

LOAN AGREEMENT

by and between

THE CITY OF STOCKTON

and

ANCHOR VILLAGE ASSOCIATES, L.P.
a California Limited Partnership

601 North Hunter Street

(Housing Bond Proceeds)

LOAN AGREEMENT

This Loan Agreement (the "Agreement") is entered into as of _____, 2016, by and between the City of Stockton, a municipal corporation (the "City") and Anchor Village Associates, L.P. (the "Borrower"), a California limited partnership, with reference to the following facts, purposes and intentions.

RECITALS

A. The former Redevelopment Agency of the City of Stockton adopted the Amended and Restated Redevelopment Plan for the Waterfront Merger Redevelopment Project Area (the "Redevelopment Project Area") by Ordinance No. 09-009 on June 23, 2009, as amended (the "Redevelopment Plan"). The Development is located in the Project Area.

B. Pursuant to authority granted under California law, the Agency had the responsibility to implement the Redevelopment Plan, including the creation of affordable housing within the Project Area.

C. Pursuant to the Redevelopment Plan, the Agency established the Low and Moderate Income Housing Fund for the Project Area (the "Housing Fund") pursuant to California Health and Safety Code Section 33334.3.

D. The Stockton Public Financing Authority issued its 2006 Series C Revenue Bonds (the "Bonds") which are secured in part by the tax increment deposited in the Housing Fund.

E. The Agency borrowed the proceeds of the Bonds related to the Project Area to develop affordable housing in the Project Area and throughout the City.

F. Pursuant to Assembly Bills x1 26 and 1484 enacted on June 28, 2011 and June 27, 2012 (collectively the "Dissolution Law"), the Agency was dissolved on 2012.

G. Under the authority of the Dissolution Act, the City declared itself to be the Successor Agency to the former Agency ("Successor Agency").

H. The Successor Agency had excess unspent loan proceeds available from the Bonds, and entered into an agreement to transfer the balance of the unspent loan proceeds plus accrued interest to the City, to be spent in a manner consistent with the applicable bond covenants and related documents.

I. The Stockton Successor Agency Oversight Board approved the transfer agreement on April 22, 2015, which was approved by the California Department of Finance on May 14, 2015.

J. The Bond proceeds were transferred to the City and are under the control of the City to use in a manner consistent with the applicable bond covenants and related documents.

K. The City issued a Notice of Funding Availability on March 5, 2015 for affordable housing projects. The City Council approved loans for six projects, including the Anchor Village project. Anchor Village was awarded One Million Two Hundred Thousand Dollars (\$1,200,000) of Bond Proceeds.

L. The Borrower wishes to borrow and the City wishes to One Million Two Hundred Thousand Dollars (\$1,200,000) (the "Construction Loan") funded from the Bond Proceeds for the development and construction of the Development.

M. The Loan will be evidenced by a promissory note executed by Borrower in favor of the City (the "Note"), and secured by a deed of trust to be recorded against the Property (the "Deed of Trust"). In connection with the Loan, the City and the Borrower shall enter into a regulatory agreement restricting the future use of the Property, which shall be recorded again the Property (the "Regulatory Agreement").

N. The Borrower has represented that it possesses the necessary expertise, skill and ability to carry out the commitments contained in this Agreement.

O. Through this Agreement and the accompanying Regulatory Agreement the City is imposing occupancy and affordability restrictions on the Development in order to meet replacement and production housing requirements applicable to the Project Area pursuant to Health and Safety Code Section 33413 and use of the Housing Fund pursuant to Health and Safety Code Section 33334.2.

P. As more fully set forth in Section 7.8, this Agreement does not authorize the granting of other City permits for the Development. Such actions may be authorized and will become possible only upon subsequent action of the City.

Q. On March 17,2015, the acquisition and construction of the Development was granted a Categorical Exemption under Section 15332, Article 19 of the Guidelines for Implementation of the California Environmental Quality Act.

NOW, THEREFORE, in consideration of the recitals hereof and the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

(a) "Agency" shall mean the Redevelopment Agency of the City of Stockton, a public body corporate and politic.

(b) "Agreement" shall mean this Loan Agreement between the City and the Borrower.

(c) "Approved Budget" shall mean the budget, including sources and uses of funds, as approved by the City, and attached hereto and incorporated herein as Exhibit B, but which may be amended with the approval of the City as set forth in this Agreement.

(d) "Approved Financing" shall mean all of the funds obtained by the Borrower and approved by the City for the purpose of financing the acquisition and construction of the Development and disbursed in the manner set forth in the Approved Development Budget, in addition to the Loan.

(e) "Borrower" shall mean Anchor Village Associates L.P., a California limited partnership, and its permitted successors and assigns hereunder.

(f) "City" shall mean the City of Stockton, a charter city.

