalf of the Partnership, as applicable, the Construction Loan Documents and is further authorized and empowered to:

**Borrow Money.** To borrow from time to time from Construction Lender and the other Lenders on such terms as may be agreed upon between the Partnership and Construction Lender, such sum or sums of money as in their judgment should be borrowed.

**Grant Security.** To mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber and deliver to Construction Lender, as security for the payment of any loans or credit accommodations so obtained, any promissory notes so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), or any other or further indebtedness of the Partnership to Construction Lender at any time owing, however the same may be evidenced, any property now or hereafter belonging to the Partnership or in which the Partnership now or hereafter may have an interest, including without limitation all real property and all personal property (tangible or intangible) of the Partnership. Such property may be mortgaged, pledged, transferred, endorsed, hypothecated, or encumbered at the time such loans are obtained or such indebtedness is incurred, or at any other time or times, and may be either in addition to or in lieu of any property theretofore mortgaged, pledged, transferred, endorsed, hypothecated, or encumbered.

**Execute Notes.** To execute and deliver to Construction Lender the promissory note or notes, loan agreement, or other evidence of credit accommodations of the Partnership, on Construction Lender's forms, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any indebtedness of the Partnership to Construction Lender, and also to execute and deliver to Construction Lender one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

**Execute Security Documents.** To execute and deliver to Construction Lender the forms of mortgage, deed of trust, security agreement, and other security agreements and financing statements which may be required by Construction Lender, and which shall evidence the terms and conditions under and pursuant to which such liens and encumbrances, or any of them, are given; and also to execute and deliver to Construction Lender any other written instruments, any chattel paper, or any other collateral, of any kind or nature, which Construction Lender may deem necessary or proper in connection with or pertaining to the giving of the liens and encumbrances.

**Negotiate Items.** To draw, endorse, and discount with Construction Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Partnership in which the Partnership may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to the account of the Partnership with Construction Lender, or to cause such other disposition of the proceeds derived therefrom as they may deem advisable.

**Further Acts.** In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances thereunder, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as they may in their discretion deem reasonably necessary or proper in order to carry into effect the provisions of these Resolutions.

RESOLVED FURTHER, that any and all acts authorized pursuant to these Resolutions and performed prior to the passage of these Resolutions are hereby ratified and approved, that these Resolutions shall remain in full force and effect and Construction Lender may rely on these Resolutions until written notice of their revocation shall have been delivered to and received by Construction Lender. Any such notice shall not affect any of the Partnership's agreements or commitments in effect at the time notice is given.

RESOLVED FURTHER, that the Partnership will notify Construction Lender in writing at Construction Lender's address (or such other addresses as Construction Lender may designate from time to time) prior to any (a) change in the name of the Partnership, (b) change in the assumed business name(s) of the Partnership, (c) change in the management of the Partnership, (d) change in the authorized signer(s), (e) conversion of the Partnership to a new or different type of business entity, or (f) change in any other aspect of the Partnership that directly or indirectly relates to any agreements between the Partnership and Construction Lender. No change in the name of the Partnership will take effect until after Construction Lender has been notified.

TPC HOLDINGS V, LLC,  
an Idaho limited liability company

By: \_\_\_\_\_  
Caleb Roope  
Manager

SUTTER COMMUNITY AFFORDABLE HOUSING,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Martha Griese  
Vice President

**Exhibit D**  
**Incumbency Certificate**

MANAGING GENERAL PARTNER INCUMBENCY

The undersigned certifies that he/she is the President of **SUTTER COMMUNITY AFFORDABLE HOUSING** (the "Managing General Partner"), which is the managing general partner **LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP** ("Borrower"). The undersigned further certifies that (1) as such, he/she is duly authorized to execute this Certificate, and (2) the undersigned persons have been appointed and are qualified officers of the Managing General Partner with the authority to act on behalf of the Managing General Partner holding the office set forth opposite his/her name, and that the signature appearing opposite his/her name is his genuine signature.

IN WITNESS WHEREOF, the undersigned has duly executed this Incumbency Certificate as of November \_\_, 2015.

<u>Name</u>	<u>Office</u>	<u>Signature</u>
Martha Griese	Vice President	_____

**Managing General Partner:**

SUTTER COMMUNITY AFFORDABLE  
HOUSING,  
a California nonprofit public benefit  
corporation

By: \_\_\_\_\_  
Martha Griese  
Vice President

**ADMINISTRATIVE GENERAL PARTNER INCUMBENCY**

The undersigned certifies that he/she is the Manager of **TPC HOLDINGS V, LLC**, an Idaho limited liability company (the "Administrative General Partner"), which is the administrative general partner **LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP** ("Borrower"). The undersigned further certifies that (1) as such, he/she is duly authorized to execute this Certificate, and (2) the undersigned persons have been appointed and are qualified officers of the Administrative General Partner with the authority to act on behalf of the Administrative General Partner holding the office set forth opposite his/her name, and that the signature appearing opposite his/her name is his genuine signature.

IN WITNESS WHEREOF, the undersigned has duly executed this Incumbency Certificate as of November \_\_\_\_, 2015.

<u>Name</u>	<u>Office</u>	<u>Signature</u>
Caleb Roope	Manager	_____

**Administrative General Partner:**

TPC HOLDINGS V, LLC,  
an Idaho limited liability company

By: \_\_\_\_\_  
Caleb Roope  
Manager



**Exhibit E**  
**Good Standing Certificate**



Recording Requested By  
And When Recorded Mail To:

Rabobank, N.A.  
Attention: Community Development Finance  
618 West Main Street  
Visalia, California 93291

Space Above For Recorder's Use

**SUBORDINATION AGREEMENT  
(CITY OF LIVE OAK)**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE LIEN OF CERTAIN DEEDS OF TRUST ON THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

This Subordination Agreement (the "Subordination Agreement") is dated for reference purposes as of November \_\_, 2015, between **LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP** (the "Borrower") and the **CITY OF LIVE OAK**, a California municipal corporation ("Junior Lender"), in favor of **RABOBANK, N.A.**, its successors, transferees and assigns (together with its successors and assigns, "Senior Lender"). The Junior Lender and the Senior Lender are individually and collectively, as the context requires, referred to in this Subordination Agreement as "Lender."

**Factual Background**

**A.** Borrower is the owner of the real property described in **Exhibit A** attached to this Subordination Agreement (the "Property").

**B.** The Senior Lender is making a construction loan to the Borrower in the principal amount of \$10,700,000.00 (the "Senior Loan"). The Senior Loan is being made pursuant to that certain Construction Loan Agreement (the "Loan Agreement") between the Bank and the Borrower dated as of the date hereof (the "Senior Loan Agreement"). The Senior Loan is evidenced by that certain Promissory Note Secured by Deed of Trust dated as of the date hereof in the stated amount of \$10,700,000.00 (the "Note"), made and secured by, among other things, that certain Construction Deed of Trust, with Assignment of Leases and Rents, Security Agreement, and Fixture Filing dated as of the date hereof (the "Senior Deed of Trust"), to be recorded concurrently herewith in the Official Records of Sutter County, California ("Official Records"), covering certain real and personal property, as therein described, including but not limited to the Property. All documents which evidence, guaranty, secure, or otherwise pertain to the Senior Loan collectively constitute the "Senior Loan Documents."

