

**Jesse Wu**

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**From:** Jesse Wu  
**Sent:** Tuesday, March 04, 2003 2:37 PM  
**To:** 'bchan@co.alameda.ca.us'  
**Cc:** 'csshields@treadwellrollo.com'; 'gsbuhr@treadwellrollo.com'; 'JGregory@fbm.com'; 'ddrogos@co.alameda.ca.us'; Carol Galante; Peter Nichol  
**Subject:** Mandela Gateway (Oakland, CA)

Barney-

Thanks again for meeting with us last Friday, we appreciate the time that you and Donna spent to understand our project.

I am sending via FedEx a copy of our Building Loan Agreement (Construction Loan Agreement) with Wells Fargo Bank, NA. In Section 3.1(j), you will see the April 2003 deadline mentioned at the meeting. If you have any questions, feel free to call me.

Jesse Wu  
Project Manager  
BRIDGE Housing Corporation  
One Hawthorne Street, Suite 400  
San Francisco, CA 94105  
(415) 989-1111  
(415) 495-4898 fax

*Enclosed*

Attached is a rendering of the project and a location map.



small rendering.jpg



Attachment 15C Site Plan.pdf

**CONFIDENTIAL**

**BUILDING LOAN AGREEMENT**

**between**

**MANDELA GATEWAY ASSOCIATES,  
A CALIFORNIA LIMITED PARTNERSHIP**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

**Executed as of February 1, 2003**

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## BUILDING LOAN AGREEMENT

THIS BUILDING LOAN AGREEMENT ("Agreement") is executed as of February 1, 2003, by and between MANDELA GATEWAY ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP ("Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender").

### RECITALS

- A. Borrower owns the ground leasehold interest in the land described in Exhibit A hereto and will own a fee interest in the improvements to be constructed thereon pursuant to that certain Ground Lease Agreement dated as of February 1, 2003, between Borrower as Lessee and The Housing Authority of the City of Oakland as Lessor (the "Ground Lease"). The property described in Exhibit A is hereinafter referred to as the "Property".
- B. Borrower proposes to construct on the Property certain improvements consisting of: a 168-unit affordable multi-family housing complex together with all appurtenances, fixtures, and tenant improvements now or hereafter located on the Property ("Improvements"). The Improvements shall be constructed in accordance with plans and specifications which Borrower has heretofore, or will hereafter deliver to Lender, as amended in order to comply with the terms and conditions of this Agreement ("Plans and Specifications"). Borrower has requested from Lender a loan for the purpose of such construction.
- C. Borrower has represented to Lender that the Improvements will be eligible for Federal Low Income Housing Tax Credits in the annual amount of \$2,614,690 for a period of ten (10) years and State Low Income Housing Tax credits in the amount of \$8,494,102 for the period from 2004 to 2007 (collectively the "LIHTC") pursuant to the Preliminary Reservation Letter dated September 23, 2002, from the Tax Credit Allocation Committee ("TCAC") of the State of California ("Reservation").

NOW, THEREFORE, Borrower and Lender agree as follows:

### ARTICLE 1. DEFINITIONS

1.1 DEFINED TERMS. The following capitalized terms generally used in this Agreement shall have the meanings defined or referenced below. Certain other capitalized terms used only in specific sections of this Agreement are defined in such sections.

"ACC" – means the Consolidated Annual Contributions Contract between HUD and the Authority dated August 1, 1996.

"Account" – means an account with Lender, account number 750-0122507, in the name of Borrower or Borrower's designee into which Loan proceeds will be deposited.

"ADA" – means the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. as now or hereafter amended or modified.

"Agency" – means the Redevelopment Agency of the City of Oakland.

"Agency Loan" – shall have the meaning ascribed to such term in Section 9.7.

"Agency Loan Documents" – means all documents executed by Borrower and/or Agency in connection with the Agency Loan.

"Agreement" – shall have the meaning ascribed to such term in the preamble hereto.

"Agreement" – shall have the meaning ascribed to such term in the preamble hereto.

"AHAP" – means the Agreement to Enter into a Housing Assistance Payments Contract dated February 1, 2003 between Borrower and Authority.

"AHP Lender" – means World Savings Bank.

"AHP Loan" – means the financing to be provided by AHP Lender in a principal amount of not less than \$1,000,000.

"Architect" – means Michael Willis Architects.

"Architect's Agreement" – means that certain agreement dated July 12, 2002 between BRIDGE Housing Corporation and Michael Willis Architects. The Architect's Agreement has been assigned by BRIDGE Housing Corporation to Borrower.

"Authority" – means the Housing Authority of the City of Oakland.

"Authority Local Funds Loan" – shall have the meaning ascribed to such term in Section 9.6.

"Authority Local Funds Loan Documents" – means all documents executed by Borrower and/or Authority in connection with the Authority Local Funds Loan.

"Authority Hope VI Loan" – shall have the meaning ascribed to such term in Section 9.5.

"Authority Hope VI Loan Documents" – means all documents executed by Borrower and/or Authority in connection with the Authority Hope VI Loan.

"Bankruptcy Code" – means the Bankruptcy Reform Act of 1978 (11 U.S.C. § 101-1330) as now or hereafter amended or recodified.

"BHVI" - means BRIDGE Housing Ventures, Inc., a California nonprofit public benefit corporation.

"Bonded Work" – shall have the meaning ascribed to such term in Section 8.1.

"Border Zone Property" – means any property designated as "border zone property" under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith.

"Borrower" – means MANDELA GATEWAY ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP.

"Borrower's Funds" – means all funds of Borrower deposited with Lender pursuant to the terms and conditions of this Agreement.

"Borrower's Funds Account" – means the account with Lender into which all funds deposited with Lender pursuant to this Agreement shall be placed.

"Business Day" – means a day of the week (but not a Saturday, Sunday or holiday) on which the offices of Lender are open to the public for carrying on substantially all of Lender's business functions. Unless specifically referenced in this Agreement as a Business Day, all references to "days" shall be to calendar days.

"Capital Contributions" – shall have the meaning ascribed to such term in Section 9.3.

"CHFA" – means the California Housing Finance Agency.



"CHFA Permanent Financing" -- shall have the meaning ascribed to such term in Section 9.9.

"City" means the City of Oakland.

"City Loan" -- shall have the meaning ascribed to such term in Section 9.8.

"City Loan Documents" means all documents executed by Borrower and/or City in connection with the City Loan.

"CLI" means Chestnut Linden, Inc., a California nonprofit public benefit corporation.

"Completion Date" -- means December 31, 2004.

"Construction Agreement" -- means that certain agreement to construct the Improvements dated February 10, 2003, by and between Borrower and Contractor.

"Contractor" -- means James E. Roberts - Obayashi Corporation.

"Contribution Agreement" -- means the Contribution Agreement of even date herewith entered into among Borrower, BHVI, BRIDGE Housing Corporation and Tax Credit Investor.

"Declaration of Trust" -- means the Declaration of Trust and Restrictive Covenants of approximately even date herewith, recorded against the Property on the Effective Date, entered into by Borrower and Authority for the benefit of HUD.

"Deed of Trust" -- means that certain Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith executed by Borrower as Trustor, to American Securities Company, a California corporation, as Trustee, for the benefit of Lender, as Beneficiary, as hereafter amended, supplemented, replaced or modified.

"Default" -- shall have the meaning ascribed to such term in Section 11.1.

"Disbursement Budget" -- shall have the meaning ascribed to such term in Exhibit C.

"Effective Date" -- means the date the Deed of Trust is recorded in the Office of the County Recorder of the county where the Property is located.

"Environmental Report" - means the Phase I and Phase II Environmental Site Assessment/Mandela Gateway Redevelopment Site dated August 2, 2002 prepared by Treadwell & Rollo.

"Federal Requirements" -- means the R&O, the Declaration of Trust, the ACC, the Mixed Finance ACC Amendment, the HOPE VI Grant Agreement, and any other Federal statutes, regulations and executive orders relating to the above or to the Project.

"Final Site Mitigation Plan" -- shall have the meaning ascribed to such term in Section 7.2(e).

"First Capital Contribution" - shall have the meaning ascribed to such term in Section 9.3.

"First Extended Maturity Date" -- means the date which is ninety (90) days after the Maturity Date.

"First Option to Extend" -- means Borrower's option, subject to the terms and conditions of Section 2.8, to extend the term of the Loan from the Maturity Date to the First Extended Maturity Date.

"Fourth Capital Contribution" - shall have the meaning ascribed to such term in Section 9.3.

**"General Partner"** – means BHVI or, upon transfer of BHVI's general partnership interest in Borrower to CLI as contemplated herein and in the Partnership Agreement, CLI.

**"Gross Operating Income"** - shall have the meaning ascribed to such term in Section 10.4.

**"Ground Lease"** - shall have the meaning ascribed to such term in Recital A.

**"Guarantors"** – means BRIDGE Housing Corporation, a California non-profit public benefit corporation, BRIDGE Housing Ventures, Inc., a California nonprofit public benefit corporation, and any other person or entity who, or which, in any manner, is or becomes obligated to Lender under any guaranty now or hereafter executed in connection with respect to the Loan (collectively or severally as the context thereof may suggest or require).

**"HAP Contract"** means, collectively, the AHAP and, upon its execution following completion of the Improvements, the Housing Assistance Payment Contract entered into between Borrower and Authority.

**"Hazardous Materials"** – shall have the meaning ascribed to such term in Section 7.1 (a).

**"Hazardous Materials Claims"** – shall have the meaning ascribed to such term in Section 7.1 (c).

**"Hazardous Materials Laws"** – shall have the meaning ascribed to such term in Section 7.1 (b).

**"Home Ownership Access Easement"** – means the Grant of Easement and Easement Agreement executed by Authority and Borrower and recorded against the Property on or before the Effective Date.

**"Hope VI Grant Agreement"** – means the grant agreement entered into April 14, 2000 between HUD and the Authority under the HOPE VI Program.

**"HUD"** – means the U.S. Department of Housing and Urban Development.

**"Improvements"** – shall have the meaning ascribed to such term in Recital B.

**"Indemnitors"** – means BRIDGE Housing Corporation, a California nonprofit public benefit corporation, BRIDGE Housing Ventures, Inc., a California nonprofit public benefit corporation, and any other person or entity who, or which, in any manner, is or becomes obligated to Lender under any indemnity now or hereafter executed in connection with respect to the Loan (collectively or severally as the context thereof may suggest or require).

**"Intercreditor Agreement"** means the Disbursement and Intercreditor Agreement among Borrower, Authority, and Special Limited Partner of even date herewith.

**"Interest Rate"** – shall have the meaning ascribed to such term in the Note.

**"Lender"** – means WELLS FARGO BANK, NATIONAL ASSOCIATION.

**"LIHTC"** – means the Federal and State Low Income Housing Tax Credits allocated for the Improvements by TCAC as described in Recital C.