(g) "City Manager" shall mean the City manager of the City of Stockton.

(h) "Deed of Trust" shall mean the deed of trust that will encumber the Development to secure repayment of the Loan and the Borrower's obligations under the Regulatory Agreement. The form of the Deed of Trust shall be provided by the Agency.

(i) "Default" shall have the meaning set forth in Section 6.1 below.

(j) "Development" shall mean the Property, the existing Improvements and the Improvements Borrower intends to develop on the Property.

(k) "Calendar Year" means the fiscal year of the Borrower, consisting of a twelve (12)-month period ending on December 31.

(l) "Hazardous Materials" shall have the meaning set forth in Section 3.7 below.

(m) "Hazardous Materials Claim" shall have the meaning set forth in Section 4.6 below.

(n) "Hazardous Materials Law" shall have the meaning set forth in Section 4.6 below.

(o) "Housing Fund" means the low and moderate income housing fund established by the Agency pursuant to California Health and Safety Code Section 33334.3.

(p) "Improvements" shall mean the fifty-one (51) housing units, the community spaces, the offices, and all landscaping, roads and parking spaces on the Property.

(q) "Loan" shall mean the loan from the City to Borrower in the total principal amount of One Million Two Hundred Thousand Dollars (\$1,200,000).

(r) "Loan Documents" shall mean this Agreement, the Note, the Regulatory Agreement, the Deed of Trust, and all other documents required to be executed by the Borrower in connection with the transactions contemplated by this Agreement.

(s) "Management Agent" means the management agent employed by the Borrower and approved by the City.

(t) "Marketing Plan" means the marketing plan prepared by the Borrower to be approved by the City.

(u) "Note" shall mean the promissory note that will evidence Borrower's obligation to repay the Loan. The form of the Note shall be provided by the City.

(v) "Parties" shall mean the City and Borrower.

(w) "Property" shall mean the real property located in the City of Stockton, County of San Joaquin, California, more particularly described in the attached Exhibit A.

(x) "Regulatory Agreement" shall mean the Regulatory Agreement and Declaration of Restrictive Covenants between the City and the Borrower associated and recorded against the Property.

(y) "Term" shall mean the term of this Agreement, which shall consist of the period commencing as of the date of this Agreement and expiring on the earlier of: (1) Fifty-five (55) years from the date of the issuance of the occupancy permit for the Development; or (2) Fifty-seven (57) years after the date of the Note.

(z) "Transfer" shall have the meaning set forth in Section 4.11 below.

(aa) "Unit" means one of the fifty-one (51) housing units to be constructed on the Property.

Section 1.2 Exhibits. The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A: Legal Description of the Property
- Exhibit B: Approved Development Budget
- Exhibit C: Development Schedule

ARTICLE 2 LOAN PROVISIONS

Section 2.1 Loan.

Subject to satisfaction of the conditions set forth in Section 2.5, the Agency shall loan to the Borrower the principal sum not to exceed One Million Two Hundred Thousand Dollars (\$1,200,000) for the purposes set forth in Section 2.3 of this Agreement. The Loan shall be evidenced by a promissory note (the "Note") in a form to be provided by the City, which shall be executed by the Borrower concurrently herewith.

Section 2.2 Interest.

(a) Subject to the provisions of Section 2.2(b) below, the outstanding principal balance of the Loan shall bear simple interest at a rate of three percent (3%) per annum commencing on the date of the project's final draw.

(b) In the event of a Default by the Borrower (as defined in Section 5.1) interest on the Loan shall begin to accrue, as of the date of Default (following expiration of applicable notice and cure periods) and continuing until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

Section 2.3 Use of Funds.

The Borrower shall use the Loan funds to pay a portion of the development and construction costs consistent with the Approved Development Budget, attached as Exhibit B to this Agreement. The Borrower shall not use the Loan funds for any other purpose without the prior written consent of the City Manager.

Section 2.4 Security.

(a) Borrower shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust and recording it as a lien against the Property.

(b) The City agrees to subordinate the Deed of Trust and the Regulatory Agreement to the liens of the deeds of trust securing the construction and permanent financing for the Development subject to approval by the City of a finance plan (the "Approved Financing") and provided the City receives adequate notice and cure rights and pursuant to subordination agreements in a form approved by the City.

Section 2.5 Loan Disbursement.