**C.** Junior Lender has provided, or has agreed to provide, to Borrower (i) an acquisition loan in the original principal amount of \$293,000 and (ii) a fee deferral loan in the original principal amount of \$373,349 (collectively, the "Junior Loan"). The Junior Loan is evidenced by that certain Acquisition and Fee Deferral Loan Agreement ("Junior Loan Agreement"), Acquisition Loan Promissory Note ("Acquisition Note") and Fee Deferral Loan Promissory Note ("Fee Deferral Note"), each dated as of even date herewith, and secured by that certain Deed of Trust and Security Agreement ("Junior Deed of Trust") to be recorded in the Official Records concurrently herewith covering a portion of the Property. All documents which evidence, guaranty, secure, or otherwise pertain to the Junior Loan including, without limitation, the Junior Loan Agreement, Acquisition Note, Fee Deferral Note and Junior Deed of Trust collectively constitute the "Junior Loan Documents."

D. It is a material condition to each Lender's agreement to provide its respective loan to Borrower that the priorities of the Loan Documents including the Deeds of Trust be established as provided in this Subordination Agreement. The Borrower and the Lenders have agreed that the order of priority of their respective Loan Documents shall be as follows: (1) first, the Senior Loan and Senior Loan Documents, including the Senior Deed of Trust, and (2) next, the Junior Loan and the Junior Loan Documents, including the Junior Loan Deed of Trust. It is to the mutual benefit of the parties that the Lenders make their respective loans to Borrower. Senior Lender and Junior Lender are willing to agree to the establishment of the priorities of their respective Loans and Loan Documents upon the terms set forth below. Each loan may be referred to in this Subordination Agreement, respectively, as the context may require, as a "Loan" or the "Loan." Each deed of trust or security agreement that secures each Loan may be referred to as a "Deed of Trust," and collectively as the "Deeds of Trust." All of the loan documents relating to any Loan may be referred to in this Subordination Agreement, respectively, as the context may require, as "Loan Documents."

## Agreement

### **1. Subordination.**

**1.1 Subordination of Loans and Loan Documents.** As to each Loan, the Lenders agree that the applicable (i) Junior Loan and Junior Loan Documents, (ii) any and all renewals, modifications, extensions, or advances thereunder or secured thereby (including interest thereon), (iii) any liens and security interests created by the Junior Loan Documents, and (iv) all rights, remedies, conditions, terms and covenants contained in the applicable Junior Loan Documents are hereby and at all times and in all respects, wholly subordinate and inferior in claim and right to the applicable (i) Senior Loan and Senior Loan Documents, (ii) any and all renewals, modifications, extensions, or advances thereunder or secured thereby (including interest thereon), (iii) the liens and security interests created by the Senior Loan Documents, and (iv) all of the rights, remedies, conditions, terms and covenants contained in the Senior Loan Documents and any claims, rights, and remedies arising therefor or in connection therewith. No amendments, modifications consolidations, supplements, amendments, replacements and restatements of and/or to the Senior Loan Documents or waivers of any provisions thereof shall affect the subordination thereof as set forth in this **Section 1.1.**

**1.2 Lien Priority.** With regard to those Loan Documents to be recorded in the Official Records of Sutter County, California with respect to the Property, the Lenders agree to the following priority order of such documents with respect to the Property:

- (a) The Senior Deed of Trust; and
- (c) The Junior Deed of Trust

**2. Acknowledgments and Agreements of Junior Lender.** Junior Lender declares, acknowledges, and agrees that:

**2.1** Senior Lender would not make the Senior Loan without this Subordination Agreement;

**2.2** Junior Lender consents to all provisions of the Senior Loan Documents;

**2.3** In making disbursements, Senior Lender is under no obligation or duty to see, nor has Senior Lender represented that it will see, to the application of the proceeds of the Senior Loan for the benefit or protection of any such Junior Lender;

**2.4** Junior Lender intentionally and unconditionally waives, relinquishes, subjects, and subordinates the liens, claims, rights, and charges of its Loan Documents, and all present and future indebtedness and obligations secured thereby, in favor of all Senior Loan Documents and the lien, claim, right, and charge upon the Property of the Senior Loan Documents, and understands that in reliance

upon, and in consideration of, this subjection and subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into, that would not be made or entered into but for Senior Lender's reliance upon this waiver, relinquishment, subjection, and subordination;

**2.5** Junior Lender has delivered to Senior Lender true and complete copies of its Loan Documents, and such documents have not been amended, modified or supplemented in any way, except as disclosed therein;

**2.6** There are no defaults (or conditions or events which, with notice or the passage of time or both, would constitute a default), known to any Junior Lender as of the date hereof, by Borrower under its obligations set forth in any of the Loan Documents; and

**2.7** Junior Lender shall not enter into any agreement to amend or modify any of its Loan Documents without notice to, and in the case of material amendments or modifications, the prior consent of Senior Lender.

### **3. Rights of Subrogation; Bankruptcy.**

**3.1** Lender hereby waives any requirement for marshaling of assets thereby in connection with any foreclosure of any security interest or any other realization upon collateral in respect of any of the Loan Documents, as applicable, or any exercise of any rights of set-off or otherwise. Each Lender assumes all responsibility for keeping itself informed as to the condition (financial or otherwise) of Borrower, the condition of the Property and all other collateral and other circumstances and, except for notices expressly required by this Subordination Agreement, no Lender shall have any duty whatsoever to obtain, advise or deliver information or documents to the other relative to such condition, business, assets and/or operations. No Lender owes a fiduciary duty to any other Lender in connection with the administration of the Senior Loan and the Senior Loan Documents or the Junior Loan and the Junior Loan Documents and Lender agrees not to assert any such claim.

**3.2** No payment or distribution to Senior Lender pursuant to the provisions of this Subordination Agreement and no exercise of any cure right by any Junior Lender as provided herein shall entitle any such Junior Lender to exercise any right of subrogation in respect thereof prior to the payment in full of the Senior Loan, and Junior Lender agrees that, prior to the satisfaction of all Senior Loan it shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in any portion of the Property or any other collateral now securing the Senior Loan or the proceeds therefrom that is or may be prior to, or of equal priority to, any of the Senior Loan Documents or the liens, rights, estates and interests created thereby.

**3.3** The provisions of this Subordination Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case, proceeding or other action against Borrower under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors (a "Proceeding"). For as long as the Senior Loan shall remain outstanding, Junior Lender shall not, and shall not solicit any person or entity to, and shall not direct or cause Borrower or any entity which controls Borrower (the "Borrower Group") to: (i) commence any Proceeding; (ii) institute proceedings to have Borrower adjudicated a bankrupt or insolvent; (iii) consent to, or acquiesce in, the institution of bankruptcy or insolvency proceedings against Borrower; (iv) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of Borrower; (v) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower, the Property (or any portion thereof) or any other collateral securing the Senior Loan (or any portion thereof); (vi) make an assignment for the benefit of any creditor of Borrower; (vii) seek to consolidate the Property or any other assets of the Borrower with any member of the Borrower Group in any proceeding relating to bankruptcy, insolvency, reorganization or relief of debtors; or (viii) take any action in furtherance of any of the foregoing.