**"Loan"** – means the principal sum that Lender agrees to lend and Borrower agrees to borrow pursuant to the terms and conditions of this Agreement: TWENTY-SEVEN MILLION TWO HUNDRED THIRTY-FIVE THOUSAND TWENTY-ONE AND NO/100THS DOLLARS (\$ 27, 235, 021.00).

**"Loan Documents"** – means those documents, as hereafter amended, supplemented, replaced or modified, properly executed and in recordable form, if necessary, listed in Exhibit B as Loan Documents.

"Maturity Date" – means April 17, 2005.

"Mixed Finance Amendment" – means the Mixed Finance Amendment to the ACC dated as of February \_\_, 2003, entered into by Authority and HUD with respect to the Project.

"No Further Action Letter" – shall have the meaning ascribed to such term in Section 7.2(e).

"Note" – means that certain Promissory Note Secured by Deed of Trust of even date herewith, in the original principal amount of the Loan, executed by Borrower and payable to the order of Lender, as hereafter amended, supplemented, replaced or modified.

"Obligee" – shall have the meaning ascribed to such term in Section 8.1.

"Original Maturity Date" – means the Maturity Date.

"Other Related Documents" – means those documents, as hereafter amended, supplemented, replaced or modified from time to time, properly executed and in recordable form, if necessary, listed in Exhibit B as Other Related Documents.

"Participant" – shall have the meaning ascribed to such term in Section 12.13.

"Partnership Agreement" – shall mean that certain Amended and Restated Agreement of Limited Partnership of Mandela Gateway Associates, of even date herewith, among General Partner, CLI, Special Limited Partner and Tax Credit Investor, as amended with the consent of Lender.

"Partnership Documents" – means the Partnership Agreement and all other documents now or hereafter executed by Borrower, General Partner, Special Limited Partner, Tax Credit Investor and CLI, with the approval of Lender in connection therewith.

"Permitted Operating Expenses" shall have the meaning ascribed to such term in Section 10.4.

"Plans and Specifications" – shall have the meaning ascribed to such term in Recital B.

"Preliminary Reservation Letter" – shall have the meaning ascribed to such term in Section 6.15.

"Prime Rate" – means a base rate of interest which Lender establishes from time to time and which serves as the basis upon which the effective rates of interest are calculated for those loans making reference thereto. Any change in an effective rate due to a change in the Prime Rate shall become effective on the day each such change is announced within Lender.

"Project or project" – means the Property and the construction of the improvements thereon.

"Property" – shall have the meaning ascribed to such term in Recital A.

"REA" – means the Declaration Establishing Reciprocal Easements and Covenants Running With The Land executed by Authority and recorded against the Property on or before the Effective Date.

"R&O" – means the Regulatory and Operating Agreement for the PHA Assisted Units of Mandela Gateway of even date herewith, executed by Borrower and Authority and recorded against the Property on the Effective Date.

"Restrictions" – means the R&O, all other regulatory agreements and covenants, conditions and restrictions recorded against the Property and approved by Lender.

"Second Capital Contribution" – shall have the meaning ascribed to such term in Section 9.3.

"Second Extended Maturity Date" – means the date which is one hundred eighty (180) days after the Maturity Date.

"Second Option to Extend" – means Borrower's option, subject to the terms and conditions of Section 2.9 to extend the term of the Loan from the First Extended Maturity Date to the Second Extended Maturity Date.

"Set Aside Letter" – shall have the meaning ascribed to such term in Section 8.1.

"Site Mitigation Plan" – means the Site Mitigation Plan/Mandela Gateway Redevelopment Site dated November 12, 2002 prepared by Treadwell & Rollo.

"Special Limited Partner" – means Related Direct SLP LLC, a Delaware limited liability company.

"Subdivision Map" – shall have the meaning ascribed to such term in Section 9.10.

"Surety" – shall have the meaning ascribed to such term in Section 8.1.

"Tax Credit Investor" – means Related Capital Oakland Partners LLC, a Delaware limited liability company.

"TCAC" – means the California Tax Credit Allocation Committee.

"Third Capital Contribution" – shall have the meaning ascribed to such term in Section 9.3.

"Title Policy" – means the LP-10 ALTA Lender's Policy of Title Insurance as issued by Chicago Title Company.

**1.2** EXHIBITS INCORPORATED. Exhibits A, B, C and D all attached hereto, are hereby incorporated into this Agreement.

## ARTICLE 2. LOAN

**2.1** LOAN. By and subject to the terms of this Agreement, Lender agrees to lend to Borrower and Borrower agrees to borrow from Lender the principal sum of Twenty-Seven Million Two Hundred Thirty-Five Thousand Twenty-One and no/100ths Dollars (\$27,235,021.00), said sum to be evidenced by the Note of even date herewith. The Note shall be secured, in part, by the Deed of Trust, of even date herewith, encumbering certain real property and improvements as legally defined therein. Amounts disbursed to or on behalf of Borrower pursuant to the Note shall be used to finance the construction of the Property and Improvements and for such other purposes and uses as may be permitted under this Agreement and the other Loan Documents.

**2.2** LOAN FEE. Borrower shall pay to Lender, at Loan closing, a loan fee in the amount of \$136,175.00 (0.5%) of the Loan amount).

**2.3** LOAN DOCUMENTS. Borrower shall deliver to Lender concurrently with this Agreement each of the documents, properly executed and in recordable form, as applicable, described in Exhibit B as Loan Documents, together with those documents described in Exhibit B as Other Related Documents.

**2.4** EFFECTIVE DATE. The date of the Loan Documents is for reference purposes only. The Effective Date of delivery and transfer to Lender of the security under the Loan Documents and of Borrower's and Lender's obligations under the Loan Documents shall be the date the Deed of Trust is recorded in the Office of the County Recorder of the county where the Property is located.

**2.5 MATURITY DATE.** The Maturity Date of the Loan shall be April 17, 2005, at which time all sums due and owing under this Agreement and the other Loan Documents shall be repaid in full. All payments due to Lender under this Agreement, whether at the Maturity Date or otherwise, shall be paid in immediately available funds.

**2.6 CREDIT FOR PRINCIPAL PAYMENTS.** Any payment made upon the outstanding principal balance of the Loan shall be credited as of the Business Day received, provided such payment is received by Lender no later than 11:00 a.m. (Pacific Standard Time or Pacific Daylight Time, as applicable) and constitutes immediately available funds. Any principal payment received after said time or which does not constitute immediately available funds shall be credited upon such funds having become unconditionally and immediately available to Lender.

**2.7 FULL REPAYMENT AND RECONVEYANCE.** Upon receipt of all sums owing and outstanding under the Loan Documents, Lender shall issue a full reconveyance of the Property and Improvements from the lien of the Deed of Trust; provided, however, that all of the following conditions shall be satisfied at the time of, and with respect to, such reconveyance: (a) Lender shall have received all escrow, closing and recording costs, the costs of preparing and delivering such reconveyance and any sums then due and payable under the Loan Documents; and (b) Lender shall have received a written release satisfactory to Lender of any set aside letter, letter of credit or other form of undertaking which Lender has issued to any surety, governmental agency or any other party in connection with the Loan and/or the Property and Improvements. Lender's obligation to make further disbursements under the Loan shall terminate as to any portion of the Loan undisbursed as of the date of issuance of such full release or reconveyance, and any commitment of Lender to lend any undisbursed portion of the Loan shall be canceled.

**2.8 FIRST OPTION TO EXTEND.** Borrower shall have the option to extend the term of the Loan from the Maturity Date (for purposes of this Section, "Original Maturity Date"), to the First Extended Maturity Date, upon satisfaction of each of the following conditions precedent:

(a) Borrower shall provide Lender with written notice of Borrower's request to exercise the First Option to Extend not more than ninety (90) days but not less than thirty (30) days prior to the Original Maturity Date;

(b) As of the date of Borrower's delivery of notice of request to exercise the First Option to Extend, and as of the Original Maturity Date, no Default shall have occurred and be continuing, and no event or condition which, with the giving of notice or the passage of time or both, would constitute a Default shall have occurred and be continuing, and Borrower shall so certify in writing;

(c) Borrower shall execute or cause the execution of all documents reasonably required by Lender to exercise the First Option to Extend and shall deliver to Lender, at Borrower's sole cost and expense, such title insurance endorsements as may be reasonably required by Lender;

(d) Borrower shall provide Lender with an estoppel reasonably satisfactory to Lender executed by CHFA confirming that the CHFA Commitment is unamended and in full force and effect, and that CHFA's commitment to fund the CHFA Permanent Financing does not expire or terminate earlier than thirty (30) days after the First Extended Maturity Date;

(e) There shall have occurred no material adverse change, as determined by Lender in its sole discretion, in the financial condition of Borrower, General Partner, any Guarantor, any Indemnitor or Tax Credit Investor from that which existed as of the later of: (i) the Effective Date; or (ii) the date upon which the financial condition of such party was first represented to Lender;

(f) Borrower shall provide Lender with an estoppel executed by Tax Credit Investor confirming that General Partner is not in default under the Partnership Agreement and that the

Partnership Agreement is unamended except as approved by Lender in writing, and that the expiration date for Tax Credit Investor's obligation to fund its Fourth Capital Contribution is not earlier than thirty (30) days after the First Extended Maturity Date;

(g) Borrower shall provide evidence satisfactory to Lender of Borrower's continued compliance with all TCAC achievement dates, including Borrower's ability to meet the TCAC placed-in-service date;

(h) Borrower shall obtain and deliver to Lender copies of certificates of occupancy issued by the appropriate governmental authority for all of the Improvements;

(i) On or before the Original Maturity Date, Borrower shall pay to Lender an extension fee in the amount of 0.125% of the total commitment amount (whether disbursed or undisbursed), as determined on the Original Maturity Date.

(j) The Improvements shall be 100% complete, substantially in accordance with the Plans and Specifications, and Lender shall have received a certificate of completion from Architect in form and substance reasonably satisfactory to Lender, together with a copy of the recorded notice of completion;

(k) If requested by Lender, Lender shall have received an LP-10 rewrite to the Title Policy issued by Title Company in form and content reasonably satisfactory to Lender; and

(l) The balance in the interest reserve as of the Original Maturity Date shall be sufficient to pay interest on the Loan until the Second Maturity Date.

(m) Borrower shall have fully complied with the Final Site Mitigation Plan and obtained the No Further Action Letter.

Except as modified by this First Option to Extend, the terms and conditions of this Agreement and the other Loan Documents as modified and approved by Lender shall remain unmodified and in full force and effect.