The City shall not be obligated to make any disbursements or take any other action under the Loan Documents unless the following conditions precedent are satisfied prior to each such disbursement of the Loan:

- (a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement;
- (b) The City has received evidence reasonably satisfactory to the City that the Borrower exists in good standing at the time of the proposed disbursement, and that the Borrower has delivered certified resolutions duly authorizing Borrower's entry into and performance under the Loan Documents;
- (c) Borrower has executed and delivered to City all documents, instruments, and policies required under the Loan Documents;
- (d) A title insurer reasonably acceptable to the City is unconditionally and irrevocably committed to issuing an ALTA Lender's Policy of insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the City, and containing such endorsements as the City may reasonably require;
- (e) The Borrower has executed and delivered to the City all documents, instruments, and policies required under the Loan Documents and the Deed of Trust and the Regulatory Agreement have been recorded against the Property in the Office of the Recorder of the County of San Joaquin;
- (f) Borrower has furnished the City with evidence of the insurance coverage meeting the requirements of Section 4.12 below;
- (g) The Borrower must submit a written draw requests, including certification that the conditions set forth in Section 2.5 (a) and (b) continue to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development Budget, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred, to the City. Borrower shall apply the disbursement for the purpose(s) requested. The City shall exercise best efforts to disburse funds within thirty (30) days of receipt of the draw request and satisfaction of applicable disbursement preconditions. Draw requests can be submitted no more often than once a month;

Upon satisfaction of the applicable conditions for a designated disbursement, the City shall disburse the Loan (or so much thereof as is required) for cost items and in amounts consistent with those shown in Exhibit B. Notwithstanding any other provisions of this Agreement, the City shall have no further obligation to disburse any portion of the Loan to the Borrower following: (i) termination of this Agreement; or (ii) notification by the City to the Borrower of a Default under the terms of this Agreement.

Section 2.6 Repayment Schedule.

The Loan shall be repaid as follows:

(a) Special Definitions.

(i) Net Proceed of Permanent Financing. Net Proceeds of Permanent Financing shall mean the portion of the Approved Financing that is not required to pay the costs of acquisition and development of the Development (including but not limited to the funding of reserves). Net Proceeds of Permanent Financing, if any, shall be determined pursuant to the procedure set forth in Section 2.6 (c) below.

(ii) Residual Receipts. “Residual Receipts” means, in a particular calendar year, the amount by which Gross Revenue (as defined below) exceeds Annual Operating Expenses (as defined below), but only with respect to Gross Revenue and Annual Operating Expenses accruing from and after the completion of construction of the Development.

(1) Gross Revenue. “Gross Revenue,” with respect to a particular calendar year, shall mean all revenue, income, receipts, and other consideration actually received from operation and leasing of the Development. “Gross Revenue” shall include, but not be 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 (or applied toward the cost of recovering such proceeds); 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. “Gross Revenue” shall not include tenants’ security deposits, loan proceeds, capital contributions or similar advances.

(b) Annual Operating Expenses. “Annual Operating Expenses” with respect to a particular calendar year shall mean 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: property taxes and assessments imposed on the Development; debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on loans associated with development of the Development and approved by the City; deferred developer fee; property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the City; partnership management fees (including any asset management fees), if any, not to exceed a total of Twenty-Five

Thousand Dollars (\$25,000) per year; premiums for property damage and liability insurance; utility services not paid for directly by tenants, including water, sewer, and trash collection; maintenance and repair; any annual license or certificate of occupancy fees required for operation of the Development; security services; advertising and marketing; cash deposited into reserves for capital replacements of the Development in an amount not to exceed six tenths of one percent (.6%) of the total development cost of the Development; cash deposited into an operating reserve in an amount not to exceed three percent (3%) of Annual Operating Expenses or the amount required in connection with the permanent financing and the tax credit syndication, whichever is greater (or any greater amount approved by the City) but with the operating reserves capped at six (6) months gross rent from the Development (as such rent may vary from time to time); extraordinary operating costs specifically approved by the City; payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved by the City and not listed above. Annual Operating Expenses shall not include the following: depreciation, amortization, depletion or other non-cash expenses or any amount expended from a reserve account.

(c) Annual Payments. Commencing on the first May 1 following completion of the construction of the Development, and on May 1 of each year thereafter for the Term of the Loan, Borrower shall make repayments of the outstanding principal and accrued interest on the Loan equal to fifty percent (50%) of the Residual Receipts from the preceding calendar year. Such annual payments 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 the City with any documentation reasonably requested by the City to substantiate the Borrower's determination of Residual Receipts.

(d) Payment in Full. All principal and accrued interest on the Loan shall be due in full on the earlier to occur of (i) the date of any Transfer not authorized by the City, (ii) the date of any Default (subject to applicable notice and cure rights), and (iii) the expiration of the Term.

(e) Prepayment. The Borrower shall have the right to prepay the loan at any time. However, the Regulatory Agreement shall remain in effect for the entire Term, regardless of any prepayment.

