

LOAN AGREEMENT

by and between

THE CITY OF STOCKTON

and

CAL WEBER ASSOCIATES LP

(CAL WEBER 40)

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS AND EXHIBITS	2
Section 1.1 Definitions	2
Section 1.2 Exhibits.....	5
ARTICLE 2 LOAN PROVISIONS.....	5
Section 2.1 Loan.	5
Section 2.2 Interest.	5
Section 2.3 Use of Funds.....	6
Section 2.4 Security.....	6
Section 2.5 Loan Disbursement.	6
Section 2.6 Repayment Schedule.....	7
Section 2.7 Reports of Residual Receipts	9
Section 2.8 Non-Recourse.	10
ARTICLE 3 CONSTRUCTION OF THE DEVELOPMENT.....	10
Section 3.1 Permits and Approvals	10
Section 3.2 Development Budget.....	11
Section 3.3 Commencement of Construction.....	11
Section 3.4 Completion of Construction.....	11
Section 3.5 Development Pursuant to Plans.....	121
Section 3.6 Marketing Plan.	12
Section 3.7 Equal Opportunity.	12
Section 3.8 Progress Report.	12
Section 3.9 Construction Responsibilities.	13
Section 3.10 Mechanics Liens.	123
Section 3.11 Inspections.	14
Section 3.12 Approved Development Budget.	124
Section 3.13 Developer Fee.....	14
ARTICLE 4 LOAN REQUIREMENTS	14
Section 4.1 Applicability	104
Section 4.2 Financial Accountings	14
Section 4.3 Information	15
Section 4.4 Records.....	15
Section 4.5 Audits.	125
Section 4.6 Hazardous Materials.	15
Section 4.7 Maintenance and Damage	17
Section 4.8 Fees and Taxes.	18
Section 4.9 Notice of Litigation.....	18
Section 4.10 Mandatory Language.	18
Section 4.11 Transfer.....	19
Section 4.12 Insurance Requirements.	20

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER.....	22
Section 5.1 Representations and Warranties.....	22
ARTICLE 6 DEFAULT AND REMEDIES	233
Section 6.1 Default.	233
Section 6.2 Remedies.	25
Section 6.3 Right of Contest.	26
Section 6.4 Remedies Cumulative	26
Section 6.5 Limited Partner Cure Rights.....	26
ARTICLE 7 GENERAL PROVISIONS	27
Section 7.1 Relationship of Parties.	27
Section 7.2 No Claims.....	27
Section 7.3 Amendments.	27
Section 7.4 Entire Understanding of the Parties.....	27
Section 7.5 Indemnification.	27
Section 7.6 Non-Liability of City, Employees and Agents.....	28
Section 7.7 No Third Party Beneficiaries.....	28
Section 7.8 Action by the City	28
Section 7.9 Conflict of Interest.	28
Section 7.10 Waivers.	29
Section 7.11 Notices, Demands and Communications.	29
Section 7.12 Applicable Law.	29
Section 7.13 Parties Bound.....	29
Section 7.14 Attorneys' Fees	30
Section 7.15 Severability.....	30
Section 7.16 Force Majeure.	30
Section 7.17 Extended Use Agreement	30
Section 7.18 Future City Actions	30
Section 7.19 Multiple Originals; Counterpart.....	31
 Exhibit A Legal Description	
Exhibit B Approved Development Budget	
Exhibit C Scope of Work	

LOAN AGREEMENT
(CAL WEBER 40 – 506 EAST WEBER AVENUE)

This Loan Agreement (the "Agreement") is entered into as of _____, 2015 (the "Effective Date"), by and between the City of Stockton, a municipal corporation (the "City") and Cal Weber Associates LP, a California limited partnership (the "Borrower"), with reference to the following facts, purposes and intentions.

RECITALS

A. The City has received Home Investment Partnerships Program funds from the U.S. Department of Housing and Urban Development (HUD) pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 ("HOME Funds"). Such funds must be used by the City in accordance with 24 C.F.R. 92 et seq.