**2.9 SECOND OPTION TO EXTEND.** Borrower shall have the option to extend the term of the Loan from the First Extended Maturity Date, to the Second Extended Maturity Date, upon satisfaction of each of the following conditions precedent:

(a) Borrower shall provide Lender with written notice of Borrower's request to exercise the Second Option to Extend not more than ninety (90) days but not less than thirty (30) days prior to the First Extended Maturity Date;

(b) As of the date of Borrower's delivery of notice of request to exercise the Second Option to Extend, and as of the First Extended Maturity Date, no Default shall have occurred and be continuing, and no event or condition which, with the giving of notice or the passage of time or both, would constitute a Default shall have occurred and be continuing, and Borrower shall so certify in writing;

(c) Borrower shall execute or cause the execution of all documents reasonably required by Lender to exercise the Second Option to Extend and shall deliver to Lender, at Borrower's sole cost and expense, such title insurance endorsements as may be reasonably required by Lender;

(d) Borrower shall provide Lender with an estoppel reasonably satisfactory to Lender executed by CHFA confirming that the CHFA Commitment is unamended and in full force and effect, and that CHFA's commitment to fund the CHFA Permanent Financing does not expire or terminate earlier than thirty (30) days after the Second Extended Maturity Date;

(e) There shall have occurred no material adverse change, as determined by Lender in its sole discretion, in the financial condition of Borrower, General Partner, any Guarantor, any Indemnitor or Tax Credit Investor from that which existed as of the later of: (i) the Effective Date; or (ii) the date upon which the financial condition of such party was first represented to Lender;

(f) Borrower shall provide Lender with an estoppel executed by Tax Credit Investor confirming that General Partner is not in default under the Partnership Agreement and that the Partnership Agreement is unamended except as approved by Lender in writing, and that the expiration date for Tax Credit Investor's obligation to fund its Fourth Capital Contribution is not earlier than thirty (30) days after the Second Extended Maturity Date;

(g) On or before the Original Maturity Date, Borrower shall pay to Lender an extension fee in the amount of 0.125% of the total commitment amount (whether disbursed or undisbursed), as determined on the Original Maturity Date;

(h) Borrower shall have provided Lender evidence satisfactory to Lender that, as of the First Extended Maturity Date, not less than seventy-five percent (75%) of the net rentable area of the Improvements shall be occupied by tenants who have commenced rental payments (or will commence rental payments after receiving one month's free rent) pursuant to leases which, in the aggregate, comply with any leasing criteria established by Lender and all restrictive covenants recorded against the Property and consented to by Lender; and

(i) The balance in the interest reserve as of the First Extended Maturity Date shall be sufficient to pay interest on the Loan until the Second Extended Maturity Date.

Except as modified by this Second Option to Extend, the terms and conditions of this Agreement and the other Loan Documents as modified and approved by Lender shall remain unmodified and in full force and effect.

**2.10 CERTAIN RESTRICTIONS PRIOR TO DEED OF TRUST.** Lender acknowledges that the Declaration of Trust, the R&O, the Ground Lease or a Memorandum thereof, the REA and the Home Ownership Access Easement, shall be recorded against the Property prior to the Deed of Trust. Lender shall execute a subordination agreement in connection therewith concurrently with the closing of the Loan if required by Title Company and if such subordination agreement is in form and substance satisfactory to Lender.

**2.11 PUBLIC HOUSING REQUIREMENTS.** Lender acknowledges that 46 units in the Project are public housing units as defined in the U.S. Housing Act of 1937, as amended ("Act"), 42 U.S.C. 1437, and are subject to all requirements applicable to a public housing project under the "Act", including, without limitation, requirements with respect to operating receipts and operating expenditures as contained in the ACC, as amended by the Mixed Finance Amendment, entered into between Authority and HUD pursuant to the Act.

### ARTICLE 3. DISBURSEMENT

**3.1 CONDITIONS PRECEDENT.** Lender's obligation to make any disbursements or take any other action under the Loan Documents shall be subject at all times to satisfaction of each of the following conditions precedent; provided that Lender's consent to recordation of the Deed of Trust shall constitute Lender's acknowledgement that the conditions set forth in Sections 3.1 (f),(g),(h) and (i)(i) below have been satisfied or waived:

(a) **No Default.** There shall exist no Default, as defined in this Agreement, or Default as defined in any of the other Loan Documents or in the Other Related Documents, or event, omission or failure of condition which would constitute a Default after notice or lapse of time, or both; and

(b) Loan In Balance. Any undisbursed Loan funds together with all sums, if any, to be provided by Borrower as shown in Exhibit C shall be at all times equal to or greater than the amount which Lender from time to time determines necessary to: (i) pay, through completion, all costs of development, construction, marketing and sale or leasing of the Property and Improvements in accordance with the Loan Documents; (ii) pay all sums which may accrue under the Loan Documents prior to repayment of the Loan; and (iii) enable Borrower to perform and satisfy all of the covenants of Borrower contained in the Loan Documents. If Lender determines at any time that the undisbursed Loan funds are insufficient for said purposes, Borrower shall deposit the amount of such deficiency in the Borrower's Funds Account within seven (7) days of Lender's written demand provided, however, that Borrower may provide and Lender may accept evidence satisfactory to Lender in its sole and absolute discretion of the availability of funds from other funding sources in an amount satisfactory to cover any and all obligations under this section; and

(c) Delivery of Documents. Lender shall have received all Loan Documents, other documents, instruments, policies, and forms of evidence or other materials requested by Lender under the terms of this Agreement or any of the other Loan Documents including without limitation: (1) the final Construction Contract; (2) a payment and performance bond with dual obligee rider in form and content acceptable to Lender, and recordation of such bond in the county in which the property is located; (3) receipt of Lender's in-house review of the cost engineering reports; (4) such other documents and instruments as may be required by Lender; and

(d) Reports. Lender shall have received and approved in form and substance satisfactory to Lender: (i) a soils report for the Property and Improvements; (ii) an environmental questionnaire and environmental site assessment with respect to the presence, if any, of Hazardous Materials on the Property and Improvements; (iii) two sets of the Plans and Specifications, certified as complete by the Architect, together with evidence of all necessary or appropriate approvals of governmental agencies; (iv) copies of all agreements which are material to completion of the Improvements; (v) copies of all building permits and similar permits, licenses, approvals, development agreements and other authorizations of governmental agencies required in connection with the development of the Property and Improvements; and (vi) copies of any initial study, negative declaration, mitigated negative declaration, environmental impact report, notice of determination or notice of exemption prepared, adopted, certified or filed by or with any governmental agency in connection with the Property and Improvements;

(e) Disbursement Of Other Funding Sources. All of the proceeds of the Authority Hope VI Loan, the Authority Local Funds Loan, the Agency Loan, the City Loan, the AHP Loan, and the First, Second and Third Capital Contributions, shall have been fully disbursed to pay project costs in accordance with the budget attached hereto as Exhibit C, and Borrower shall have delivered to Lender written evidence thereof reasonably satisfactory to Lender.

(f) Partnership Documents Lender shall have reviewed and approved the Partnership Agreement, the Contribution Agreement and the other documents referred to therein to be executed by Borrower and or its constituent partners.

(g) Review and Approval of Certain Documents Affecting the Project. Lender shall have reviewed and approved the following documents: (a) the Ground Lease; (b) the R&O, (c) the Authority Hope VI Loan documents; (d) the Authority Local Funds Loan documents; (e) the Agency Loan documents; (f) the City Loan Documents; (g) the AHP loan documents; (h) the CHFA Commitment (i) the AHAP ; (j) the REA ; and (k) the Home Ownership Access Easement.

(h) HUD Approvals. Borrower shall deliver evidence reasonably satisfactory to Lender that HUD has given all approvals of the Project, the Loan, and all of the other financing transactions described herein required under the Hope VI Grant Agreement or otherwise in connection with the Hope VI Grant.



(i) Commercial Development Approval and Construction. (i) Borrower shall have submitted to Bank a development budget satisfactory to Bank for the commercial property adjacent to the Property to be developed by Borrower's affiliate (the "Drug Store Parcel"), which budget shall include, without limitation, evidence satisfactory to Bank that the commercial construction period sources of funds are adequate to complete the development of the Drug Store Parcel. (ii) Borrower shall have completed the portion of the improvements on the Drug Store Parcel to the extent necessary to enable construction of the portion of the Improvements which are to be constructed over the Drug Store Parcel.

(j) Environmental Remediation. Borrower shall deliver to Lender (i) evidence reasonably satisfactory to Lender that Borrower has completed removal of asbestos-containing materials and lead-based paint from the Property in accordance with applicable law and obtained all necessary regulatory approvals in connection therewith; (ii) by April 15, 2003, a "Final Site Mitigation Plan" addressing remediation of the soil contamination described in the Environmental Report, and all necessary regulatory approvals thereof, (which shall include, without limitation a letter from the regulatory agency(ies) having jurisdiction over such plan that, upon completion of the work contemplated by the plan, no further remediation or other action will be required) together with a budget for the performance of the work described therein. The Final Site Mitigation Plan and budget therefor shall be subject to Lender's approval, which approval shall not unreasonably be withheld or delayed; and (iii) by September 1, 2003, written confirmation by CHFA that Borrower has satisfied all conditions to funding of the CHFA Permanent Financing with respect to environmental condition and remediation of the Property, subject to completion of the work prescribed by the Final Site Mitigation Plan and issuance of a No Further Action Letter in connection therewith and written confirmation by Tax Credit Investor that the Environmental Condition as defined in the Contribution Agreement has been fully satisfied.

(k) Existing Tenants. Within ninety (90) days after the Effective Date, Borrower shall provide to Lender evidence reasonably satisfactory to Lender that Aguilar Partners and Viacom Outdoor (collectively, "Existing Tenants") have vacated the Property, and any possessory, leasehold or other interests of Existing Tenants in the Property have been terminated.

(l) Predevelopment Services Agreement and Demolition and Remediation Agreement. All work to be performed pursuant to that certain Amended and Restated Predevelopment Services Agreement dated November 14, 2002 between Authority and BRIDGE Housing Corporation ("BRIDGE") and that certain Demolition and Remediation Agreement dated December 12, 2002 between Authority and BRIDGE on or affecting the Property has been completed to Lender's reasonable satisfaction and fully paid for.

(m) Deletion of Title Exception. By not later than September 30, 2003, Borrower shall cause Title Company to issue an endorsement to Lender's Title Policy in form reasonably satisfactory to Lender removing as an exception to title that certain Minor Encroachment Permit and Agreement recorded against the Property September 21, 1995 as Series No. 95219048.

(n) Tax Credit Investor Syndication. Borrower shall deliver to Lender evidence reasonably satisfactory to Lender that Tax Credit Investor has admitted one or more institutional investors as members in Tax Credit Investor who have agreed to fund an amount equal to the entire capital contribution to be made by Tax Credit Investor to Borrower pursuant to the Partnership Documents.

### **3.2 ACCOUNT, PLEDGE AND ASSIGNMENT, AND DISBURSEMENT**

**AUTHORIZATION**. The proceeds of the Loan and Borrower's Funds, when qualified for disbursement, shall be deposited into the Account or otherwise disbursed to or for the benefit or account of Borrower under the terms of this Agreement; provided, however, that any direct disbursements from the Loan which are made by means of wire transfer, shall be subject to the provisions of any funds transfer agreement which is identified in Exhibit B hereto. Disbursements hereunder may be made by Lender upon the written request of the following persons: Carol Galante or Lydia Tan, who have been authorized by Borrower to request such disbursements until such time as written notice of Borrower's revocation of such authority is received by Lender at the address shown in Exhibit D. As additional security for Borrower's

performance under the Loan Documents, Borrower hereby irrevocably pledges and assigns to Lender all monies at any time deposited in the Account.