Section 2.7 Reports and Accounting of Residual Receipts.

a) Audited Financial Statement. In connection with the annual repayment of the Loan, the Borrower shall furnish to the City an audited statement duly certified by an independent firm of certified public accountants approved by the City, setting forth in reasonable detail the computation and amount of Residual Receipts during the preceding calendar year.

b) Books and Records. The Borrower shall keep and maintain on the Property, or elsewhere with the City's written consent, full, complete and appropriate books, records 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 an accrual basis. All such books, records, and accounts shall be open to and available for inspection by the City, 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 to any governmental agency shall at all reasonable times be open for inspection by the City 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.

(c) City Audits. The receipt by the City of any statement pursuant to subsection (a) above or any payment by Borrower or acceptance by the City of any loan repayment for any period shall not bind the City as to the correctness of such statement or such payment. Within three (3) years after the receipt of any such statement, the City or any designated agent or employee of the City at any time shall be entitled to audit the Residual Receipts and all books, records, and accounts pertaining thereto. 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, the City 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 the City, then such deficiency shall become immediately due and payable with interest at the default rate set forth in Section 2.2(b) above, 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 calendar year shall be found to have understated Residual Receipts by more than five percent (5%) and the City is entitled to any additional Loan repayment as a result of said understatement, then Borrower shall pay, in addition to the interest charges referenced hereinabove, all of the City's reasonable costs and expenses connected with any audit or review of Borrower's accounts and records.

Section 2.8 Non-Recourse.

Except as provided below, the Borrower shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan or the performance of the covenants of the Borrower under the Deed of Trust. The sole recourse of the City with respect to the principal of, or interest on, the Note and defaults by Borrower in the performance of its covenants under the Deed of Trust shall be to the

property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the City there under, or (b) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Note as demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of and payment of interest on the Note and the performance of the Borrower's obligations under the Deed of Trust, except as hereinafter set forth; nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the City under Sections 3.5(c), 4.6(c), and 7.5 of this Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

Section 2.9 Term.

This Agreement and the Loan shall have a term (the "Term") that commences on the date of this Agreement and expiring on the earlier of: (1) Fifty-five (55) years from the date of the issuance of the occupancy permit for the Development; or (2) Fifty-seven (57) years after the date of the Note. Notwithstanding the foregoing, the indemnification provisions of Sections 3.5(c), 4.6(c), and 7.5 shall survive termination of this Agreement.

Section 2.10 Repayment of the Loan.

All principal and interest on the Loan shall be due and payable, at the option of the City, upon the earliest of: (i) Transfer of the Development other than a Transfer permitted or approved by the City as provided in Section 4.11; (ii) the occurrence of an Event of Default for which the City exercises its right to cause the Loan indebtedness to become immediately due and payable; (iii) in the event of a Default by the Borrower under the Loan Documents that remains uncured after expiration of the applicable cure period or (iv) the expiration of the Term. Payments received from the Borrower shall be applied to interest accrued first, if any, and the remaining balance, if any, to principal.

Section 2.11 Development Schedule.

The Borrower shall perform the tasks identified on the Development Schedule, among others, with the proceeds of the Loan. The tasks shall be completed no later than the dates set forth in the Development Schedule attached to this Agreement as Exhibit C.

Section 2.12 Relocation Obligations.

If and to the extent that acquisition of the Property and construction of the Development results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Borrower shall comply with all applicable local, state, and federal statutes and regulations (including without limitation California Government Code Section 7260 et seq. and accompanying regulations) with respect to relocation planning, advisory assistance, and payment of monetary benefits. Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws.

ARTICLE 3
CONSTRUCTION OF THE DEVELOPMENT

Section 3.1 Permits and Approvals.

All permits and approvals necessary for the development of all units in the Development must be received no later than January 31, 2017, or the City, at its option, and within thirty (30) days written notice and opportunity to cure, may declare Borrower in default hereunder.

Section 3.2 Development Budget.

Borrower has submitted to City and obtained City approval of the Development Budget.

Section 3.3 Commencement of Construction.

Borrower shall cause the commencement of construction no later than March 1, 2017.

Section 3.4 Completion of Construction.

Borrower shall diligently pursue construction to completion, and shall cause the completion of the development of the Development no later than two (2) years after commencement of construction of the Development.

Section 3.5 Development Pursuant to Plans and Laws; Prevailing Wages.

(a) Borrower shall develop the Development in conformance with the plans and specifications approved by the City. Borrower shall notify the City in a timely manner of any material changes in the work required to be performed under this Agreement, including any material additions, changes, or deletions to the Scope of Work approved by the City. A written change order authorized by the City must be obtained before any of the following changes, additions, or deletions in work for the

Development may be performed: (1) any change in the work the cost of which exceeds One Hundred Thousand Dollars (\$100,000); or (2) any set of changes in the work the cost of which cumulatively exceeds Two Hundred Thousand Dollars (\$200,000); or (3) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Development as provided for in the Scope of Work approved by the City. Consent to any additions, changes, or deletions to the work shall not relieve or release Borrower from any other obligations under this Agreement, or relieve or release Borrower or its surety from any surety bond. City shall utilize best efforts to approve or disapprove change orders within five (5) working days of receipt of a request for approval.