B. In 2002, the City borrowed \$500,000 through the Housing Enabled by Local Partnerships (HELP) Program administered by the California Housing Finance Agency (CalHFA) for the purpose of providing loans to low-income homeowners to repair their homes. In 2003, the City borrowed an additional \$550,000 to assist in the acquisition of land and pre-development costs for an affordable multi-family housing project. The City repaid the HELP loans in February, 2011 and the program income from the loans made with these funds is now available to assist other housing projects.

C. The Borrower is the owner of that real property located at 506 and 520 East Weber Avenue, Stockton, California, more particularly described in the attached Exhibit A (the "Property"). The Borrower intends to renovate a portion of the property into forty (40) units of multifamily housing (the "Development") and, with the exception of one manager's unit, intends to rent one-hundred percent (100%) of the housing units to low income households as defined by HUD.

D. Borrower wishes to borrow and the City wishes to extend a loan of **Two Million Five Hundred Thousand Dollars (\$2,500,000)** (the "Loan") for eligible rehabilitation costs. The City has agreed to fund the Loan with HELP Program Income and HOME funding. The project will contain ten (10) HOME-assisted units.

E. Borrower wishes to purchase City-owned property located at 30 North California Street ("City Parcel") for the project. City is willing to sell the property for One Hundred Ninety Thousand Dollars (\$190,000). The purchase price (the "Acquisition Loan") will be repaid to the City through terms included in separate loan documents.

F. Borrower wishes to lease air rights over a City-owned parking lot located at 25 North American Street. A separate agreement will establish the lease terms.

G. The transfer of the ownership of 30 North California Street and the use of the loan funds were approved by the City Council contingent upon all funding necessary to

construct the project being obtained. Once the funding is obtained, the loans shall be evidenced by Promissory Notes executed by the Borrower in favor of the City (the "Notes"), and secured by a deed of trust (the "Deeds of Trust") to be recorded against the Property in the Official Records of the County. In connection with the Loan, the City and Borrower shall enter into a regulatory agreement restricting the future use of the Property, which shall be recorded against the Property (the "Regulatory Agreement").

H. Through this Agreement and the accompanying Regulatory Agreement, the City is imposing occupancy and affordability restrictions on the Development pursuant to the terms of HOME and HUD guidelines.

I. The City has conducted an environmental assessment of the Project pursuant to the National Environmental Protection Act ("NEPA") and HUD's Environmental Review procedures at 24 CFR Part 58 and determined that the project will have no adverse environmental effects. The City also determined that the project is Categorically Exempt from the California Environmental Quality Act (CEQA).

J. The Development complies with Article XXXIV of the California Constitution as the voters of the City approved Measure G on November 2, 2010, which provides that five hundred (500) affordable housing units may be developed, constructed and acquired annually. The City Council has allocated thirty-nine (39) units of such authority for the Development by Resolution No. 2014-06-24-1506 dated June 24, 2014.

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) "Acquisition Loan" shall mean the loan from the City to Borrower in the total principal amount of One Hundred Ninety Thousand Dollars (\$190,000) to pay for the acquisition of the City Parcel.

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

(c) "Approved Development Budget" shall mean the proforma 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 rehabilitation of the Development and disbursed in the manner set forth in the Approved Development Budget, in addition to the Loan.

(e) "Borrower" shall mean Cal Weber Associates, LP, a California limited partnership, and its permitted successors and assigns hereunder.

(f) "City" shall mean the City of Stockton, a municipal corporation.

(g) "City Council" shall mean the council of the City of Stockton.

(h) "City Manager" shall mean the City Manager of the City of Stockton.

(i) "City Parcel" shall mean City-owned property located at 30 North California Street.

(j) "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 City.

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

(l) "Development" shall mean the renovation of a portion of the existing buildings located at 506 and 520 East Weber Avenue into residential units, attendant site improvements on the Property, and any new improvements Borrower intends to develop on the Property.

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

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

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

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

(q) "HELP Funds" shall mean the program income the City has received from loans made with State Housing Enabled by Local Partnership (HELP) loans, as further defined in Recital B.