**3.3 BORROWER'S FUNDS ACCOUNT, PLEDGE AND ASSIGNMENT.** Except as otherwise provided in this Agreement, all of the Borrower's Funds which are deposited with Lender by Borrower as shown in Exhibit C, or any other provision of the Loan Documents, shall be placed in the Borrower's Funds Account with, and controlled by, Lender for disbursement under this Agreement. As additional security for Borrower's performance under the Loan Documents, Borrower hereby irrevocably pledges and assigns to Lender all monies at any time deposited in the Borrower's Funds Account.

**3.4 LOAN DISBURSEMENTS.** Subject to the conditions set forth in Section 3.1, the proceeds of the Loan and Borrower's Funds shall be disbursed in accordance with the terms and conditions of Exhibit D. Disbursements made after the deposit of Borrower's Funds shall be made first from the Borrower's Funds Account until depleted. All disbursements shall be held by Borrower in trust and applied by Borrower solely for the purposes for which the funds have been disbursed. Lender has no obligation to monitor or determine Borrower's use or application of the disbursements.

## **ARTICLE 4. CONSTRUCTION**

**4.1 COMMENCEMENT AND COMPLETION.** Borrower shall commence construction of the Improvements without delay after recordation of the Deed of Trust and shall complete construction of the Improvements on or before the Completion Date.

**4.2 FORCE MAJEURE.** The time within which construction of the Improvements must be completed shall be extended for a period of time equal to the period of any delay directly affecting construction which is caused by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot, insurrection, or governmental regulation of the sale or transportation of materials, supplies or labor; provided, however, that Borrower shall furnish Lender with written notice satisfactory to Lender evidencing any such delay within fifteen (15) days from the occurrence of any such delay. In no event shall the time for completion of the Improvements be extended beyond the Maturity Date or more than the earlier of the TCAC placed-in-service date or ninety (90) days beyond the Completion Date.

**4.3 CONSTRUCTION AGREEMENT.** Borrower and Contractor have entered into the Construction Agreement pursuant to the terms and conditions of which Contractor is to construct the Improvements. Borrower shall require Contractor to perform in accordance with the terms of the Construction Agreement and shall not amend, modify or alter the responsibilities of Contractor under the Construction Agreement without Lender's prior written consent. Borrower shall execute, an assignment of Borrower's rights under the Construction Agreement to Lender as security for Borrower's obligations under this Agreement and the other Loan Documents and shall cause the Contractor to consent to any such assignment.

**4.4 ARCHITECT'S AGREEMENT.** Borrower and Architect have entered into the Architect's Agreement, pursuant to which Architect is to design the improvements. Borrower shall require Architect to perform in accordance with the terms of the Architect's Agreement and shall not amend, modify or alter the responsibilities of Architect under the Architect's Agreement without Lender's prior written consent. Borrower shall execute an assignment of the Architect's Agreement and the Plans and Specifications to Lender as additional security for Borrower's performance under this Agreement and the other Loan Documents and shall cause the Architect to consent to any such assignment.

**4.5 PLANS AND SPECIFICATIONS.**

(a) **Changes; Lender Consent.** Except as otherwise provided in this Agreement, Borrower shall not make any changes in the Plans and Specifications without Lender's prior written consent if such change: (i) constitutes a material change in the building material or equipment

specifications, or in the architectural or structural design, value or quality of any of the Improvements; (ii) would result in an increase of construction costs in excess of TWENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$25,000.00) for any single change or in excess of ONE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$100,000.00) for all such changes; (iii) would affect the structural integrity, quality of building materials, or overall efficiency of operating systems of the Improvements; or (iv) requires the approval of Authority, Agency, City, AHP Lender or Tax Credit Investor. Without limiting the above, Lender agrees that Borrower may make minor changes in the Plans and Specifications without Lender's prior written consent, provided that such changes do not violate any of the conditions specified above. Borrower shall at all times maintain, for inspection by Lender, a full set of working drawings of the Improvements.

(b) Changes: Submission Requirements. Borrower shall submit any proposed change in the Plans and Specifications to Lender at least ten (10) days prior to the commencement of construction relating to such proposed change whether or not such change is subject to Lender's consent. Requests for any change which requires consent shall be accompanied by working drawings and a written description of the proposed change, submitted on a change order form acceptable to Lender, signed by Borrower and, if required by Lender, also by the Architect and the Contractor. At its option, Lender may require Borrower to provide: (i) evidence satisfactory to Lender of the cost and time necessary to complete the proposed change; (ii) a deposit in the amount of any increased costs into Borrower's Funds Account after Lender has determined, in its sole discretion, that adequate funds are not available in the budget; and (iii) a complete set of "as built" Plans and Specifications for the completed Improvements.

(c) Consent Process. Borrower acknowledges that Lender's review of any changes and required consent may result in delays in construction and hereby consents to any such delays.

(d) Final Plans and Specifications. Upon completion of the Improvements, Borrower shall deliver to Lender within sixty (60) days a set of final Plans and Specifications.

**4.6 CONTRACTOR/CONSTRUCTION INFORMATION.** Within ten (10) days of Lender's written request, Borrower shall deliver to Lender from time to time in a form acceptable to Lender: (a) a list detailing the name, address and phone number of each contractor, subcontractor and material supplier to be employed or used for construction of the Improvements together with the dollar amount, including changes, if any, of each contract and subcontract, and the portion thereof, if any, paid through the date of such list; (b) copies of each contract and subcontract identified in such list, including any changes thereto; (c) a cost breakdown of the projected total cost of constructing the Improvements, and that portion, if any, of each cost item which has been incurred; and (d) a construction progress schedule detailing the progress of construction and the projected sequencing and completion time for uncompleted work, all as of the date of such schedule.

Borrower agrees that Lender may disapprove any contractor, subcontractor or material supplier which, in Lender's good faith determination, is deemed financially or otherwise unqualified; provided, however, that the absence of any such disapproval shall not constitute a warranty or representation of qualification by Lender. Lender may contact any such contractor, subcontractor or material supplier to discuss the course of construction.

**4.7 PROHIBITED CONTRACTS.** Without Lender's prior written consent, Borrower shall not contract for any materials, furnishings, equipment, fixtures or other parts or components of the Improvements, if any third party shall retain any ownership interest (other than lien rights created by operation of law) in such items after their delivery to the Property and Improvements. Borrower shall have five (5) days to effect the removal of any such retained interest. Notwithstanding the foregoing, Borrower shall have the right to lease the laundry and office equipment. Borrower shall deliver copies of such leases to Lender.

**4.8 LIENS AND STOP NOTICES.** If a claim of lien is recorded which affects the Property or Improvements or a bonded stop notice is served upon Lender, Borrower shall, within twenty (20) calendar days of such recording or service or within five (5) calendar days of Lender's demand, whichever occurs first: (a) pay and discharge the claim of lien or bonded stop notice; (b) effect the release thereof by recording or delivering to Lender a surety bond in sufficient form and amount; or (c) provide Lender with other assurances which Lender deems, in its sole discretion, to be satisfactory for the payment of such claim of lien or bonded stop notice and for the full and continuous protection of Lender from the effect of such lien or bonded stop notice.

**4.9 CONSTRUCTION RESPONSIBILITIES.** Borrower shall construct the Improvements in a workmanlike manner according to the Plans and Specifications and the recommendations of any soils or engineering report approved by Lender. Borrower shall comply with all applicable laws, ordinances, rules, regulations, building restrictions, recorded covenants and restrictions, and requirements of all regulatory authorities having jurisdiction over the Property or Improvements. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Property and Improvements, including, without limitation, for the quality and suitability of the Plans and Specifications and their compliance with all governmental requirements, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all disbursements. Lender is not obligated to supervise, inspect or inform Borrower, or any third party of any aspect of the construction of the Improvements or any other matter referred to above.

**4.10 ASSESSMENTS AND COMMUNITY FACILITIES DISTRICTS.** Without Lender's prior written consent, Borrower shall not cause or suffer to become effective or otherwise consent to the formation of any assessment district or community facilities district which includes all or any part of the Property and Improvements pursuant to: (a) the Mello-Roos Community Facilities Act of 1982; (b) the Municipal Improvement Act of 1913; or (c) any other comparable or similar statute or regulation. Nor shall Borrower cause or otherwise consent to the levying of special taxes or assessments against the Property and Improvements by any such assessment district or community facilities district.

**4.11 DELAY.** Borrower shall promptly notify Lender in writing of any event causing delay or interruption of construction, or the timely completion of construction. The notice shall specify the particular work delayed, and the cause and period of each delay.

**4.12 INSPECTIONS.** Lender shall have the right to enter upon the Property at all reasonable times to inspect the Improvements and the construction work to verify information disclosed or required pursuant to this Agreement. Any inspection or review of the Improvements by Lender is solely to determine whether Borrower is properly discharging its obligations to Lender and may not be relied upon by Borrower or by any third party as a representation or warranty of compliance with this Agreement or any other agreement. Lender owes no duty of care to Borrower or any third party to protect against, or to inform Borrower or any third party of, any negligent, faulty, inadequate or defective design or construction of the Improvements as determined by Lender.

**4.13 SURVEYS.** Upon Lender's written request, Borrower shall promptly deliver to Lender: (a) a perimeter survey of the Property; (b) upon completion of the foundations of the Improvements, a survey showing the location of the Improvements on the Property or an endorsement to the Title Policy acceptable to Lender and confirming that the Improvements are located entirely within the Property and do not encroach upon any easement, or breach or violate any governmental requirement; and (c) upon completion of the Improvements, an as-built survey acceptable to a title insurer for purposes of issuing an ALTA policy of title insurance. All such surveys shall be performed and certified by a licensed engineer or surveyor acceptable to the title insurer.

**4.14 BONDS.** Within five (5) calendar days of Lender's written request, Borrower shall deliver to Lender dual obligee performance and labor and material payment bonds in form, substance and amount acceptable to Lender. If requested by Lender, Borrower shall record said bond,

the Plans and Specifications and the Construction Agreement, if any, in the Office of the County Recorder of the County where the Property and Improvements are located.

#### ARTICLE 5. INSURANCE

Borrower shall, while any obligation of Borrower or any Guarantor under any Loan Document remains outstanding, maintain at Borrower's sole expense, with licensed insurers approved by Lender, the following policies of insurance in form and substance satisfactory to Lender:

**5.1 TITLE INSURANCE.** A Title Policy, together with any endorsements which Lender may reasonably require, insuring Lender, in the principal amount of the Loan, of the validity and the priority of the lien of the Deed of Trust upon the Property and Improvements, subject only to matters approved by Lender in writing. During the term of the Loan, Borrower shall deliver to Lender, within five (5) days of Lender's written request, such other endorsements to the Title Policy as Lender may require.