(b) Borrower shall cause all work performed in connection with the Development to be performed in compliance with (i) all applicable laws, ordinances, rules and regulations of federal, state, City or municipal governments or agencies now in force or that may be enacted hereafter; (ii) the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations to the extent applicable; (iii) the prevailing wages provision and related requirements of California Labor Code Section 1720 and 1777.5 et seq. to the extent applicable, (iv) the HUD quality standards set out in 24 C.F.R. 5.701 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. 39, and (v) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower shall be responsible to the City for the procurement and maintenance thereof, as may be required of Borrower and all entities engaged in work on the Development.

(c) This Agreement has been prepared with the intention that the City assistance under this Agreement meets the exception set forth in Labor Code Section 1720(c)(6)(E) to the general requirement that state prevailing wages be paid in connection with construction work that is paid for in whole or in part out of public funds; provided, however, that nothing in this Agreement constitutes a representation or warranty by any party regarding the applicability of the provisions of Labor Code Section 1720 et seq., 1777.5 et seq., and implementing regulations of the Department of Industrial Relations. Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulation or comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the Department of Industrial Relations in connection with construction of the Development or any other work undertaken or in connection with the Property. This Section 3.5(c) shall survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

Section 3.6 Marketing Plan.

(a) No later than the commencement of construction of the Development, Borrower shall submit to the City for approval its plan for marketing the Development to income-eligible households as required pursuant to the Regulatory Agreement including information on affirmative marketing efforts and compliance with fair housing laws.

(b) Upon receipt of the Marketing Plan, the City shall promptly review the Marketing Plan and shall approve or disapprove it within thirty (30) days after submission. If the Marketing Plan is not approved, Borrower shall submit a revised Marketing Plan within thirty (30) days. If the City does not approve the revised Marketing Plan because Borrower has not incorporated specific revisions reasonably requested by City, Borrower shall be in default hereunder.

Section 3.7 Equal Opportunity.

During the development of the Development there shall be no discrimination on the basis of race, color, creed, religion, age, gender, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work.

Section 3.8 Progress Reports.

Until such time as Borrower has completed construction of the Development, Borrower shall provide the City with quarterly progress reports regarding the status of the construction of the Development, including a certification that the actual costs to date conform to the Approved Development Budget, as it may be amended from time to time pursuant to Section 3.12 below.

Section 3.9 Construction Responsibilities.

(a) It shall be the responsibility of Borrower to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with this Agreement.

(b) Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Development is solely for the purpose of determining whether Borrower is properly discharging its obligations to the City, and should not be relied upon by Borrower or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development.

Section 3.10 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on the City or any other lender or other third party in connection with the Development, then Borrower shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond in sufficient form and amount, or provide the City with other assurance satisfactory to the City that the claim of lien or stop notice will be paid or discharged.

(b) If Borrower fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternately, the City may require Borrower to immediately deposit with the City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Borrower.

(c) Borrower shall file a valid notice of cessation or notice of completion upon cessation of development on the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes the City, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Development and Property.

Section 3.11 Inspections.

Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the City and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement.

Section 3.12 Approved Development Budget; Revisions to Budget.

As of the date of this Agreement, the City has approved the Approved Development Budget set forth in Exhibit B. Borrower shall submit any required amendments to the Approved Development Budget to the City for approval by the Deputy Housing Director of within five (5) days of the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget. Written consent of the City shall be required to amend the Approved Development Budget.

Section 3.13 Developer Fee.

The maximum cumulative developer fee that may be paid to any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, shall not exceed the amount approved by the City in the Approved Development Budget as it may be revised from time to time (the "Developer Fee"). Except for the Developer Fee, no compensation from any source shall be received by or be payable to the Borrower or any affiliate of the Borrower in connection with the provision of development and construction management services for the acquisition and development of the Development.

ARTICLE 4
LOAN REQUIREMENTS

Section 4.1 Applicability

The Borrower shall comply with this Article 4 throughout the Term.

Section 4.2 Financial Accounting and Post-Completion Audits

No later than sixty (60) days following completion of construction of the Development, Borrower shall provide to City an initial estimated unaudited financial accounting of all sources and uses of funds for the Development. No later than one hundred fifty (150) days following completion of construction of the Development, Borrower shall submit an audited financial report showing the sources and uses of all funds utilized for the Development.

Section 4.3 Information.

Borrower shall provide any information reasonably requested by the City in connection with the Development.

Section 4.4 Records.

(a) Borrower shall maintain complete, accurate, and current records pertaining to the Development for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the City to inspect and copy records. Such records shall include all invoices, receipts, and other documents related to expenditures from the Loan funds. Records must be kept accurate and current.