(r) "HELP Loan" shall mean the City loan of HELP program income to Borrower pursuant to this Agreement in the total principal amount of Four Hundred Thirty One Thousand Dollars (\$431,000).

(s) "HOME Funds" shall mean the Home Investment Partnerships Program funds the City has received from HUD pursuant to the Cranston-Gonzales National Affordable Housing Act, as amended.

(t) "HOME Loan" shall mean the City loan of HOME Funds to Borrower pursuant to this Agreement in the total principal amount of Two Million Sixty Four Thousand Five Hundred Dollars (\$2,069,000).

(u) "Improvements" shall mean the renovation of the Property into forty (40) housing units, landscaping, laundry facilities, and parking areas.

(v) "Loan" shall mean the loan from the City to Borrower in the total principal amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) to be used for eligible rehabilitation costs.

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

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

(y) "Marketing and Management Plan" means the marketing and management plan prepared by the Borrower to be approved by the City.

(z) "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.

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

(bb) "Property" shall mean the real property located at 506 and 520 East Weber Avenue in the City of Stockton, County of San Joaquin, California, more particularly described in the attached Exhibit A.

(cc) "Regulatory Agreement" shall mean the Regulatory Agreement and Declaration of Restrictive Covenants between the City and the Borrower associated with the Loan. The form of the Regulatory Agreement shall be provided by the City.

(dd) "Supplemental Financing" shall mean any financing received by the Borrower for the Development, including the Tax Credit Funds.

(ee) "TCAC" shall mean the California Tax Credit Allocation Committee.

(ff) "Term" shall mean the term of this Agreement, which shall consist of the period commencing as of the Effective Date 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.

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

(hh) "Unit" means one of forty (40) housing units to be renovated 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: Scope of Development

ARTICLE 2 LOAN PROVISIONS

Section 2.1 Loan. Subject to satisfaction of the conditions set forth in Section 2.5, the City shall lend to the Borrower the principal sum not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) for the purposes set forth in Section 2.3 of this Agreement. The Loan shall be evidenced by a 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 under this Agreement (as defined in Section 6.1) that remains uncured after expiration of the applicable notice and cure period, at the City's option, the principal amount of the Loan shall be immediately due and payable, and shall bear interest at the lesser of ten percent (10%) per annum or the maximum rate permitted by law, from the expiration of the applicable cure period to the date of repayment in full of the principal amount of the Loan and any interest due thereon or until such time as the Default is cured.

Section 2.3 Use of Funds.

The Borrower shall use the Loan funds to pay a portion of the rehabilitation costs of the Development, consistent with the Approved Development Budget. The Borrower shall not use the Loan funds for any other purpose without the prior written consent of the City.

Section 2.4 Security.

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

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

Section 2.5 Conditions Precedent to Disbursement.

The City shall not be obligated to make any disbursements of the Loan 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 which has occurred and is continuing at the time the disbursement is to be made, and no act, failure, omission or condition has occurred and is continuing at the time the disbursement is to be made that would constitute an event of Default under this Agreement;

(b) The City has received evidence reasonably satisfactory to them 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) The Borrower has executed and delivered to the City all documents, instruments, and policies required under the Loan Documents.

(d) The Borrower has furnished the City with evidence of the insurance coverage meeting the requirements from Section 4.12 below;

(e) The Borrower has complied with all reporting requirements set forth in this Agreement;

(f) The City has received a written draw request from the Borrower, including certification that the condition set forth in Section 2.5(a) continues 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. 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.

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 until such time as the Default is cured.

Section 2.6 Repayment Schedule.

The Loan shall be repaid as follows:

(a) Special Definitions.

(i) 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.

(ii) 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 or used to repay senior loans); 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.

(iii) 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; any payments due or made on any senior construction or permanent financing and other loans approved by the City; 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 paid to the General Partner or an affiliate thereof), if any, not to exceed a total of Twenty Five Thousand Dollars (\$25,000) per year, increasing annually by 3.5 percent; deferred developer fee, if any; asset management fee to the limited partner of the owner of the Development up to Seven Thousand Five Hundred Dollars (\$7,500) per year, (increasing by ten percent every five years) but only for the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended; 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 required in connection with the permanent financing and the tax credit syndication; 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 reserve 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.