3.4. If Junior Lender is deemed to be a creditor of Borrower in any Proceeding (i) Junior Lender hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any Proceeding by or against the Borrower without the prior consent of Senior Lender; (ii) Junior Lender covenants and agrees not to vote against the interests of Senior Lender in any such Proceeding; (iii) Senior Lender may vote on behalf of Junior Lender only if the proposed plan would result in Senior Lender being "impaired" (as such term is defined in the United States Bankruptcy Code) in any such Proceeding with respect to any proposed plan of reorganization in respect of which creditors are voting and (iv) Junior Lender shall not challenge the validity or amount of any claim submitted in such Proceeding by Senior Lender in good faith or any valuations of the Property or other Senior Loan collateral submitted by Senior Lender in good faith, in such Proceeding or take any other action in such Proceeding, which is adverse to Senior Lender's enforcement of its claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code).

4. **Integration; No Waiver.** This Subordination Agreement is the whole and only agreement with regard to the subordination of the liens, claims, and charges of the Junior Loan and Junior Loan Documents to the Senior Loan and Senior Loan Documents. This Subordination Agreement may not be modified or amended except by a written agreement signed by the parties. No waiver shall be deemed to be made by any Lender of any of its rights hereunder unless the same shall be in writing signed by or on behalf of such Lender, and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights of such Lender or the obligations of Borrower to such Lender in any other respect at any other time.

5. **Successors and Assigns.** This Subordination Agreement is binding on and inures to the benefit of the legal representatives, successors, and assigns of the parties. Each Lender's successors and assigns include any financial institution which may now, or hereafter, purchase or participate in such Lender's Loan, as well as any party that acquires any such Loan. Notice of acceptance of this Subordination Agreement is hereby waived and this Subordination Agreement shall be binding upon each Lender and its legal representatives, successors, and assigns, as the case may be, it being understood and agreed, however, that, unless otherwise agreed in writing by the Senior Lender, no assignment of the Junior Loan Documents, or any part thereof, shall be made without the prior written consent of the Senior Lender.

6. **Attorneys' Fees and Costs.** If any party to this Subordination Agreement brings an action to interpret or enforce its rights under this Subordination Agreement, the prevailing party will be entitled to recover its costs and reasonable attorneys' fees as awarded in the action. Whenever any party to this Subordination Agreement is obligated to pay or reimburse another party for attorneys' fees, those fees include the reasonable allocated costs for services of in-house counsel, to the extent not prohibited by applicable law.

7. **Governing Law.** This Subordination Agreement is governed by the laws of the State of California, without regard to the choice of law rules of that state.

8. **Notices.** All notices given under this Subordination Agreement shall be in writing and be given by personal delivery, overnight receipted courier (such as Airborne, UPS, or Federal Express) or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below its signature. Notices shall be effective upon the first to occur of receipt, when proper delivery is refused, or the expiration of forty-eight (48) hours after deposit in registered or certified United States mail as described above. Addresses for notice may be changed by any party by notice to all other parties in accordance with this Section.

9. **Counterparts.** This Subordination Agreement may be executed in counterparts, and all counterparts constitute but one and the same document.

11. **Extended Use Agreement.** Notwithstanding anything contained in the Senior Loan Documents or the Junior Loan Documents, each Lender hereby acknowledges and agrees that the State of California, acting through TCAC, intends to enter into an extended use agreement, which constitutes the

extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the "Code"). As of the date hereof, Code Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Code Section 42 for a period of three (3) years after the date the Property is acquired by foreclosure or by instrument in lieu of foreclosure, even though such foreclosure or instrument in lieu of foreclosure would cause the termination of any such extended use agreement required by TCAC. In the event the extended use agreement required by TCAC is recorded against the Property, each Lender agrees to comply with the provisions set forth in Code Section 42(h)(6)(E)(ii).

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR PURPOSES OTHER THAN IMPROVEMENT OF THE PROPERTY.**

*(Remainder of page intentionally left blank.  
Signatories and notary jurats on the following pages.)*

**IN WITNESS WHEREOF**, the parties have executed this Subordination Agreement the date first above written.

**“JUNIOR LENDER”**

**THE CITY OF LIVE OAK,**  
a California municipal corporation

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

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

Approved as to Form:

Address for notices to Junior Lender:

City of Live Oak  
9955 Live Oak Blvd.  
Live Oak, CA 95953



**“SENIOR LENDER”**

**RABOBANK, N.A.**

By: \_\_\_\_\_  
Debi Engelbrecht  
Vice President

Address for notices to Senior Lender:  
Rabobank, N.A.  
Attention: Community Development Finance  
618 West Main Street  
Visalia, California 93291

**“BORROWER”**

**LIVE OAK PACIFIC ASSOCIATES,  
A CALIFORNIA LIMITED PARTNERSHIP,**  
a California limited partnership

By: TPC Holdings V, LLC,  
an Idaho limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Caleb Roope  
Manager

By: Sutter Community Affordable Housing,  
a California nonprofit public benefit  
corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Martha Griese  
Vice President

Address for notices to Borrower:

Live Oak Pacific Associates,  
A California Limited Partnership  
c/o The Pacific Companies  
430 E. State Street, Suite 100  
Eagle, ID 83616  
Attn: Caleb Roope

*with a copy to:*

Sutter Community Affordable Housing  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*and a copy to:*

CREA Kristen Court, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(All signatures must be acknowledged by a notary.)*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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State of California )  
County of Los )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Exhibit A to **SUBORDINATION AGREEMENT.**

Description of Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LIVE OAK, COUNTY OF SUTTER, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Recording Requested By  
And When Recorded Mail To:

Rabobank, N.A.  
Attention: Community Development Finance  
618 West Main Street  
Visalia, California 93291

Space Above For Recorder's Use

**SUBORDINATION AGREEMENT  
(HOUSING AUTHORITY)**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE LIEN OF CERTAIN DEEDS OF TRUST ON THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

This Subordination Agreement (the "Subordination Agreement") is dated for reference purposes as of November \_\_, 2015, between **LIVE OAK PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP** (the "Borrower") and **THE REGIONAL HOUSING AUTHORITY OF SUTTER AND NEVADA COUNTIES** ("Junior Lender"), in favor of **RABOBANK, N.A.**, its successors, transferees and assigns (together with its successors and assigns, "Senior Lender"). The Junior Lender and the Senior Lender are individually and collectively, as the context requires, referred to in this Subordination Agreement as "Lender."

**Factual Background**

**A.** Borrower is the owner of the real property described in **Exhibit A** attached to this Subordination Agreement (the "Property").

**B.** The Senior Lender is making a construction loan to the Borrower in the principal amount of \$10,700,000.00 (the "Senior Loan"). The Senior Loan is being made pursuant to that certain Construction Loan Agreement (the "Loan Agreement") between the Bank and the Borrower dated as of the date hereof (the "Senior Loan Agreement"). The Senior Loan is evidenced by that certain Promissory Note Secured by Deed of Trust dated as of the date hereof in the stated amount of \$10,700,000.00 (the "Note"), made and secured by, among other things, that certain Construction Deed of Trust, with Assignment of Leases and Rents, Security Agreement, and Fixture Filing dated as of the date hereof (the "Senior Deed of Trust"), to be recorded concurrently herewith in the Official Records of Sutter County, California ("Official Records"), covering certain real and personal property, as therein described, including but not limited to the Property. All documents which evidence, guaranty, secure, or otherwise pertain to the Senior Loan collectively constitute the "Senior Loan Documents."