**5.2 PROPERTY INSURANCE.** A Builders Risk Completed Value Hazard Insurance policy, including, without limitation, such endorsements as Lender may require, insuring Lender against damage to the Property and Improvements in an amount acceptable to Lender. Lender shall be named on the policy under a Lender's Loss Payable Endorsement (form #438BFU or equivalent).

**5.3 FLOOD HAZARD INSURANCE.** A policy of flood insurance, as required by applicable governmental regulations, or as deemed necessary by Lender.

**5.4 LIABILITY INSURANCE.** A policy of comprehensive general liability insurance with limits as required by Lender, insuring against liability for injury and/or death to any person and/or damage to any property occurring on the Property and/or in the Improvements from any cause whatsoever.

**5.5 GENERAL.** Borrower shall provide to Lender the originals of all required insurance policies, or other evidence of insurance acceptable to Lender. All insurance policies shall provide that the insurance shall not be cancelable or materially changed without ten (10) days prior written notice to Lender. Lender shall be named under a Lender's Loss Payable Endorsement (form #438BFU or equivalent) on all insurance policies which Borrower actually maintains with respect to the Property and Improvements. Borrower shall provide to Lender evidence of any other hazard insurance Lender may deem necessary at any time during the Loan.

#### ARTICLE 6. REPRESENTATIONS AND WARRANTIES

As a material inducement to Lender's entry into this Agreement, Borrower represents and warrants to Lender as of the Effective Date and continuing thereafter that:

**6.1 AUTHORITY/ENFORCEABILITY.** Borrower is in compliance with all laws and regulations applicable to its organization, existence and transaction of business and has all necessary rights and powers to own, develop and operate the Property and Improvements as contemplated by the Loan Documents.

**6.2 BINDING OBLIGATIONS.** Borrower is authorized to execute, deliver and perform its obligations under the Loan Documents, and such obligations shall be valid and binding obligations of Borrower.

**6.3 FORMATION AND ORGANIZATIONAL DOCUMENTS.** Borrower has delivered to Lender all formation and organizational documents of Borrower, of the partners, joint venturers or members of Borrower, if any, and of all guarantors of the Loan, if any, and all such formation and organizational documents remain in full force and effect and have not been amended or modified since

they were delivered to Lender. Borrower shall immediately provide Lender with copies of any amendments or modifications of the formation or organizational documents.

**6.4 NO VIOLATION.** Borrower's execution, delivery, and performance under the Loan Documents do not: (a) require any consent or approval not heretofore obtained under any partnership agreement, operating agreement, articles of incorporation, bylaws or other document; (b) violate any governmental requirement applicable to the Property and Improvements or any other statute, law, regulation or ordinance or any order or ruling of any court or governmental entity; (c) conflict with, or constitute a breach or default or permit the acceleration of obligations under any agreement, contract, lease, or other document by which the Borrower is or the Property and Improvements are bound or regulated; or (d) violate any statute, law, regulation or ordinance, or any order of any court or governmental entity.

**6.5 COMPLIANCE WITH LAWS.** Borrower has, and at all times shall have obtained, all permits, licenses, exemptions, and approvals necessary to construct, occupy, operate and market the Property and Improvements, and shall maintain compliance with all governmental requirements applicable to the Property and Improvements and all other applicable statutes, laws, regulations and ordinances necessary for the transaction of its business. The Property is a legal parcel lawfully created in full compliance with all subdivision laws and ordinances.

**6.6 LITIGATION.** Except as disclosed to Lender in writing, there are no claims, actions, suits, or proceedings pending, or to Borrower's knowledge threatened, against Borrower or affecting the Property or Improvements.

**6.7 FINANCIAL CONDITION.** All financial statements and information heretofore and hereafter delivered to Lender by Borrower, including, without limitation, information relating to the financial condition of Borrower, the Property, the Improvements, the partners, joint venturers or members of Borrower (to the extent they are affiliates of General Partner(s), Guarantor(s) or Indemnitor(s)), and/or any Guarantors, fairly and accurately represent the financial condition of the subject thereof and have been prepared (except as noted therein) in accordance with generally accepted accounting principles consistently applied. Borrower acknowledges and agrees that Lender may request and obtain additional information from third parties regarding any of the above, including, without limitation, credit reports.

**6.8 NO MATERIAL ADVERSE CHANGE.** There has been no material adverse change in the financial condition of Borrower, Guarantors or General Partner since the dates of the latest financial statements furnished to Lender and, except as otherwise disclosed to Lender in writing, Borrower has not entered into any material transaction which is not disclosed in such financial statements.

**6.9 LOAN PROCEEDS AND ADEQUACY.** The undisbursed Loan proceeds, together with Borrower's Funds and all other sums, if any, to be provided by Borrower as shown in Exhibit C, are sufficient to construct the Improvements in accordance with the terms and conditions of this Agreement.

**6.10 ACCURACY.** All reports, documents, instruments, information and forms of evidence delivered to Lender concerning the Loan or security for the Loan or required by the Loan Documents are accurate, correct in all material respects and sufficiently complete to give Lender true and accurate knowledge of their subject matter, and do not contain any material misrepresentation or omission.

**6.11 TAX LIABILITY.** Borrower has filed all required federal, state, county and municipal tax returns and has paid all taxes and assessments owed and payable, and Borrower has no knowledge of any basis for any additional payment with respect to any such taxes and assessments.

**6.12 UTILITIES.** All utility services, including, without limitation, gas, water, sewage, electrical and telephone, necessary for the development and occupancy of the Property and improvements are available at or within the boundaries of the Property, or Borrower has taken all steps necessary to assure that all such services will be available upon completion of the Improvements.

**6.13 COMPLIANCE.** Borrower is familiar with and in compliance with all governmental requirements for the development of the Property and construction of the Improvements and will conform to and comply with all governmental requirements, including, without limitation, HUD requirements in connection with the HOPE VI program, the Plans and Specifications, the Restrictions, the DDA and all other regulatory agreements and covenants, conditions and restrictions recorded against the Property (collectively, "Restrictions").

**6.14 AMERICANS WITH DISABILITIES ACT COMPLIANCE.** The Improvements have been designed and shall be constructed and completed, and thereafter maintained, in strict accordance and full compliance with all of the requirements of the Americans with Disabilities Act, of July 26, 1990, Pub. L. No. 101-336, 104 Stat. 327, 42 U.S.C. § 12101, *et seq.*, as amended from time to time. Borrower shall be responsible for all ADA compliance costs.

**6.15 TAX CREDITS.** Borrower has received a Preliminary Reservation Letter dated September 23, 2002 ("Preliminary Reservation Letter"), and Borrower is entitled to an LIHTC allocation for the Improvements from TCAC. The LIHTC allocation as set forth in said Preliminary Reservation Letter is for Federal Low Income Housing Tax Credits in the amount of \$2,614,690 annually for each of ten (10) years and for State Low Income Housing Tax Credits in the amount of \$8,494,102 for 2002. Borrower shall completely and in a timely manner perform all actions and meet all requirements to maintain and perfect the reservations and LIHTC allocation, including, without limitation, timely furnishing to the TCAC of all of the items required to be furnished to it no later than such date as required by TCAC in order to prevent the expiration of the reservation and allocation. If Lender determines, in its sole and absolute discretion, that Borrower will not meet the TCAC requirements as set forth in the Preliminary Reservation Letter, Borrower hereby agrees, with the consent of Tax Credit Investor, to reapply for the next available allocation of LIHTC's within all timeliness and requirements as established by TCAC. Failure to do so is a Default pursuant to Section 11.1(q) herein. Borrower shall submit to Lender, immediately upon receipt, until the Loan has been paid in full a copy of all written communication to or from TCAC or any other governmental authority relating to the Improvements or the LIHTC.

**6.16 COMPLIANCE WITH FEDERAL REQUIREMENTS.** The Project, the provisions of this Agreement and the Loan Documents, Borrower's Partnership Agreement and all other agreements, financing documents and commitments entered into by Borrower in connection with the Project comply with the Federal Requirements, except as such requirements have been expressly waived in writing by HUD.

**6.17 BUSINESS LOAN.** The Loan is a business loan transaction in the stated amount solely for the purpose of carrying on the business of Borrower and none of the proceeds of the Loan will be used for the personal, family or agricultural purposes of the Borrower.

**6.18 CHFA COMMITMENT.** The CHFA Commitment is in full force and effect, unamended except as approved in writing by Lender, and no default or failure of a condition exists thereunder.

**6.19 AHAP.** The AHAP Contract is unamended and in full force and effect, and no default exists thereunder.

## ARTICLE 7. HAZARDOUS MATERIALS

**7.1 SPECIAL REPRESENTATIONS AND WARRANTIES.** Without in any way limiting the other representations and warranties set forth in this Agreement, and after reasonable investigation and inquiry, Borrower hereby specially represents and warrants to the best of Borrower's knowledge as of the date of this Agreement as follows:

(a) **Hazardous Materials.** Except as disclosed in the Environmental Report, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "wastes," "regulated substances," "industrial solid wastes," or "pollutants" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "Hazardous Materials").

(b) **Hazardous Materials Laws.** The Property and Improvements are in compliance with all laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

(c) **Hazardous Materials Claims.** There are no claims or actions ("Hazardous Materials Claims") pending or threatened against Borrower, the Property or Improvements by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.

(d) **Border Zone Property.** The Property has not been designated as Border Zone Property under the provisions of California Health and Safety Code, Sections 25220 et seq. and there has been no 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 designated as Border Zone Property.

**7.2 HAZARDOUS MATERIALS COVENANTS.** Borrower agrees as follows:

(a) **No Hazardous Activities.** Borrower shall not cause or permit the Property or Improvements to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(b) **Compliance.** Borrower shall comply and cause the Property and Improvements to comply with all Hazardous Materials Laws.

(c) **Notices.** Borrower shall immediately notify Lender in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property and Improvements; (ii) any knowledge by Borrower that the Property and Improvements do not comply with any Hazardous Materials Laws; (iii) any Hazardous Materials Claims; and (iv) the 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 designated as Border Zone Property.

(d) **Remedial Action.** In response to the presence of any Hazardous Materials on, under or about the Property or Improvements, Borrower shall immediately take, at Borrower's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

(e) **Final Site Mitigation Plan.** Without limiting any of the foregoing, Borrower shall develop and obtain all necessary regulatory approvals for a site mitigation plan to take such remedial action as may be required by applicable Hazardous Materials Laws with respect to the presence of Hazardous Materials on the Property (a "Final Site Mitigation Plan") as soon as reasonably possible after the Closing Date, but in any event by April 15, 2003. Such plan and the budget therefor shall be subject to Lender's approval, which approval shall not unreasonably be withheld or delayed. Borrower shall perform all work required by the Final Site Mitigation Plan, and shall obtain from the appropriate regulatory authority a "No Further Action" letter and deliver a copy thereof to Lender as soon as reasonably possible after completion of such work.