(b) Annual Payments. Commencing on May 1 the year after the Acquisition Loan is paid in full, 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. Payments received from the Borrower shall be applied first to accrued interest, then to current interest, and the remaining balance, if any, to principal.

(c) 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.

(d) 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, record and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in reasonable 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 upon 72 hours notice. Copies of all tax returns and other reports that Borrower may be required to furnish any governmental agency shall at all reasonable times, upon 72 hours notice, 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, upon at least 72 hours advance notice, 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 Loan Documents. 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 Loan Documents 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 thereunder, 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 intent 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 Loan Documents, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the City under Sections 3.5, 4.8, 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.

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 April 15, 2015, or the City, at its option, and with thirty (30) days' written notice and opportunity to cure, may declare Borrower in default hereunder.

Section 3.2 Development Budget. Borrower has submitted the Development budget and it has been approved by the City.

Section 3.3 Commencement of Construction. Borrower shall cause the commencement of construction no later than April 30, 2015.

Section 3.4 Completion of Construction. Borrower shall diligently prosecute 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, subject to any approved change orders. 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 through 1861 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 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 assistance under this Agreement meets the exception set forth in Labor Code section 1720(c)(5)(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 through section 1861 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, in their reasonable discretion, 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 Report. 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 construction 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 reasonably 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, upon at least 72 hours advance notice, 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 Director of the Economic Development Department 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. Notwithstanding the above, the Borrower shall not amend the Approved Development Budget with respect to the cost of acquisition of the Property after the Borrower has closed on the escrow to acquire the Property.

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 Tax Credit Allocation Committee (TCAC) (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 (other than partnership management and incentive management fees payable to the General Partner or an affiliate thereof, and property management fees payable to the property manager) 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 Accountings 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 to City an audited financial report showing the sources and uses of all funds utilized for the Development. City hereby agrees to accept the final cost certification prepared in connection with the tax credits in lieu of the audited financial report required under this Section 4.2.

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 upon 72 hours' notice. 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 upon 72 hours' notice during normal business hours to City all books, accounts, reports, files, and other papers or 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. In its reasonable discretion, 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 material compliance with, and shall not cause or permit the Property to be in material 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 customarily used in construction of projects like the Development or 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 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) 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 Borrower. Borrower shall indemnify and hold harmless the City and its 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 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, 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 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) Borrower will or may be subjected to administrative, civil or criminal sanctions or penalties if it fails to take a required action; (iii) 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) 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 City'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's 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 lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the City upon their 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, reasonable wear and tear excepted. 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, or such reasonable time thereafter in the event such condition cannot reasonably be cured within 30 days, 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 of one hundred twenty (120) days after the damage and shall be complete within one (1) year thereafter, or such longer periods for the commencement and completion as may be extended by the City in their reasonable discretion. Subject to the requirements of senior lenders, all insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, the Borrower shall make up the deficiency.

Section 4.8 Fees and Taxes.

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 Borrower, and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the City, 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 and adversely 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 foregoing 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 any 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 leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land 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, sub-lessees, subtenants, or vendees in the land herein leased."

(c) In Contracts:

"There shall be no discrimination against or segregation of any person or 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 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, sub-lessees, 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 transfer of the Development to a limited partnership in which Borrower or its affiliate is the general partner, provided the limited partnership assumes all obligations under the Loan Documents; the leasing of any

single unit in the Development to an occupant in compliance with the Regulatory Agreement, the admission of limited partners; a change in or substitution of the General Partner, where such new general partner is the limited partner of Borrower or an affiliate of such limited partner, or is satisfactory to and approved in advance in writing by Lenders, which approval shall not be unreasonably withheld or delayed; or the transfer of the limited partnership interest in Borrower to any substitute limited partner that is an affiliate of the investor limited partner, or any substitute limited partner unaffiliated with the investor limited partner, where such new limited partner is satisfactory to and approved by Lenders in writing, which approval shall not be unreasonably withheld or delayed, provided such approval for an unaffiliated substitute limited partner shall not be required if all required capital contributions have previously been made.