**C.** Junior Lender has provided, or has agreed to provide, to Borrower (i) an acquisition loan in the original principal amount of \$823,000 and (ii) a capital funds loan in the original principal amount of \$337,143 (collectively, the "Junior Loan"). The Junior Loan is evidenced by that certain Acquisition and Capital Funds Loan Agreement ("Junior Loan Agreement"), Acquisition Loan Promissory Note ("Acquisition Note") and Capital Funds Loan Promissory Note ("Capital Funds Note"), each dated as of even date herewith, and secured by that certain Deed of Trust and Security Agreement ("Junior Deed of Trust") to be recorded in the Official Records concurrently herewith covering a portion of the Property. All documents which evidence, guaranty, secure, or otherwise pertain to the Junior Loan including, without limitation, the Junior Loan Agreement, Acquisition Note, Capital Funds Note and Junior Deed of Trust collectively constitute the "Junior Loan Documents."

D. It is a material condition to each Lender's agreement to provide its respective loan to Borrower that the priorities of the Loan Documents including the Deeds of Trust, be established as provided in this Subordination Agreement. The Borrower and the Lenders have agreed that the order of priority of their respective Loan Documents shall be as follows: (1) first, the Senior Loan and Senior Loan Documents, including the Senior Deed of Trust, and (2) next, the Junior Loan and the Junior Loan Documents, including the Junior Loan Deed of Trust. It is to the mutual benefit of the parties that the Lenders make their respective loans to Borrower. Senior Lender and Junior Lender are willing to agree to the establishment of the priorities of their respective Loans and Loan Documents upon the terms set forth below. Each loan may be referred to in this Subordination Agreement, respectively, as the context may require, as a "Loan" or the "Loan." Each deed of trust or security agreement that secures each Loan may be referred to as a "Deed of Trust," and collectively as the "Deeds of Trust." All of the loan documents relating to any Loan may be referred to in this Subordination Agreement, respectively, as the context may require, as "Loan Documents."

## Agreement

### **1. Subordination.**

**1.1 Subordination of Loans and Loan Documents.** As to each Loan, the Lenders agree that the applicable (i) Junior Loan and Junior Loan Documents, (ii) any and all renewals, modifications, extensions, or advances thereunder or secured thereby (including interest thereon), (iii) any liens and security interests created by the Junior Loan Documents, and (iv) all rights, remedies, conditions, terms and covenants contained in the applicable Junior Loan Documents are hereby and at all times and in all respects, wholly subordinate and inferior in claim and right to the applicable (i) Senior Loan and Senior Loan Documents, (ii) any and all renewals, modifications, extensions, or advances thereunder or secured thereby (including interest thereon), (iii) the liens and security interests created by the Senior Loan Documents, and (iv) all of the rights, remedies, conditions, terms and covenants contained in the Senior Loan Documents and any claims, rights, and remedies arising therefor or in connection therewith. No amendments, modifications consolidations, supplements, amendments, replacements and restatements of and/or to the Senior Loan Documents or waivers of any provisions thereof shall affect the subordination thereof as set forth in this **Section 1.1.**

**1.2 Lien Priority.** With regard to those Loan Documents to be recorded in the Official Records of Sutter County, California with respect to the Property, the Lenders agree to the following priority order of such documents with respect to the Property:

- (a) The Senior Deed of Trust; and
- (c) The Junior Deed of Trust

**2. Acknowledgments and Agreements of Junior Lender.** Junior Lender declares, acknowledges, and agrees that:

**2.1** Senior Lender would not make the Senior Loan without this Subordination Agreement;

**2.2** Junior Lender consents to all provisions of the Senior Loan Documents;

**2.3** In making disbursements, Senior Lender is under no obligation or duty to see, nor has Senior Lender represented that it will see, to the application of the proceeds of the Senior Loan for the benefit or protection of any such Junior Lender;

**2.4** Junior Lender intentionally and unconditionally waives, relinquishes, subjects, and subordinates the liens, claims, rights, and charges of its Loan Documents, and all present and future indebtedness and obligations secured thereby, in favor of all Senior Loan Documents and the lien, claim, right, and charge upon the Property of the Senior Loan Documents, and understands that in reliance



upon, and in consideration of, this subjection and subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into, that would not be made or entered into but for Senior Lender's reliance upon this waiver, relinquishment, subjection, and subordination;

**2.5** Junior Lender has delivered to Senior Lender true and complete copies of its Loan Documents, and such documents have not been amended, modified or supplemented in any way, except as disclosed therein;

**2.6** There are no defaults (or conditions or events which, with notice or the passage of time or both, would constitute a default), known to any Junior Lender as of the date hereof, by Borrower under its obligations set forth in any of the Loan Documents; and

**2.7** Junior Lender shall not enter into any agreement to amend or modify any of its Loan Documents without notice to, and in the case of material amendments or modifications, the prior consent of Senior Lender.

### **3. Rights of Subrogation; Bankruptcy.**

**3.1** Lender hereby waives any requirement for marshaling of assets thereby in connection with any foreclosure of any security interest or any other realization upon collateral in respect of any of the Loan Documents, as applicable, or any exercise of any rights of set-off or otherwise. Each Lender assumes all responsibility for keeping itself informed as to the condition (financial or otherwise) of Borrower, the condition of the Property and all other collateral and other circumstances and, except for notices expressly required by this Subordination Agreement, no Lender shall have any duty whatsoever to obtain, advise or deliver information or documents to the other relative to such condition, business, assets and/or operations. No Lender owes a fiduciary duty to any other Lender in connection with the administration of the Senior Loan and the Senior Loan Documents or the Junior Loan and the Junior Loan Documents and Lender agrees not to assert any such claim.

**3.2** No payment or distribution to Senior Lender pursuant to the provisions of this Subordination Agreement and no exercise of any cure right by any Junior Lender as provided herein shall entitle any such Junior Lender to exercise any right of subrogation in respect thereof prior to the payment in full of the Senior Loan, and Junior Lender agrees that, prior to the satisfaction of all Senior Loan it shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in any portion of the Property or any other collateral now securing the Senior Loan or the proceeds therefrom that is or may be prior to, or of equal priority to, any of the Senior Loan Documents or the liens, rights, estates and interests created thereby.

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**6. Attorneys' Fees and Costs.** If any party to this Subordination Agreement brings an action to interpret or enforce its rights under this Subordination Agreement, the prevailing party will be entitled to recover its costs and reasonable attorneys' fees as awarded in the action. Whenever any party to this Subordination Agreement is obligated to pay or reimburse another party for attorneys' fees, those fees include the reasonable allocated costs for services of in-house counsel, to the extent not prohibited by applicable law.

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*(Remainder of page intentionally left blank.  
Signatories and notary jurats on the following pages.)*

IN WITNESS WHEREOF, the parties have executed this Subordination Agreement the date first above written.