(b) The City shall notify Borrower of any records it deems insufficient. Borrower shall have twenty-one (21) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than twenty-one (21) calendar days is reasonably necessary to correct the deficiency, then borrower shall begin to correct the deficiency within twenty-one (21) calendar days and correct the deficiency as soon as reasonably possible.

Section 4.5 Audits.

Borrower shall make available for examination at reasonable intervals and during normal business hours to City all books, accounts, reports, files, and other papers of property with respect to all matters covered by this Agreement, and shall permit City to audit, examine, and make excerpts or transcripts from such records. City may make audits of any conditions relating to this Agreement.

Section 4.6 Hazardous Materials.

(a) Borrower shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Borrower shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be used in construction of the Development or customarily kept and used in and about residential property of this type.

(b) Borrower shall immediately advise the City in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Borrower or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) the

Borrower's discovery of any occurrence or 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 Property under any Hazardous Materials Law.

(c) The City 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 the Borrower. The Borrower shall indemnify and hold harmless the City and its council members, directors, 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 Property 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 City 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.

(d) Without the City's prior written consent, which shall not be unreasonably withheld, the Borrower 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 City's reasonable judgment, impair the value of the City's security hereunder; provided, however, that the City'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 City's consent before taking such action, provided that in such event the Borrower shall notify the City as soon as practicable of any action so taken. The City agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) the Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) the Borrower establishes to the reasonable satisfaction of the City that there is no reasonable alternative to such remedial action which would result in less impairment of the City's security hereunder; or (iv) the action has been agreed to by the City.

(e) The Borrower hereby acknowledges and agrees that (i) this Section is intended as the City's written request for information (and Borrower's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and

warranty in this Agreement (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.

(f) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under the Deed of Trust, the City may elect to exercise its rights 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 (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Borrower to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the City right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Borrower 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 the Borrower 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 the City in connection with any action commenced under this paragraph, 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 the Deed of Trust and shall be due and payable to the City upon its demand made at any time following the conclusion of such action.

Section 4.7 Maintenance and Damage.

(a) During the course of both development and operation of the Development, Borrower shall maintain the Development and 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 notice of such a condition, then in addition to any other rights available to the City, the City shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(b) Subject to the requirements of senior lenders, and if economically feasible in the City's reasonable judgment, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the City with such changes as have been approved by the City. Such work or repair shall be commenced no later than the later of one hundred

twenty (120) days after the damage and shall be complete within one year thereafter, or such longer period for the commencement and completion as may be extended by the City in its reasonable discretion. Any insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration.

Section 4.8 Fees and Taxes.

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

Section 4.9 Notice of Litigation.

Borrower shall promptly notify the City in writing of any litigation materially affecting Borrower or the Property and of any claims or disputes that involve a material risk of such litigation.

Section 4.10 Mandatory Language in all Subsequent Deeds, Leases and Contracts.

All deeds, leases, or contracts entered into by the Borrower as to any portion of the Property shall contain the following language:

(a) In Deeds:

“Grantee herein covenants by and for itself, its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee 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 property herein conveyed. The forgoing covenant shall run with the land.”

(b) In Leases:

“The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns and all persons claiming under the lessee or through the lessee that his lease is made subject to the condition that there shall be no discrimination against or segregation of a person or of a group of person on

account of race, color, religion, creed, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee 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 property herein conveyed.”

(c) In Contracts:

“There shall be no discrimination against or segregation of a person or of a group of person on account of race, color, religion, creed, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee 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 of the land.”

Section 4.11 Transfer.

(a) For purposes of this Agreement, “Transfer” shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title. The term “Transfer” shall exclude the leasing of any single unit in the Development to an occupant in compliance with the Regulatory Agreement and the leasing of the community center and/or the police substation.

(b) No Transfer shall be permitted without the prior written consent of the City, which the City may withhold in its sole discretion, provided however, that City shall not unreasonably withhold or deny its approval of a transfer of the Property or partnership interest pursuant to Borrower’s partnership agreement. The Loan shall automatically accelerate and be due in full upon any unauthorized Transfer.

Section 4.12 Insurance Requirements.

(a) The Borrower shall maintain and keep in force, at the Borrower's sole cost and expense, the following insurance applicable to the Development in a form acceptable to the City with evidence of such coverage provided to the Risk Manager within ten (10) days of execution of this Agreement, but in no event later than the initial disbursement of Loan funds pursuant to this Agreement:

(1) Worker's Compensation insurance, in scope and amount required by law.

(2) Comprehensive General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence and combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(3) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Borrower does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required.

(4) For any design professionals working on the Development, Borrower shall ensure that such professionals carry errors and omission coverage in a minimum amount of Two Million Dollars (\$2,000,000).