(b) No Transfer shall be permitted without the prior written consent of the City, which the City may withhold in its sole discretion. The Loan shall automatically accelerate and be due in full upon any unauthorized Transfer.

(c) Upon the transfer of the property to a limited partnership and the assignment of the Loan to the partnership, the limited partner shall have the right to cure defaults the same as the Borrower.

Section 4.12 Insurance Requirements.

The Borrower shall maintain the following insurance coverage throughout the Term of the Loan:

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

(b) 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.

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

(d) Property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming the City as separate a Loss

Payees, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(e) Blanket Fidelity Bond covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount not less than One Million Dollars (\$1,000,000) naming the City separate Loss Payees, as its interests may appear. In the event Borrower transfers property to a limited partnership, Borrower shall cause its general partners to maintain such insurance.

(f) 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 (a), (b), and (c) 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 (g), (h) and (i) below, including, without limitation, the requirement of subsection (f). Subcontractors working on the Development under indirect contract with the Borrower shall be required to maintain the insurance described in subsections (a), (b), and (c) above. Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and agents pursuant to this subsection shall name as additional insureds the City and its respective board members, agents, and employees.

(g) 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.

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

(i) All policies and bonds shall contain (a) the agreement of the insurer to give the City at least thirty (30) days' 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 (to the extent such actions are required as of the date of execution and delivery of the above-named documents);

(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 predevelopment, ownership and development of the Property will comply in all material respects 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) HUD Requirements. Borrower shall remain responsible and accountable for the performance of the terms and conditions of this Agreement, notwithstanding that Borrower may employ consultants to perform any of its activities. Borrower will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development ("HUD"). As a recipient of NSP funds, Borrower agrees to comply with HUD requirements set forth in Exhibit D, which is incorporated as part of this Agreement;

(h) Pending Proceedings. The Borrower is not in default under any law or regulation or under any order of any court, board, commission or city 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;

(i) 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 in writing by the City, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the City; and

(j) 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.

ARTICLE 6 DEFAULT AND REMEDIES

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

(a) Failure to Construct. Subject to Section 7.16, failure of Borrower to commence and complete construction of the Development within the times set forth in Article 3 above;

(b) Failure to Make Payment. Failure to repay the principal and any interest on the Loan within ten (10) days or receipt of written notice from the City that such payment is due pursuant to the Loan Documents;

(c) Breach of Covenants. 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 by from the City to the Borrower, or, if the breach cannot be cured within thirty (30) days, 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;

(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 Property 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 therefor (including, without limitation, the posting of bonds) satisfactory to City;

(i) 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; and

(j) 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 adverse respect when made.

Section 6.2 Remedies. The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the City or automatically where so specified, relieve the City of any obligation to make or continue the Loan and shall give the City the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, 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; and

(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 therefor, 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 other lenders hereunder.

Section 6.4 Remedies Cumulative. Subject to the nonrecourse provisions contained in Section 2.8 above, 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.

Section 6.5 Limited Partner Cure Rights. Borrower's limited partner(s) (collectively, "Limited Partner") shall have the right but not the obligation to cure any Default of Borrower under the Loan Documents, and City agrees to accept or reject any cure tendered by Limited Partner on the same basis as if such cure were tendered by Borrower. In addition to any notice required to be given by City to Borrower, City shall give concurrent written notice of any Default under the Loan Documents to Limited Partner. The notice shall specify: (i) the nature of the event or deficiency giving rise to the Default, (ii) the action required to cure the event or deficiency, if an action to cure is possible and can be ascertained, and (iii) a date by which such action to cure must be taken, if applicable, which date shall in no event be less than ten (10) calendar days from the mailing of the notice for monetary defaults or thirty (30) calendar days from the mailing of the notice for non-monetary defaults (or such longer period as set forth in this Section 6. If the cure of a non-monetary default requires more than thirty (30) days (or such longer period as set forth in Section 6), City shall extend the time within which the Default must be cured, provided Limited Partner promptly commences to cure the Default and thereafter diligently pursues or prosecutes such cure to completion, or

diligently pursues the removal and replacement of the General Partner. In the event City fails to provide notice of a Default to Limited Partner as set forth herein, City's failure to provide such notice to Limited Partner shall not result in liability to City, but City shall grant Limited Partner ten (10) calendar days from receipt of actual notice of a monetary default or thirty (30) days from receipt of actual notice of a non-monetary default (or such longer period as provided in this Section 6) to pay any and all sums or perform any and all acts necessary to cure such Default.