**“JUNIOR LENDER”**

**THE REGIONAL HOUSING AUTHORITY  
OF SUTTER AND NEVADA COUNTIES**

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
RHASNC Attorney

Approved as to Form:

Address for notices to Junior Lender:

The Regional Housing Authority  
of Sutter and Nevada Counties  
1455 Butte House Road  
Yuba City, CA 95993  
Attn: RHASNC Director

**“SENIOR LENDER”**

**RABOBANK, N.A.**

By: \_\_\_\_\_  
Debi Engelbrecht  
Vice President

Address for notices to Senior Lender:  
Rabobank, N.A.  
Attention: Community Development Finance  
618 West Main Street  
Visalia, California 93291

**“BORROWER”**

**LIVE OAK PACIFIC ASSOCIATES,  
A CALIFORNIA LIMITED PARTNERSHIP,**  
a California limited partnership

By: TPC Holdings V, LLC,  
an Idaho limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Caleb Roope  
Manager

By: Sutter Community Affordable Housing,  
a California nonprofit public benefit  
corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Martha Griese  
Vice President

Address for notices to Borrower:

Live Oak Pacific Associates,  
A California Limited Partnership  
c/o The Pacific Companies  
430 E. State Street, Suite 100  
Eagle, ID 83616  
Attn: Caleb Roope

*with a copy to:*

Sutter Community Affordable Housing

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*and a copy to:*

CREA Kristen Court, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(All signatures must be acknowledged by a notary.)*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of )

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Signature \_\_\_\_\_



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Los )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Exhibit A to **SUBORDINATION AGREEMENT.**

Description of Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LIVE OAK, COUNTY OF SUTTER, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**COMMUNICATION WITH THOSE CHARGED WITH GOVERNANCE AT THE  
CONCLUSION OF THE AUDIT**

To the Board of Directors  
Sutter Community Affordable Housing  
Yuba City, California

We have audited the financial statements of Sutter Community Affordable Housing (a nonprofit Corporation) for the year ended March 31, 2015, and have issued our report thereon dated July 29, 2015. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you during the planning of our audit. Professional standards also require that we communicate to you the following information related to our audit.

**SIGNIFICANT AUDIT FINDINGS****Qualitative Aspects of Accounting Practices**

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Corporation are described in the notes to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the year ended March 31, 2015. We noted no transactions entered into by the Corporation during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the Corporation's financial statements are depreciation of capital assets.

Management's estimate of depreciation is based on estimated or actual historical cost and the useful lives of such assets. We evaluated the key factors and assumptions used to develop the Corporation's estimate in determining that it is reasonable in relation to the financial statements taken as a whole.

The financial statement disclosures are neutral, consistent, and clear.

**Difficulties Encountered in Performing the Audit**

We encountered no significant difficulties in dealing with management in performing and completing our audit.

To the Board of Directors  
Sutter Community Affordable Housing  
Yuba City, California

### **Corrected and Uncorrected Misstatements**

Professional standards require us to accumulate all misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. Management has agreed to correct all such misstatements. Items identified as significant deficiencies are identified in Appendix A of the Management Letter.

### **Disagreements with Management**

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

### **Management Representations**

We have requested certain representations from management that are included in the management representation letter.

### **Management Consultations with Other Independent Accountants**

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the organization's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

### **Other Audit Findings or Issues**

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Corporation's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

### **OTHER MATTERS**

We were engaged to report on the schedule of functional expenses which accompanies the financial statements. With respect to this supplementary information, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with U.S. generally accepted accounting principles, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

We were not engaged to report on the introductory section, which accompanies the financial statements. We did not audit or perform other procedures on this other information and we do not express an opinion or provide any assurance on it.

To the Board of Directors  
Sutter Community Affordable Housing  
Yuba City, California

This information is intended solely for the use of the Board of Directors and management of the entity and is not intended to be, and should not be, used by anyone other than these specified parties.

*Smith & Newell*

Smith & Newell, CPAs  
Yuba City, California  
July 29, 2015

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**INDEPENDENT AUDITOR'S MANAGEMENT LETTER**

To the Board of Directors  
Sutter Community Affordable Housing  
Yuba City, California

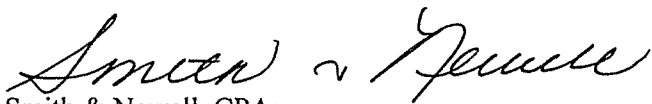
In planning and performing our audit of the financial statements of Sutter Community Affordable Housing, (Corporation) as of and for the year ended March 31, 2015, in accordance with auditing standards generally accepted in the United States of America, we considered the Corporation's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Corporation's internal control. Accordingly, we do not express an opinion on the effectiveness of the Corporation's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, we identified certain deficiencies in internal control that we consider to be significant deficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the organization's financial statements will not be prevented, or detected and corrected, on a timely basis. We did not identify any deficiencies in internal control that we consider to material weaknesses.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiency described in the attached appendix to be a significant deficiency.

This communication is intended solely for the information and use of management, the Board of Directors, and others within the organization, and is not intended to be, and should not be, used by anyone other than these specified parties.

  
Smith & Newell, CPAs  
Yuba City, California  
July 29, 2015

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**SUTTER COMMUNITY AFFORDABLE HOUSING**  
**Appendix A: Management Letter Comments**  
**For the Fiscal Year Ended March 31, 2015**

**CURRENT YEAR FINDINGS AND RECOMMENDATIONS**

**Operating Deficit (Significant Deficiency)**

**Condition**

At the time of our audit we noted that Sutter Community Affordable Housing continued to have operating expenses in excess of operating revenues. Although the Corporation has been able to maintain a positive cash flow, the yearly operating deficit continues primarily because of accrued interest on debt. At March 31, 2015, the total deficit in net assets in the Town Center fund was \$1,638,916 and the total deficit in net assets in the Yolo Street/Heiken Way fund was \$29,510. This is a repeat of a prior year finding.

**Cause**

The Corporation continues to expend more than it is receiving in dwelling rents and subsidies.

**Criteria**

Sound management practices require that efforts be made to ensure that fees for services, including rental fees, be adequate to cover expenses incurred as well as provide for future debt payments.

**Effect of Condition**

Sutter Community Affordable Housing is incurring operating deficits.

**Recommendation**

We recommend that Sutter Community Affordable Housing evaluate options that may be available to decrease operating deficits. If it is not possible to reduce expenses to a breakeven point, reducing expenses at least to the breakeven point prior to accrued interest would be a positive accomplishment.

**Management Response**

Sutter Community Affordable Housing currently has four loans/grants for the Town Center Senior Manor and Yolo Heiken properties.

***Town Center Senior Manor***

- Loan 1 - \$673,367 HOME Promissory Note with the City of Yuba City. Interest rate of 3% per year, no principal payments are due until 2053 or Event of Default.
- Loan 2 - \$1,323,589 RDA Promissory Note. Same repayment terms as Loan #1.
- Interest for Town Center Senior Manor loans accrues annually in accordance with the above Agreements, but is not included in yearly budgets.

**SUTTER COMMUNITY AFFORDABLE HOUSING**  
**Appendix A: Management Letter Comments**  
**For the Fiscal Year Ended March 31, 2015**

**CURRENT YEAR FINDINGS AND RECOMMENDATIONS (CONTINUED)**

**Operating Deficit (Significant Deficiency) (Continued)**

**Management Response (Continued)**

*Yolo Heiken*

- Loan 1 - \$100,000 AHP Promissory Note with the City of Yuba City. Zero interest, forgivable 11/19/2013.
- Grant 2 - \$160,000 City of Yuba City Promissory Note. Zero interest, no principal payments are due until 2056.

**SUTTER COMMUNITY AFFORDABLE HOUSING**

**Appendix A: Management Letter Comments**

**For the Fiscal Year Ended March 31, 2014**

**STATUS OF PRIOR YEAR RECOMMENDATIONS**

**Operating Deficit (Significant Deficiency)**

**Prior Year Recommendation**

We recommend that Sutter Community Affordable Housing evaluate options that may be available to decrease operating deficits. If it is not possible to reduce expenses to a breakeven point, reducing expenses at least to the breakeven point prior to accrued interest would be a positive accomplishment.