(5) Property insurance covering the improvements on the Property covering all risks of loss, excluding earthquake and flood, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming the City as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(6) Blanket Fidelity Bond covering all officers and employees, for loss of Loan proceeds cause by dishonesty, in an amount not less than One Million Dollars (\$1,000,000) naming the City a Loss Payee, as its interest may appear.

(7) The Borrower shall cause any general contractor or agent working on the Development under direct contract with the Borrower, and any subcontractors to such general contractors or agents, to maintain insurance of the types and in at least the minimum amounts described in subsections (1), (2), and (3) above, except that the limit of liability for comprehensive general liability insurance for subcontractors and agents shall be One Million Dollars (\$1,000,000), and shall require that such insurance shall meet all of the requirements of subsections (8), (9), and (10) below, including, without limitation, the requirement of subsection (7). Subcontractors working on the Development under indirect contract with the Borrower shall be required to maintain the insurance described in subsections (1), (2), and (3) above. Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and agents pursuant to this subsection shall name as addition insured the City, its council members, agents, and employees

(8) The required insurance shall be provided under an occurrence form, and Borrower shall maintain such coverage continuously so long as the Note is outstanding. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation

or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(9) Comprehensive General Liability, Comprehensive Automobile Liability and Property insurance policies shall be endorsed to name as an additional insured the City and its agents, employees and council members.

(10) All policies and bonds shall contain (a) the agreement of the insurer to give the City at least thirty (30) days written notice prior to cancellation, (including without limitation, for non-payment of premium) or any material change in said policies (b) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the City; (c) a provision that no act or omission of the Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (d) a waiver by the insurer of all rights of subrogation against the City and its authorized parties in connection with any loss or damage thereby insured against.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 5.1 Representations and Warranties.

The Borrower hereby represents and warrants to the City as follows:

(a) Organization. Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Borrower enforceable against it in accordance with their respective terms, subject to the laws affecting creditors rights and principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Borrower, or any provision of the organizational documents of the Borrower, or will conflict with or constitute a breach of or a default under any agreement to which the Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of the Borrower, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The development of the Property will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or City.

(g) Pending Proceedings. The Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Borrower, materially affect the Borrower's ability to repay the Loan or impair the security to be given to the City pursuant hereto.

(h) Title to Property. At the time of recordation of the Deed of Trust, the Borrower will have good and marketable fee title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by City, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the City or approved in writing by the City.

(i) Financial Statements. The financial statements of the Borrower and other financial data and information furnished by the Borrower to the City fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of the Borrower from that shown by such financial statements and other data and information.

(j) Sufficient Funds. The Borrower holds sufficient funds and/or binding commitments for sufficient funds to pay the costs of the Development.

ARTICLE 6 DEFAULT AND REMEDIES

Section 6.1 Events of Default. Each of the following shall constitute a "Default" by Borrower under this Agreement:

(a) Failure to Construct. Subject to Section 7.17, failure of Borrower to commence and complete the construction of the Development within the times set forth in Article 3 above.

(b) Failure to Pay. Any failure to pay, in full, any payment required under any of the Loan Documents when due following written notice by the City and ten (10) days opportunity to cure.

(c) Breach of Loan Documents. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the City to the Borrower or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control.

(d) Default Under Other Loans. Failure to make any payment or perform any of Borrower's covenants, agreements, or obligations under the documents evidencing and securing the Approved Financing following expiration of all applicable notice and cure periods.

(e) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or Borrower shall have

admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any Default in this subsection shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(f) Assignment; Attachment. Borrower shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(g) Suspension; Termination. Borrower shall have voluntarily suspended its business or, if Borrower is a partnership, the partnership shall have been dissolved or terminated, other than a technical termination of the partnership for tax purposes. The occurrence of any Default in this subsection shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(h) Liens on Property. There shall be filed any claim of lien (other than liens approved in writing by City) against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of forty-five (45) days without discharge or satisfaction thereof or provision therefore (including, without limitation, the posting of bonds) satisfactory to City.

(i) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development, except for a condemnation by the City. The occurrence of any Default in this subsection shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(j) Unauthorized Transfer. Any Transfer other than as permitted by Section 4.11. The occurrence of any Default in this subsection shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

(k) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to City in connection with any of the Loan Documents, proving to have been incorrect in any material respect when made. The occurrence of any Default in this subsection shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

Section 6.2 Remedies.

The occurrence of a Default will at the option of the City give the City the right to proceed with any and all of the remedies set forth in this Agreement including but not limited to the following:

(a) Acceleration of Note. The City shall have the right to cause all indebtedness of the Borrower to the City under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. The Borrower shall be liable to pay the City on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the City in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The City shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the City for any funds advanced by the City to cure a monetary default by Borrower upon demand therefore, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

Section 6.3 Right of Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the City or the rights of the City hereunder.