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. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the purchase of the Property, and development and operation 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, or the operation of the Development, and the Borrower shall include similar requirements in any contracts entered into for the development of the Development or the operation 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 shall indemnify, defend and hold the City and its board 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 of 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 or its board members, officers, employees, agents, successors and assigns. The provisions 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 and City Officials, Employees and Agents. No board member, official, employee or agent of the City shall be personally liable to the Borrower, or any successor in interest, in the event of any Default or breach by the City, or for any amount which may become due to the 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 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, 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. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specially provided that a sole standard of discretion 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 7.9 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.9(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 7.9(a) is followed.

(b) The conflict of interest provisions of Section 7.9(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 7.10 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 a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 7.11 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 City and the Borrower as follows:

City: City of Stockton Economic Development Department
425 North El Dorado Street, 3rd Floor
Stockton, CA 95202
Attn: Deputy Director of Housing

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

Borrower: DFA Development, LLC
Post Office Box 45
Novato, CA 94948

With copies to:

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 as the date of delivery or refusal of delivery (or attempted delivery if undeliverable). Copies of notice, sent to Borrower shall also be sent to any limited partner of Borrower who requests such notice in writing and provides its address.

Section 7.12 Applicable Law. This Agreement will be governed by California law.

Section 7.13 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 their respective successors and assigns.

Section 7.14 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 7.15 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 7.16 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; floods; 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 7.17 Extended Use Agreement.

Beneficiary acknowledges that Trustor and the California Tax Credit Allocation Committee ("CTCAC") intend 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 ("IRC"), as amended. As of the date hereof, IRC 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 Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure. In the event the regulatory agreement required by CTCAC is recorded against the Property, the Beneficiary agrees to comply with the provisions set forth in IRC Section 42(h)(6)(E)(ii).

Section 7.18 Future City Actions. The parties acknowledge and agree that:

- (a) This Agreement does not constitute City approval of any other financial assistance to the Borrower, the land use approvals, or construction of the Development;

(b) The City retains full discretion to approve or disapprove any other financial assistance to the Borrower and the land use approvals; and

(c) Prior to consideration of the land use approvals, the City must first perform all applicable statutory preconditions to such consideration.

Section 7.19 Multiple Originals; Counterpart. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

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

BORROWER:

CAL WEBER ASSOCIATES, LP, a California
limited partnership

By: _____

CITY:

CITY OF STOCKTON, a municipal corporation

By: _____

ATTEST:

LAURIE MONTES
DEPUTY CITY MANAGER

BONNIE PAIGE
City Clerk of the City of Stockton

APPROVED AS TO FORM:

JOHN M. LUEBBERKE
CITY ATTORNEY

By: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

APPROVED DEVELOPMENT BUDGET

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

<i>Budget Item</i>	<i>Amount</i>
Land/Option/Acquisition Cost	\$2,153,850
Hard Construction Costs	\$7,210,581
Construction Contingency	\$721,058
Local Development Impact Fees/Permit Fees	\$992,586
Environmental Assessments	\$10,000
Architecture/Engineering/Geotechnical	\$375,000
Appraisal/Market Study	\$27,500
Loan Fees/Interest	\$414,500
Permanent Financing Costs	\$28,000
Attorney Fees	\$165,000
Reserves	\$155,000
Marketing	\$5,000
Other Costs	\$233,680
Developer Costs	\$1,435,280
Total Budget	\$13,927,035

EXHIBIT C

SCOPE OF DEVELOPMENT

Construction

Off-site Improvements