**Status of Prior Year Recommendation**

Not Implemented

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**SUTTER COMMUNITY  
AFFORDABLE HOUSING  
(A California Non Profit Corporation)**

**FINANCIAL STATEMENTS  
TOGETHER WITH  
INDEPENDENT AUDITOR'S REPORT  
FOR THE YEAR ENDED  
MARCH 31, 2015**

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**SUTTER COMMUNITY AFFORDABLE HOUSING**  
**Annual Financial Report**  
**For the Year Ended March 31, 2015**

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## **INTRODUCTORY SECTION**

- **Members of the Board**

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**SUTTER COMMUNITY AFFORDABLE HOUSING**  
**Board of Directors**  
**For the Year Ended March 31, 2015**

Diane Hodges .....	President
Gustavo Becerra .....	Secretary/Treasurer
Barbara Swift .....	Member
Martha Griese .....	Member
Charles Epp .....	Member
Sarah Becker .....	Member
Kimberly Butcher .....	Member
Richard Grant .....	Member

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## **FINANCIAL SECTION**

- **Independent Auditor's Report**
- **Basic Financial Statements**
- **Supplementary Information**

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**INDEPENDENT AUDITOR'S REPORT**

The Board of Directors  
Sutter Community Affordable Housing  
Yuba City, California

We have audited the accompanying financial statements of Sutter Community Affordable Housing, California (a nonprofit Corporation), which comprise the statement of financial position as of March 31, 2015, and the related statements of activities and cash flows for the year then ended, and the related notes to the financial statements.

**Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

**Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes assessing the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

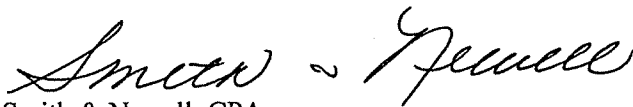
**Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Sutter Community Affordable Housing as of March 31, 2015, and the changes in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

The Board of Directors  
Sutter Community Affordable Housing  
Yuba City, California

**Other Matter**

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The schedule of functional expenses is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

A handwritten signature in cursive script that reads "Smith & Newell".

Smith & Newell, CPAs  
Yuba City, California  
July 29, 2015



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## **Basic Financial Statements**

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**SUTTER COMMUNITY AFFORDABLE HOUSING**  
**Statement of Financial Position**  
**March 31, 2015**

	Town Center	Yolo Street/ Heiken Way	Total
<b>ASSETS</b>			
Current Assets			
Cash and deposits	\$ 225,487	\$ 10,725	\$ 236,212
Imprest cash	25	-	25
Accounts receivable	133	-	133
<b>Total Current Assets</b>	<b>225,645</b>	<b>10,725</b>	<b>236,370</b>
Capital Assets			
Buildings	2,279,088	180,244	2,459,332
Leasehold improvements	76,346	21,757	98,103
Furniture and equipment	6,320	-	6,320
Accumulated depreciation	(1,224,715)	(79,194)	(1,303,909)
<b>Total Capital Assets, Net</b>	<b>1,137,039</b>	<b>122,807</b>	<b>1,259,846</b>
<b>Total Assets</b>	<b>\$ 1,362,684</b>	<b>\$ 133,532</b>	<b>\$ 1,496,216</b>
<b>LIABILITIES</b>			
Current Liabilities			
Accounts payable	\$ 9,696	\$ 431	\$ 10,127
Due to RHASNC	4,142	436	4,578
Security deposits	12,015	1,797	13,812
Prepaid tenant rent	1,332	378	1,710
<b>Total Current Liabilities</b>	<b>27,185</b>	<b>3,042</b>	<b>30,227</b>
Noncurrent Liabilities			
Accrued interest payable	977,459	-	977,459
Loans payable			
RDA loan	1,323,589	-	1,323,589
HOME loan	673,367	-	673,367
Yuba City loan	-	160,000	160,000
<b>Total Noncurrent Liabilities</b>	<b>2,974,415</b>	<b>160,000</b>	<b>3,134,415</b>
<b>Total Liabilities</b>	<b>3,001,600</b>	<b>163,042</b>	<b>3,164,642</b>
<b>NET ASSETS</b>			
Unrestricted	(1,638,916)	(29,510)	(1,668,426)
<b>Total Net Assets</b>	<b>(1,638,916)</b>	<b>(29,510)</b>	<b>(1,668,426)</b>
<b>Total Liabilities and Net Assets</b>	<b>\$ 1,362,684</b>	<b>\$ 133,532</b>	<b>\$ 1,496,216</b>

The notes to the basic financial statements are an integral part of this statement.

**SUTTER COMMUNITY AFFORDABLE HOUSING**  
**Statement of Activities**  
**For the Year Ended March 31, 2015**

	<u>Town Center</u>	<u>Yolo Street/ Heiken Way</u>	<u>Total</u>
<b>OPERATING REVENUES AND OTHER SUPPORT</b>			
Dwelling rents	\$ 179,456	\$ 43,692	\$ 223,148
Other income	7,814	120	7,934
<b>Total Operating Revenues and Other Support</b>	<u>187,270</u>	<u>43,812</u>	<u>231,082</u>
<b>OPERATING EXPENSES</b>			
Management fees	14,763	1,897	16,660
Supplies	6,706	772	7,478
Water	6,895	885	7,780
Electricity	7,781	-	7,781
Gas	1,114	694	1,808
Garbage	4,644	1,286	5,930
Sewer	7,505	1,972	9,477
Office expense	1,925	97	2,022
Outside services	81,167	8,671	89,838
Insurance	3,177	469	3,646
Taxes	1,235	560	1,795
Collection losses	1,813	2,409	4,222
Miscellaneous	1,762	252	2,014
Depreciation	82,826	7,096	89,922
<b>Total Operating Expenses</b>	<u>223,313</u>	<u>27,060</u>	<u>250,373</u>
<b>Operating Income (Loss)</b>	<u>(36,043)</u>	<u>16,752</u>	<u>(19,291)</u>
<b>NON-OPERATING REVENUES (EXPENSES)</b>			
Interest revenue	151	-	151
Interest expense	(59,909)	-	(59,909)
<b>Total Non-Operating Revenues (Expenses)</b>	<u>(59,758)</u>	<u>-</u>	<u>(59,758)</u>
<b>Change in Net Assets</b>	<u>(95,801)</u>	<u>16,752</u>	<u>(79,049)</u>
<b>Total Net Assets - Beginning</b>	<u>(1,543,115)</u>	<u>(46,262)</u>	<u>(1,589,377)</u>
<b>Total Net Assets - Ending</b>	<u>\$ (1,638,916)</u>	<u>\$ (29,510)</u>	<u>\$ (1,668,426)</u>

The notes to the basic financial statements are an integral part of this statement.