**7.3 INSPECTION BY LENDER.** Upon reasonable prior notice to Borrower, Lender, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding) enter and inspect the Property and Improvements for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property and Improvements.

**7.4 HAZARDOUS MATERIALS INDEMNITY. BORROWER HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES) WHICH LENDER MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF THE USE, GENERATION, MANUFACTURE, STORAGE, DISPOSAL, THREATENED DISPOSAL, TRANSPORTATION OR PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT THE PROPERTY OR IMPROVEMENTS. BORROWER SHALL IMMEDIATELY PAY TO LENDER UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE NOTE. BORROWER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER SHALL SURVIVE THE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE DEED OF TRUST.**

**7.5 LEGAL EFFECT OF SECTION.** Borrower and Lender agree that: (a) this Article 7 is intended as Lender's written request for information (and Borrower's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure § 726.5; and (b) each provision in this Article (together with any indemnity applicable to a breach of any such provision) with respect to the environmental condition of the real property security is intended by Lender and Borrower to be an "environmental provision" for purposes of California Code of Civil Procedure § 736, and as such it is expressly understood that Borrower's duty to indemnify Lender hereunder shall survive: (i) any judicial or non-judicial foreclosure under the Deed of Trust, or transfer of the Property in lieu thereof; (ii) the release and reconveyance or cancellation of the Deed of Trust; and (iii) the satisfaction of all of Borrower's obligations under the Loan Documents.

## ARTICLE 8. SET ASIDE LETTERS

**8.1 SET ASIDE LETTERS.** If, at Borrower's request, Lender issues any letter or letters ("Set Aside Letter") to any governmental agency ("Obligee") or bonding company ("Surety") whereby Lender agrees to allocate Loan proceeds for the construction of off-site, common area, or other improvements required by any governmental agency or for which bonds may be required ("Bonded Work") in connection with the development of the Property, Borrower represents, warrants, covenants and agrees as follows:

- (a) The sum which Borrower requests Lender to allocate for the Bonded Work shall be sufficient to pay for the construction and completion cost of the Bonded Work in accordance with any agreement between Borrower and Obligee and a copy of such agreement shall be furnished to Lender by Borrower prior to and as a condition precedent to the issuance by Lender of any Set Aside Letter;
- (b) Lender is irrevocably and unconditionally authorized to disburse to the Obligee or Surety all or any portion of said allocated Loan proceeds upon a demand of such Surety or Obligee made in accordance with the terms and conditions of the Set Aside Letter;
- (c) Any disbursements or payments which Lender makes or may be obligated to make under any Set Aside Letter, whether made directly to the Surety, Obligee, or to others for completion of all or part of the Bonded Work, shall be deemed a disbursement under this Agreement to or for the benefit or account of Borrower;
- (d) **BORROWER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER FROM ANY CLAIM, DEMAND, CAUSE OF ACTION, DAMAGE, LOSS OR LIABILITY, INCLUDING, WITHOUT LIMITATION, ANY COURT COSTS AND ATTORNEYS' FEES AND EXPENSES, WHICH LENDER MAY SUFFER OR INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF ITS ISSUANCE OF OR COMPLIANCE WITH ANY REQUESTED SET ASIDE LETTER. BORROWER SHALL PAY ANY INDEBTEDNESS ARISING UNDER THIS INDEMNITY TO LENDER IMMEDIATELY UPON DEMAND OF LENDER. BORROWER'S DUTY TO DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER HEREUNDER SHALL SURVIVE THE RELEASE AND CANCELLATION OF THE NOTE AND THE FULL OR PARTIAL RELEASE OR RECONVEYANCE OF THE DEED OF TRUST OR OTHER LOAN DOCUMENTS;**
- (e) Lender shall have no obligation to release any collateral or security under the Loan Documents unless and until Lender has received a full and final written release of its obligations under each Set Aside Letter; and
- (f) Borrower shall pay to Lender a fee equal to one and one-half percent (1.5%) of the face amount for issuance of any Set Aside Letter.

## ARTICLE 9. COVENANTS OF BORROWER

**9.1 EXPENSES.** Borrower shall immediately pay Lender upon demand all costs and expenses incurred by Lender in connection with: (a) the preparation of this Agreement, all other Loan Documents and Other Related Documents contemplated hereby; (b) the administration of this Agreement, the other Loan Documents and Other Related Documents for the term of the Loan; and (c) the enforcement or satisfaction by Lender of any of Borrower's obligations under this Agreement, the other Loan Documents or the Other Related Documents. For all purposes of this Agreement, Lender's costs and

expenses shall include, without limitation, all appraisal fees, cost engineering and inspection fees, legal fees and expenses, accounting fees, environmental consultant fees, auditor fees, UCC filing fees and/or UCC vendor fees, and the cost to Lender of any title insurance premiums, title surveys, reconveyance and notary fees. Borrower recognizes and agrees that formal written appraisals of the Property and Improvements by a licensed independent appraiser may be required by Lender's internal procedures and/or federal regulatory reporting requirements on an annual and/or specialized basis and that Lender may, at its option, require inspection of the Property and Improvements by an independent supervising architect and/or cost engineering specialist: (i) prior to each advance; (ii) at least once each month during the course of construction even though no disbursement is to be made for that month; (iii) upon completion of the Improvements; and (iv) at least semi-annually thereafter. If any of the services described above are provided by an employee of Lender, Lender's costs and expenses for such services shall be calculated in accordance with Lender's standard charge for such services.

**9.2 ERISA COMPLIANCE.** Borrower shall at all times comply with the provisions of ERISA with respect to any retirement or other employee benefit plan to which it is a party as employer, and as soon as possible after Borrower knows that any Reportable Event (as defined in ERISA) with respect to any such plan of Borrower has occurred, it shall furnish to Lender a written statement setting forth details as to such Reportable Event and the action, if any, which Borrower proposes to take with respect thereto, together with a copy of the notice of such Reportable Event furnished to the Pension Benefit Guaranty Corporation.

### **9.3 TAX CREDIT INVESTMENT**

(a) **Capital Contributions.** Pursuant to the Partnership Agreement, Tax Credit Investor has agreed to make capital contributions to Borrower in the total amount of \$29,784,000 and the Contribution Agreement (as that term is defined in the Partnership Agreement) (the "Capital Contributions"). The Capital Contributions are to be funded as follows:

1. **First Capital Contribution:** \$100,000 will be funded upon the Tax Credit Investors' admission into the Partnership; and applied to approved project costs.

2. **Second and Third Capital Contribution:** \$5,856,800 will be funded in the respective amounts of \$3,164,749 and \$2,692,051 respectively in accordance with the Partnership Documents and disbursed in accordance with the Intercreditor Agreement during construction to pay project costs. Borrower shall deliver to Lender, concurrent with each such disbursement, copies of the amount of disbursement, and documentation satisfactory to Lender evidencing disbursement of such funds to pay project costs in accordance with the budget attached hereto as Exhibit C.

3. **Fourth and Fifth Capital Contributions:** \$23,231,520 will be funded in accordance with the Partnership Documents and disbursed to Lender for repayment of the Loan, and to the extent such contribution is not sufficient, together with other payoff sources, to repay the Loan in full, then the sum of \$595,680 will be funded in accordance with the Partnership Documents and will be disbursed to pay any unpaid balance due Lender. Borrower shall not use any of the proceeds of the Fourth or Fifth Capital Contributions or any contributions thereafter for any purpose other than for payment to Lender until such time as all sums owing to Lender under the Loan Documents have been paid in full.

(b) Borrower shall: (i) timely do or cause to be done everything necessary to satisfy all conditions to the funding of the Capital Contributions; (ii) not commit any breach or default under the Partnership Documents; (iii) maintain the Partnership Documents in full force and effect until all sums owing to Lender with respect to the Loan have been paid; and (iv) not consent to any termination, amendment or modification of the Partnership Documents without Lender's prior written consent other than any amendment the sole effect of which is to confirm a transfer of limited partnership interests expressly permitted under the Loan Documents.

**9.4 AHP LOAN.** AHP Lender shall, prior to or concurrent with the Effective Date, make an AHP Loan to Borrower in the principal amount of \$1,000,000 (the "AHP Loan"), secured by a deed of trust encumbering the Property and Improvements. Such deed of trust shall be subordinate to the Deed of Trust. AHP Lender shall execute and deliver to Lender prior to the Effective Date a subordination agreement in form and substance satisfactory to Lender subordinating such deed of trust to the Deed of Trust.

**9.5 AUTHORITY HOPE VI LOAN.** Authority has made or is making to Borrower a loan through the U.S. Department of Housing and Urban Development Hope VI Program, in the original principal amount of \$3,260,000 (the "Authority Hope VI Loan") secured by a deed of trust encumbering the Property, which deed of trust shall be subordinated to the Deed of Trust. The Authority shall execute and deliver to Lender prior to the Effective Date, a subordination agreement in form and substance satisfactory to Lender subordinating to the Deed of Trust the deed of trust securing the Authority Hope VI Loan

**9.6 AUTHORITY LOCAL FUNDS LOAN.** The Authority has made or is making to Borrower a loan to finance the project in the original principal amount of \$550,000 (the "Authority Local Funds Loan") to be secured by a deed of trust encumbering the Property, which deed of trust shall be subordinated to the Deed of Trust. The Authority shall execute and deliver to Lender prior to the Effective Date a subordination agreement in form and substance satisfactory to Lender subordinating to the Deed of Trust such deed of trust, together with any regulatory agreement or other restrictions recorded against the Property in connection with the Authority Local Funds Loan other than the R&O and the Declaration of Trust.

**9.7 AGENCY LOAN.** The Redevelopment Agency of the City of Oakland has made or is making to Borrower a loan to fund project costs in the amount of \$2,500,000 (the "Agency Loan") secured by a deed of trust encumbering the Property, which deeds of trust shall be subordinated to the Deed of Trust. Agency shall execute and deliver to Lender prior to the Effective Date a subordination agreement in form and substance satisfactory to Lender subordinating to the Deed of Trust any such deed of trust, together with any regulatory agreement or other restrictions recorded against the Property in connection with the Agency Loan.

**9.8 CITY LOAN.** City has made or is making to Borrower a loan to fund project costs in the original principal amount of \$1,000,000 (the "City Loan") secured by a deed of trust encumbering the Property and Improvements, which deeds of trust shall be subordinated to the Deed of Trust. Authority shall execute and deliver to Lender prior to the Effective Date a subordination agreement in form and substance satisfactory to Lender subordinating to the Deed of Trust any such deed of trust, together with any regulatory agreement or other restrictions recorded against the Property in connection with the City Loan.