Section 6.4. Remedies Cumulative.

No right, power, or remedy given to the City by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the Borrower to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise

by the Borrower of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy; provided, however, if the Borrower conveys the Property to the City, the City shall credit repayment of the Note in the amount equal to the purchase price for the Property paid by the Borrower.

ARTICLE 7 GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and the Borrower or the Borrower's agents, employees or contractors, and the Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement for the development of the Development. In regards to the development of the Development, the Borrower shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. The Borrower agrees to be solely responsible for its own acts and those of its agents and employees.

Section 7.2 No Claims.

Nothing contained in this Agreement shall create or justify any claim against the City, by any person the Borrower may have employed or with whom the Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the development of the Development, and the Borrower shall include similar requirements in any contracts entered into for the development of the Development.

Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the parties.

Section 7.4 Entire Understanding of the Parties.

The Loan Documents constitute the entire understanding and agreement of the Parties with respect to the Loan.

Section 7.5 Indemnification.

The Borrower agrees to indemnify, defend and hold the City, its council members, officers, employees, agents, successors and assigns harmless against all claims made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with the purchase of the Property, or the relocation or residents, or the development, construction, marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the City, its council members, officers, employees, agents, successors and assigns. The provision of this Section 7.5 shall survive the expiration of the Term and the reconveyance of the Deed of Trust.

Section 7.6 Non-Liability of City, Council Members, Employees and Agents.

No member, official, employee or agent of the City shall be personally liable to Borrower in the event of any default or breach by the City or for any amount which may become due to Borrower or its successor or on any obligation under the terms of this Agreement.

Section 7.7 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement.

Section 7.8 Discretion Retained by City.

The City's execution of this Agreement in no way limits the discretion of the City in the permit and approval process in connection with development of the Development.

Section 7.9 Action by the City.

Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, subordination, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager without further approval by the City Council and any such action shall be in writing. The City Council hereby authorizes the City Manager to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement on behalf of the City. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The City Manager is also hereby authorized to approve, on behalf of the City, requests by Borrower for reasonable extensions of time deadlines set forth in this Agreement. The amount of the Loan may not be increased without approval of the City Council.

Section 7.10 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.10(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. The Borrower shall exercise due diligence to ensure that the prohibition in this Section 7.10(a) is followed.

(b) The conflict of interest provisions of Section 7.10(a) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the City, or any person related within the third (3rd) degree of such person.

Section 7.11 Waivers.

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

Section 7.12 Notices, Demands and Communications.

Formal notices, demands, and communications between the City and the Borrower shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

City: City of Stockton
400 East Main Street, 4th Floor
Stockton, CA 95202
Attn: Economic Development Director

With copies to: Office of the City Attorney
425 North El Dorado Street
Stockton, CA 95202

Borrower: Anchor Village Associates, L.P.
9 Cushing, Suite 200
Irvine, CA 92618

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt for delivery or refusal of delivery.

Section 7.13 Applicable Law.

This Agreement will be governed by California law.

Section 7.14 Parties Bound.

Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors and assigns. This Agreement is intended to run with the land and shall bind Borrower and its successors and assigns in the Property and the Development for the entire Term, and the benefit hereof shall inure to the benefit of the City and its successors and assigns.

Section 7.15 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

Section 7.16 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.17 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; flood; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of Borrower or Borrower's inability to finance the construction of the Development) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the City be required to agree to cumulative delays in excess of ninety (90) days.

Section 7.18 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 7.19 Multiple Originals; Counterpart.

This Agreement may be extended in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Remainder of Page Left Intentionally Blank

WHEREFORE, this Agreement has been entered into by the undersigned as of the date first above written.

BORROWER:

ANCHOR VILLAGE ASSOCIATES, L.P.,
a California Limited Partnership

By: _____

Its: _____

CITY:

CITY OF STOCKTON, a municipal corporation

By: _____
Kurt O. Wilson,
City Manager

APPROVED AS TO FORM:
JOHN M. LUEBBERKE
CITY ATTORNEY

BY: _____

ATTEST:

By: _____
Bonnie Paige
City Clerk of the City of Stockton

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

All that certain real property situated, lying and being in the City of Stockton, County of San Joaquin, State of California and being a portion of _____

APN 139-06-008

EXHIBIT B

APPROVED DEVELOPMENT BUDGET

All amounts are estimates, subject to modification upon request by the Borrower and written approval by the City Manager.

EXHIBIT C
DEVELOPMENT SCHEDULE

	<u>Action</u>	<u>Final Date for Action</u>
1.	Completion of Pre-Construction Activities – obtaining permits, etc.	
2.	Start of construction	
3.	Construction Completed	
4.	Final Inspection/Certificate of Occupancy	
5.	Lease-up Completed	
6.	Lease-up Completed	