**SUTTER COMMUNITY AFFORDABLE HOUSING**  
**Statement of Cash Flows**  
**For the Year Ended March 31, 2015**

	<u>Town Center</u>	<u>Yolo Street/ Heiken Way</u>	<u>Total</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
Receipts from customers	\$ 190,895	\$ 46,219	\$ 237,114
Payments to suppliers for goods and services	(144,115)	(21,568)	(165,683)
<b>Net Cash Provided (Used) by Operating Activities</b>	<u>46,780</u>	<u>24,651</u>	<u>71,431</u>
<b>CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES</b>			
Interfund loans repayments received	32,182	12,598	44,780
Interfund loans repaid	(12,598)	(32,182)	(44,780)
<b>Net Cash Provided (Used) by Noncapital Financing Activities</b>	<u>19,584</u>	<u>(19,584)</u>	<u>-</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>			
Acquisition of capital assets	-	-	-
<b>Net Cash Provided (Used) by Capital and Related Financing Activities</b>	<u>-</u>	<u>-</u>	<u>-</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Interest	151	-	151
<b>Net Cash Provided (Used) by Investing Activities</b>	<u>151</u>	<u>-</u>	<u>151</u>
<b>Net Increase (Decrease) in Cash and Cash Equivalents</b>	66,515	5,067	71,582
<b>Balances - Beginning</b>	158,997	5,658	164,655
<b>Balances - Ending</b>	<u>\$ 225,512</u>	<u>\$ 10,725</u>	<u>\$ 236,237</u>
<b>RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES</b>			
Operating income (loss)	\$ (36,043)	\$ 16,752	\$ (19,291)
Adjustments to reconcile operating income to net cash provided by operating activities:			
Depreciation	82,826	7,096	89,922
Decrease (increase) in:			
Accounts receivable	2,656	2,171	4,827
Increase (decrease) in:			
Accounts payable	(7,770)	(2,040)	(9,810)
Due to RHASNC	4,142	436	4,578
Security deposits	750	-	750
Prepaid tenant rent	219	236	455
<b>Net Cash Provided (Used) by Operating Activities</b>	<u>\$ 46,780</u>	<u>\$ 24,651</u>	<u>\$ 71,431</u>

The notes to the basic financial statements are an integral part of this statement.

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## **Basic Financial Statements**

- **Notes to Basic Financial Statements**

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**SUTTER COMMUNITY AFFORDABLE HOUSING**  
**Notes to Basic Financial Statements**  
**For the Year Ended March 31, 2015**

**NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The basic financial statements of Sutter Community Affordable Housing (Corporation) have been prepared in conformity with generally accepted accounting principles (GAAP) as applied to nonprofit entities. The more significant of the Corporation's accounting policies are described below.

**A. Description of Reporting Entity**

Sutter Community Affordable Housing is located in Yuba City, California and provides housing for low-income families and elderly and handicapped persons who cannot afford decent, safe, and sanitary housing.

**B. Income Taxes**

The Corporation is a not-for-profit organization that is exempt from income taxes under Section 501(c)(3) of the Internal Revenue Code. The Corporation has also been classified as an entity that is not a private foundation within the meaning of Section 509(a) and qualifies for deductible contributions as provided in Section 170(1)(A)(vi).

FASB ASC Topic No. 740, Income Taxes, prescribes a comprehensive model for the financial statement recognition, measurement, presentation and disclosure of uncertain tax positions taken or expected to be taken in income tax returns. Management of the Corporation believes that it has not taken a tax position that, if challenged, would have a material effect on the financial statements. The Corporation files Form 990 in the federal jurisdiction within the United States and Form 199 in the State of California. At March 31, 2015, the Corporation's tax returns related to the years ended March 31, 2012, through March 31, 2014 remain open to possible examination by tax authorities. No tax returns are currently under examination by any tax authorities. The Corporation has not incurred any penalties or interest under FASB ASC Topic No. 740.

**C. Basis of Accounting**

The operations of the Corporation are organized into funds, each of which is considered to be a separate accounting entity. The two funds of the Corporation record the activity of separate projects.

Basis of accounting refers to when revenues and expenses are recognized in the accounts and reported in the financial statements.

The financial statements of the Corporation have been prepared on the accrual basis of accounting. Under this method of accounting, revenues are recognized when they are earned and expenses are recognized when the liability is incurred. Contributions are recognized as revenue when they are unconditionally committed.

**D. In Kind Donations**

Donated property is reflected in the financial statements at the estimated fair value at the date of receipt. Contributed services are stated at their estimated fair value, if they are ordinarily purchased and are of a specialized nature such as skilled and professional level volunteers. If donated property or services create or enhance a capital asset, they are capitalized and depreciated according to the capital asset policy.

**SUTTER COMMUNITY AFFORDABLE HOUSING**  
**Notes to Basic Financial Statements**  
**For the Year Ended March 31, 2015**

**NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**E. Basis of Presentation**

The financial statement presentation follows the recommendations of the Financial Accounting Standards Board (FASB) in ASC 958. Under FASB ASC 958, the Corporation is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets.

**Unrestricted net assets** - Net assets that are not subject to donor imposed stipulations. The deficit in unrestricted net assets represent the excess of liabilities over assets.

**Temporarily restricted net assets** - Net assets subject to donor-imposed stipulations that will be met by actions of the Corporation and/or the passage of time. The Corporation does not have any temporarily restricted net assets.

**Permanently restricted net assets** - Net assets subject to donor-imposed stipulations that the principal be maintained permanently by the Corporation. The Corporation does not have any permanently restricted net assets.

**F. Cash and Deposits**

Cash and deposits held by the Corporation at March 31, 2015, consists of cash held in checking and saving accounts at banks which are secured by the Federal Deposit Insurance Corporation (FDIC). The balance in these banks did not exceed amounts covered by the FDIC. The Corporation has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk on cash deposits. Concentration of credit risk associated with investments is considered low due to the credit quality of the financial institutions holding these cash deposits and the Federal Deposit Insurance Corporation coverage.

**G. Cash and Cash Equivalents**

For purposes of the statement of cash flows, the Corporation considers all highly liquid investments available for current use with an initial maturity of three months or less to be cash equivalents.

**H. Accounts Receivable**

Accounts receivable at March 31, 2015, consisted primarily of tenant dwelling rents. Management considers all amounts to be collectible and therefore has established no allowance for uncollectibles.

**I. Inventories**

Purchases of supplies are recorded as an expense at the time of purchase. Records are not maintained of inventory and supplies on hand, although these amounts are not considered material.

**SUTTER COMMUNITY AFFORDABLE HOUSING**

**Notes to Basic Financial Statements**

**For the Year Ended March 31, 2015**

**NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**J. Capital Assets**

Capital assets are defined by the Corporation as assets with a cost of more than \$1,000 and an estimated useful life of more than two years. Capital assets are recorded at historical cost or estimated historical cost if actual historical cost is not available. Contributed capital assets are recorded at their estimated fair market value at the date of donation.

Depreciation is computed on a straight-line basis over the estimated useful lives of the related assets. The estimated useful lives of depreciable assets are as follows:

Furniture and equipment	5- 10 years
Buildings	30 years

Expenses for maintenance and repairs are charged against operations. Renewals and betterments that materially extend the life of the assets are capitalized.

**K. Revenue Recognition**

Dwelling rents are recognized when earned. When rents are received in advance of the due date, they are recorded as prepaid tenant rent.

**L. Use of Estimates**

The preparation of basic financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that effect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

**NOTE 2: DEFICIT NET ASSETS**

The Corporation had deficit net assets in the following individual funds as of March 31, 2015:

Town Center	\$ 1,638,916
Yolo Street Heiken Way	29,510

These deficits are caused primarily by debt and accrued interest on debt. Repayment of this debt and accrued interest has either been deferred by the lenders until the Corporation has adequate revenue to begin repayment or is scheduled to be forgiven if compliance requirements are met.