**9.9 CHFA PERMANENT FINANCING.** Borrower has obtained from CHFA a commitment dated February 1, 2003 (the "CHFA Commitment") for three permanent loans in the aggregate amount of Four Million Eight Hundred Thousand and No/100 Dollars (\$4,800,000.00) (the "CHFA Permanent Financing"). Borrower shall not:

- (a) commit any breach or default under the CHFA Commitment;
- (b) fail to maintain the CHFA Commitment in full force and effect until all sums owing to Lender with respect to the Loan have been paid;
- (c) consent to any termination, amendment or modification of the CHFA Commitment without Lender's prior written consent; or

(d) use any of the proceeds of the CHFA Permanent Financing for any purpose other than for payment to Lender until such time as all sums owing to Lender under the Loan Documents have been paid in full.

**9.10 REPORTING AND COMPLIANCE REQUIREMENTS IN CONNECTION WITH FUNDING SOURCES**

(a) Prior to or on the Effective Date, Borrower shall deliver to Lender (i) copies of all Authority Hope VI Loan Documents, the Authority Local Funds Loan Documents, the Agency Loan Documents, the City Loan Documents and the AHP Loan Documents, and (ii) an itemized statement of any disbursements made under any of the loans described in Sections 9.4 through 9.8 above on or prior to the Effective Date, together with evidence satisfactory to Lender of the application of such disbursements to pay project costs in accordance with the budget attached hereto as Exhibit C.

(b) After the Effective Date, Borrower shall deliver to Lender on a monthly basis copies of all draw requests in connection with the funding sources described in Sections 9.3 through 9.8 above, together with evidence of application of such funds to pay project costs in accordance with Exhibit C hereto. Borrower shall at all times comply with the terms and conditions of the Authority Hope VI Loan Documents, the Authority Local Funds Loan Documents, the Agency Loan Documents, the AHP Loan Documents, and the City Loan Documents, and in no event shall Borrower cause or permit a default to occur under any of such documents.

**9.11 COMPLIANCE WITH OTHER PROJECT DOCUMENTS.** Borrower shall at all times comply with and maintain in full force and effect the HAP Contract, the R&O, the ACC, and all other Restrictions.

**9.12 TAX EXEMPTION.** Borrower shall, when eligible to do so, take all action necessary to comply with California Revenue and Taxation Code Section 214(g) in order to obtain exemption from real property taxes levied on the Property and Improvements. In addition, General Partner shall take all actions necessary to obtain and maintain tax exempt status pursuant to Section 501(c)(3) of the Code.

**9.13 LEASING.** After completion of the Improvements, Borrower shall lease one hundred percent (100%) of the residential units in the Improvements to tenants and at rental rates consistent with the R&O and all other restrictions recorded against the Property and on a lease form approved in writing by Lender, which approval shall not be unreasonably withheld or delayed.

**9.14 APPROVAL OF RETAIL LEASES.** All leases of retail space in the Improvements shall be upon terms and conditions approved by Lender in writing, prior to Borrower's execution of any such lease, which approval shall not unreasonably be withheld or delayed. If Borrower proposes to utilize a standard lease form in leasing all or any part of the Property and Improvements, the form, and any material deviation from the form, must be approved by Lender, which approval shall not be unreasonably withheld or delayed.

**9.15 SUBDIVISION MAPS.** Prior to recording any final map, plat, parcel map, lot line adjustment or other subdivision map of any kind covering any portion of the Property (collectively, "Subdivision Map"), Borrower shall submit such Subdivision Map to Lender for Lender's review and approval, which approval shall not be unreasonably withheld. Within ten (10) Business Days after Lender's receipt of such Subdivision Map, Lender shall provide Borrower written notice if Lender disapproves of said Subdivision Map. Lender shall be deemed to have approved the Subdivision Map if such notice is not provided to Borrower. Within five (5) Business Days after Lender's request, Borrower shall execute, acknowledge and deliver to Lender such amendments to the Loan Documents as Lender may reasonably require to reflect the change in the legal description of the Property resulting from the recordation of any Subdivision Map. In connection with and promptly after the recordation of any amendment or other modification to the Deed of Trust recorded in connection with such amendments, Borrower shall deliver to Lender, at Borrower's sole expense, a title endorsement to the Title Policy in form

and substance satisfactory to Lender insuring the continued first priority lien of the Deed of Trust. Subject to the execution and delivery by Borrower of any documents required under this Section, Lender shall, if required by applicable law, sign any Subdivision Map approved, or deemed to be approved, by Lender pursuant to this Section.

**9.16 OPINION OF LEGAL COUNSEL.** If requested by Lender, Borrower shall provide, at Borrower's expense, an opinion of legal counsel in form and content satisfactory to Lender to the effect that: (a) upon due authorization, execution and recordation or filing as may be specified in the opinion, each of the Loan Documents shall be legal, valid and binding instruments, enforceable against the makers thereof in accordance with their respective terms; (b) Borrower is duly formed and has all requisite authority to enter into the Loan Documents; and (c) such other matters, incident to the transactions contemplated hereby, as Lender may reasonably request.

**9.17 FURTHER ASSURANCES.** Upon Lender's request and at Borrower's sole cost and expense, Borrower shall execute, acknowledge and deliver any other instruments and perform any other acts necessary, desirable or proper, as determined by Lender, to carry out the purposes of this Agreement and the other Loan Documents or to perfect and preserve any liens created by the Loan Documents.

**9.18 ASSIGNMENT.** Without the prior written consent of Lender, Borrower shall not assign Borrower's interest under any of the Loan Documents, or in any monies due or to become due thereunder, and any assignment without such consent shall be void. In this regard, Borrower acknowledges that Lender would not make this Loan except in reliance on Borrower's expertise, reputation, prior experience in developing and constructing commercial real property, Lender's knowledge of Borrower, and Lender's understanding that this Agreement is more in the nature of an agreement involving personal services than a standard loan where Lender would rely on security which already exists.

**9.19 MANAGEMENT OF PROPERTY.** Borrower has entered into a Management Agreement for the Property with The John Stewart Company as manager (the "Management Agreement"). Borrower shall execute an Assignment of Management Agreement as security for Borrower's obligations under the Loan Documents and shall cause manager to consent to such assignment.

**9.20 NO AMENDMENT.** Except as otherwise permitted by the terms of this Agreement, Borrower shall not materially amend or materially modify, nor shall Borrower terminate, any of the following documents without Lender's prior written consent (which shall not be unreasonably withheld or delayed) and shall keep in full force and effect the following documents, and Borrower shall comply with all terms and provisions thereof:

- (a) the Partnership Agreement and the other Partnership Documents;
- (b) the Authority Hope VI Loan Documents;
- (c) the Authority Local Funds Loan Documents;
- (d) the Agency Loan Documents;
- (e) the City Loan Documents;
- (f) the AHP Loan Documents;
- (g) the Mixed Finance Amendment;
- (h) the Restrictions;
- (i) The Ground Lease;

- (j) the Management Agreement;
- (k) AHAP and, once entered into, the HAP Contract;
- (l) the CHFA Commitment;
- (m) the REA; and
- (n) the Home Ownership Access Easement.

**9.21 PERMITS.** Borrower shall provide all necessary building and grading permits for construction of the Improvement to Lender prior to the Effective Date.

**9.22 INCOME TO BE APPLIED TO DEBT SERVICE.** Borrower shall apply all Gross Operating Income from the Property and Improvements only to the payment of Permitted Operating Expenses and the payment of accrued interest and fees and outstanding principal on the Loan. "Gross Operating Income" and "Permitted Operating Expenses" are defined in Section 10.4. Unless otherwise approved by Lender, or unless a balance exists in the interest reserve, any Gross Operating Income in excess of Permitted Operating Expenses, shall be used first to pay accrued interest. If a Default has occurred or is continuing, Lender may require that such excess be applied to cure the Default or to pay interest when due regardless of the balance in the interest reserve. In no event shall any Gross Operating Income be distributed to any partner, venturer, member or equity investor of Borrower.

**9.23 PARTICIPANTS.** Borrower understands and agrees that Lender may sell participations in the Loan to, among others, the State of California Public Employees Retirement System ("CalPERS") and World Savings Bank. Borrower acknowledges that it is not a third party beneficiary of the participation agreements or other agreements Lender enters into with any participant, including, without limitation, World Savings Bank or CalPERS, and Borrower shall have no rights or remedies under any such agreements. If Lender delivers notice to Borrower that the Loan has been participated to CalPERS, then Borrower shall deliver to Lender notice at least two Business days in advance of delivery by Borrower of any payment of interest (other than payments made by debiting the interest reserve held by Lender) or principal on the Loan. Such notice shall specify the amount and intended date of payment. Any payment of interest or principal not preceded by such notice shall, for all purposes of the Loan Documents, be deemed received by Lender two Business Days after the actual receipt thereof.

**9.24 HUD CONSENT TO ASSIGNMENT OF HAP CONTRACT.** Within forty-five (45) days after execution by Borrower and Authority of a Housing Assistance Payments Contract for the Property, Borrower shall obtain and deliver to Lender the written consent of HUD to the Assignment of HAP Contract executed by Borrower, Lender and Authority concurrently herewith.

## ARTICLE 10. REPORTING COVENANTS

**10.1 FINANCIAL INFORMATION.** Borrower shall deliver to Lender, as soon as available, but in no event later than one hundred twenty (120) days after Borrower's fiscal year end, a current audited financial statement (including, without limitation, an income and expense statement and balance sheet) together with any other financial information including, without limitation, quarterly financial statements, annual financial statements, cash flow projections and quarterly operating statements requested by Lender for the following persons and entities:

Borrower,  
General Partner, and  
Guarantors

Within thirty (30) days of Lender's request, Borrower shall also deliver to Lender such quarterly and other financial information regarding any persons or entities in any way obligated on the

Loan as Lender may specify. If audited financial information is prepared, Borrower shall deliver to Lender copies of that information within fifteen (15) days of its final preparation. Except as otherwise agreed to by Lender, all such financial information shall be prepared in accordance with generally accepted accounting principles consistently applied.

**10.2 BOOKS AND RECORDS.** Borrower shall maintain complete books of account and other records for the Property and Improvements and for disbursement and use of the proceeds of the Loan and Borrower's Funds, and the same shall be available for inspection and copying by Lender upon reasonable prior notice.

**10.3 REPORTS.** Within ten (10) days of Lender's request, Borrower shall deliver to Lender monthly inventory reports, marketing and sales schedules and reports, marketing and sales information and/or leasing information, with respect to all real property projects of Borrower and all general partners, venturers and members of Borrower, all in form and substance acceptable to Lender.

**10.4 OPERATING STATEMENTS FOR PROPERTY AND IMPROVEMENTS.** Until such time as the Note is paid in full, Borrower shall deliver to Lender on the first day of each month an "Operating Statement" which shows in detail the amounts and sources of Gross Operating Income received by or on behalf of Borrower and the amounts and purposes of Permitted Operating Expenses paid by or on behalf of Borrower with respect to the Property and Improvements for the previous month.