**NOTE 3: CASH AND DEPOSITS**

**A. Financial Statement Presentation**

As of March 31, 2015, cash and deposits consisted of the following:

Deposits in banks	\$ 236,212
Imprest cash	<u>25</u>
Total Cash	<u>\$ 236,237</u>

**SUTTER COMMUNITY AFFORDABLE HOUSING**  
**Notes to Basic Financial Statements**  
**For the Year Ended March 31, 2015**

**NOTE 3: CASH AND INVESTMENTS (CONTINUED)**

**B. Cash**

At year end, the carrying amount of the Corporation's cash deposits in banks was \$236,212 and the bank balance was \$238,101. The difference between the bank balance and the carrying amount represents outstanding checks and deposits in transit.

**NOTE 4: ACCOUNTS RECEIVABLE**

Accounts receivable consist of March dwelling rents and rent subsidies. The balance at March 31, 2015 was \$4,960 and all material amounts are considered ultimately collectible therefore no allowance for doubtful accounts was considered necessary. Of the \$133 balance, \$133 was over 90 days old.

**NOTE 5: CAPITAL ASSETS**

A summary of capital assets at March 31, 2015 follows:

	<u>Balance</u> <u>March 31, 2015</u>
Buildings	\$ 2,459,332
Leasehold improvements	98,103
Furniture and equipment	<u>6,320</u>
Total	2,563,755
Accumulated Depreciation	<u>( 1,303,909)</u>
Total Capital Assets, Net	<u>\$ 1,259,846</u>

**NOTE 6: LOANS PAYABLE**

A summary of loans payable at March 31, 2015 follows:

RDA Loan - Interest is at 3 percent of the unpaid balance. No principal payments are due until 2053. Total accrued interest payable at March 31, 2015 was \$653,599.	\$ 1,323,589
HOME Loan - Interest is at 3 percent of the unpaid balance. No principal payments are due until 2053. Total accrued interest payable at March 31, 2015 was \$323,860.	673,367
City of Yuba City Loan - Interest is at zero percent of the unpaid balance. No principal payments are due until 2056.	<u>160,000</u>
Total Loans Payable	<u>2,156,956</u>
Less Amount Due Within One Year	<u>-</u>
Total Long-Term Portion Loans Payable	<u>\$ 2,156,956</u>

**SUTTER COMMUNITY AFFORDABLE HOUSING**

**Notes to Basic Financial Statements**

**For the Year Ended March 31, 2015**

**NOTE 6: LOANS PAYABLE (CONTINUED)**

The required principal payments and interest accruals on the loans payable are as follows:

Fiscal Year Ended March 31	Principal	Interest	Total
2016	\$ -	\$ 59,909	\$ 59,909
2017	-	59,909	59,909
2018	-	59,909	59,909
2019	-	59,909	59,909
2020	-	59,909	59,909
2021-2025	-	299,543	299,543
2026-2030	-	299,543	299,543
2031-2035	-	299,543	299,543
2036-2040	-	299,543	299,543
2041-2045	-	299,543	299,543
2046-2050	-	299,543	299,543
2051-2055	1,996,956	239,635	2,236,591
2056-2060	<u>160,000</u>	<u>-</u>	<u>160,000</u>
Total	<u>\$2,156,956</u>	<u>\$ 2,336,438</u>	<u>\$ 4,493,394</u>

**NOTE 7: RELATED PARTY TRANSACTIONS**

The financial accounting of the Corporation is maintained by the Regional Housing Authority of Sutter and Nevada Counties (RHASNC). In addition, the land on which the Town Center apartments are located is leased for a period of 55 years from RHASNC for one dollar a year. The total amount paid to the RHASNC for the year ended March 31, 2015 was \$67,342.

**NOTE 8: RISK MANAGEMENT**

The Corporation is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; errors and omissions; injuries to employees; and natural disasters. The Corporation is covered by the Regional Housing Authority of Sutter and Nevada Counties risk management for errors and omissions. The Corporation carries commercial insurance for all other risks of loss. Settled claims resulting from these risks have not exceeded commercial insurance coverage in any of the past three fiscal years.

**NOTE 9: OTHER INFORMATION**

**A. Contingent Liabilities**

The AHP loan has been reflected as forgiven, however, the process of recording the reconveyance is still being finalized.

**B. Subsequent Events**

Management has evaluated events subsequent to March 31, 2015 through July 29, 2015, the date on which the financial statements were available for issuance. Management has determined no subsequent events requiring disclosure have occurred.

**SUTTER COMMUNITY AFFORDABLE HOUSING**  
**Notes to Basic Financial Statements**  
**For the Year Ended March 31, 2015**

**NOTE 9: OTHER INFORMATION (CONTINUED)**

**C. Investment in Partnership**

The Corporation is a limited partner in Maple Park I, L.P. The Corporation's share of profit, loss, and capital is 0.003%. At March 31, 2015, the Corporation's investment in the partnership is considered insignificant and is not recorded in these financial statements.

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## **Supplementary Information**

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**SUTTER COMMUNITY AFFORDABLE HOUSING**  
**Schedule of Functional Expenses**  
**For the Year Ended March 31, 2015**

	<u>Program Services</u>	<u>Town Center Management and General</u>	<u>Total</u>
<b>OPERATING EXPENSES</b>			
Management fees	\$ 14,025	\$ 738	\$ 14,763
Supplies	6,371	335	6,706
Water	6,550	345	6,895
Electricity	7,392	389	7,781
Gas	1,058	56	1,114
Garbage	4,412	232	4,644
Sewer	7,130	375	7,505
Office expense	1,829	96	1,925
Outside services	77,109	4,058	81,167
Insurance	3,018	159	3,177
Taxes	1,173	62	1,235
Collection losses	1,722	91	1,813
Miscellaneous	1,674	88	1,762
Depreciation	78,685	4,141	82,826
<b>Total Operating Expenses</b>	<u>\$ 212,148</u>	<u>\$ 11,165</u>	<u>\$ 223,313</u>

Yolo Street/Heiken Way			Total		
Program Services	Management and General	Total	Program Services	Management and General	Total
\$ 1,802	\$ 95	\$ 1,897	\$ 15,827	\$ 833	\$ 16,660
733	39	772	7,104	374	7,478
841	44	885	7,391	389	7,780
-	-	-	7,392	389	7,781
659	35	694	1,717	91	1,808
1,222	64	1,286	5,634	296	5,930
1,873	99	1,972	9,003	474	9,477
92	5	97	1,921	101	2,022
8,237	434	8,671	85,346	4,492	89,838
446	23	469	3,464	182	3,646
532	28	560	1,705	90	1,795
2,289	120	2,409	4,011	211	4,222
239	13	252	1,913	101	2,014
6,741	355	7,096	85,426	4,496	89,922
<u>\$ 25,706</u>	<u>\$ 1,354</u>	<u>\$ 27,060</u>	<u>\$ 237,854</u>	<u>\$ 12,519</u>	<u>\$ 250,373</u>

**SUTTER COMMUNITY AFFORDABLE HOUSING**  
**Note to Schedule of Functional Expenses**  
**For the Year Ended March 31, 2015**

**SCHEDULE OF FUNCTIONAL EXPENSES**

In the Schedule of Functional Expenses of the Sutter Community Affordable Housing, expenses are reported on a functional basis. Costs are divided between program services and management and general. The Corporation uses estimates to allocate the expenses.