(a) "Gross Operating Income" for this purpose shall mean the sum of any and all amounts, payments, fees, rentals, additional rentals, expense reimbursements (including, without limitation, all reimbursements by tenants, lessees, licensees and other users of the Property and Improvements), discounts or credits to Borrower, income, interest and other monies directly or indirectly received by or on behalf of or credited to Borrower from any person with respect to Borrower's ownership, use, development, operation, leasing, franchising, marketing or licensing of the Property and Improvements. Gross Operating Income shall be computed on a cash basis and shall include for each quarterly statement all amounts actually received in such quarter whether or not such amounts are attributable to a charge arising in such quarter.

(b) "Permitted Operating Expenses" shall mean the following expenses to the extent that such expenses are reasonable in amount and customary for properties of this type: (i) taxes and assessments imposed upon the Property and Improvements to the extent that such taxes and assessments are required to be paid by Borrower and are actually paid or reserved for by Borrower; (ii) bond assessments; (iii) insurance premiums for casualty insurance (including, without limitation, earthquake) and liability insurance carried in connection with the Property and Improvements, provided, however, if any, insurance is maintained as part of a blanket policy covering the Property and Improvements and other properties, the insurance premium included in this subparagraph shall be the premium fairly allocable to the Property and Improvements; and (iv) operating expenses incurred by Borrower for the management, operation, cleaning, leasing, maintenance and repair of the Property and Improvements. Permitted Operating Expenses shall not include any interest or principal payments on the Loan or any allowance for depreciation.

## ARTICLE 11. DEFAULTS AND REMEDIES

**11.1 DEFAULT.** The occurrence of any one or more of the following shall constitute an event of default ("Default") under this Agreement and the other Loan Documents:

(a) **Monetary.** Borrower's failure to pay when due any sums payable under the Note or any of the other Loan Documents after the expiration of any grace or notice and cure periods set forth therein or Borrower's failure to deposit any Borrower's Funds as and when required under this Agreement; provided that if no time period is specified in the Loan Documents for such payment or



deposit, then such failure shall not constitute a Default unless it continues for more than ten (10) days after written demand therefor by Lender; or

(b) Performance of Obligations. Borrower's failure to perform any obligation in addition to those in Section 11.1.1 (a) above under any of the Loan Documents; provided, however, that if a cure period is provided for the remedy of such failure, Borrower's failure to perform will not constitute a Default until such date as the specified cure period expires and, if no cure period is provided, Borrower's failure to perform shall not constitute a Default unless such failure continues for fifteen (15) days after the date of notice thereof from Lender ("Notice Date"). If a cure cannot reasonably be effected within fifteen (15) days after the Notice Date, then no Default shall occur hereunder so long as Borrower commences to cure within fifteen (15) days after the Notice Date and thereafter prosecutes the same to completion with due diligence, and in any event within sixty (60) days after the Notice Date; or

(c) Construction; Use. (i) There is any material deviation in the work of construction from the Plans and Specifications or governmental requirements or the appearance or use of defective workmanship or materials in constructing the Improvements, and Borrower fails to remedy the same to Lender's satisfaction within thirty (30) days of Lender's written demand to do so; or (ii) there is a cessation of construction of the Improvements prior to completion for a continuous period of more than fifteen (15) days (except as caused by an event of force majeure for which a longer delay may be permitted under Article IV); or (iii) the construction, sale or leasing of any of the Improvements in accordance with the Loan Documents is prohibited, enjoined or delayed for a continuous period of more than thirty (30) days (except as caused by an event of force majeure for which a longer delay may be permitted under Article IV); or (iv) utilities or other public services necessary for the full occupancy and utilization of the Property and Improvements are curtailed for a continuous period of more than thirty (30) days; or

(d) Liens, Attachment; Condemnation. (i) The recording of any claim of lien against the Property or Improvements or the service on Lender of any bonded stop notice relating to the Loan and the continuance of such claim of lien or bonded stop notice for twenty (20) days without discharge, satisfaction or provision for payment being made by Borrower in a manner satisfactory to Lender; or (ii) the condemnation, seizure or appropriation of, or occurrence of an uninsured casualty with respect to any material portion of the Property or Improvements; or (iii) the sequestration or attachment of, or any levy or execution upon any of the Property or Improvements, any other collateral provided by Borrower under any of the Loan Documents, any monies in the Account or in the Borrower's Funds Account, or any substantial portion of the other assets of Borrower, which sequestration, attachment, levy or execution is not released, expunged or dismissed prior to the earlier of thirty (30) days or the sale of the assets affected thereby; or

(e) Representations and Warranties. (i) The material failure of any representation or warranty of Borrower in any of the Loan Documents and the continuation of such failure for more than ten (10) days after written notice to Borrower from Lender requesting that Borrower cure such failure; or (ii) any material adverse change in the financial condition of Borrower, any Guarantor, or any Indemnitor from the financial condition represented to Lender as of the later of: (A) the Effective Date; or (B) the date upon which the financial condition of such party was first represented to Lender; or

(f) Voluntary Bankruptcy; Insolvency; Dissolution. (i) The filing of a petition by Borrower for relief under the Bankruptcy Code, or under any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; (ii) the filing of any pleading or an answer by Borrower in any involuntary proceeding under the Bankruptcy Code or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding Borrower's insolvency; (iii) a general assignment by Borrower for the benefit of creditors; or (iv) Borrower applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or

(g) Involuntary Bankruptcy. The failure of Borrower to effect a full dismissal of any involuntary petition under the Bankruptcy Code or under any other debtor relief law that is filed against Borrower or in any way restrains or limits Borrower or Lender regarding the Loan, the Property or

the Improvements, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or ninety (90) days after the date of filing of such involuntary petition; or

(h) Partners; Guarantors. The occurrence of any of the events specified in Section 11(f) or 11.1(g) as to any person or entity other than Borrower, including, without limitation, any Guarantor, Indemnitor; or

(i) Change In Management or Control. Except as set forth in Sections 12.26 and 12.27 below, and except for the transfer of the BHVI's general partnership interest in Borrower to CLI upon confirmation of CLI's 501(c) status, the occurrence of any material management or organizational change in Borrower or in the partners, venturers or members of Borrower, including, without limitation, any partnership, joint venture or member dispute not resolved within ten (10) days after written notice from Lender and which Lender determines, in its sole and absolute discretion, shall have a material adverse effect on the Loan, on the Property and Improvements, or on the ability of Borrower or its partners, venturers or members to perform their obligations under the Loan Documents; or

(j) Loss of Priority. The failure at any time of the Deed of Trust to be a valid first lien upon the Property and Improvements or any portion thereof, other than as a result of any release or reconveyance of the Deed of Trust with respect to all or any portion of the Property and Improvements pursuant to the terms and conditions of this Agreement; or

(k) Hazardous Materials. The discovery of any significant Hazardous Materials in, on or about the Property or Improvements subsequent to the Effective Date. Any such Hazardous Materials shall be "significant" for this purpose if said Hazardous Materials, in Lender's sole discretion, have a materially adverse impact on the value of the Property and Improvements; or

(l) Tax Credit Investor's Bankruptcy. The occurrence of any of the events specified in Sections 11.1(f) and 11.1(g) of this Agreement with respect to Tax Credit Investor unless Borrower has identified a new Tax Credit Investor within sixty (60) days satisfactory to Lender in Lender's sole discretion and such new Tax Credit Investor has been admitted as a limited partner in Borrower within thirty (30) days after the expiration of such 60-day period pursuant to an amendment to Borrower's partnership agreement and any related documents reasonably satisfactory to Lender; or

(m) Tax Credit Investor Financing.

- (i) Failure to comply with Section 6.15 or 9.3 of this Agreement; or
- (ii) The expiration, termination, failure to fund, failure to procure, occurrence of a default or breach (which is not cured within any applicable cure period) by either Borrower or Tax Credit Investor, or failure to satisfy any of the terms, covenants or conditions, of the Tax Credit Investor's obligation to fund capital contributions for any reason whatsoever provided however, that Lender may accept in its sole discretion a new tax credit investor identified by Borrower. Lender's acceptance of a substitute tax credit investor shall be subject to Lender's receipt of evidence satisfactory to Lender in its sole discretion of the terms and conditions of the proposed investment, financial condition of the new tax credit investor and other information requested by Lender; or

(n) Loans. The occurrence of a default under the Authority Hope VI Loan, the Authority Local Funds Loan, the Agency Loan, the City Loan or the AHP Loan, after expiration of applicable cure periods; or

(o) Withdrawal of General Partner. Except for the withdrawal of BHVI and replacement thereof with CLI, the withdrawal of the managing General Partner as a general partner of Borrower and Borrower's failure to provide a substitute or replacement acceptable to Lender and Tax Credit Investor within thirty (30) days after the occurrence of any such withdrawal; or

(p) Adverse Financial Condition. Any material adverse change in the financial condition of Borrower, General Partner, Guarantor, or Tax Credit Investor from the condition shown on the financial statement(s) submitted to Lender and relied upon by Lender in making the Loan, the materiality and adverse effect of such change in financial condition to be reasonably determined by Lender in accordance with its credit standards and underwriting practices in effect at the time of making such determination; or

(q) Transfer of Assets. The sale, assignment, pledge, hypothecation, mortgage or transfer of all or a substantial portion of assets of Borrower, Guarantor, General Partner, or Tax Credit Investor other than in the ordinary course of business of said entity; or

(r) Unsecured Indemnity Agreement. The occurrence of a default under that certain Hazardous Materials Indemnity Agreement (Unsecured) after the expiration of all notice and cure periods set forth therein, executed by indemnitors, in favor of Lender, and dated of even date herewith; or

(s) Partnership Documents. The occurrence of a default under the Partnership Documents after expiration of applicable cure periods; or

(t) CHFA Commitment. The occurrence of a default, failure of a condition or termination of the CHFA Commitment; or

(u) HAP Contract. The termination or modification of the AHAP, or the HAP Contract (after execution thereof) or a reduction in the Section 8 subsidy provided or to be provided thereunder.

**11.2 ACCELERATION UPON DEFAULT; REMEDIES.** Upon the occurrence of any Default specified in this Article 11, Lender may, at its sole option, declare all sums owing to Lender under the Note, this Agreement and the other Loan Documents immediately due and payable. Upon such acceleration, Lender may, in addition to all other remedies permitted under this Agreement and the other Loan Documents and at law or equity, apply any sums in the Account and Borrower's Funds Account to the sums owing under the Loan Documents and any and all obligations of Lender to fund further disbursements under the Loan shall terminate.

**11.3 DISBURSEMENTS TO THIRD PARTIES.** Upon the occurrence of a Default occasioned by Borrower's failure to pay money to a third party as required by this Agreement, Lender may but shall not be obligated to make such payment from the Loan proceeds, Borrower's Funds, or other funds of Lender. If such payment is made from proceeds of the Loan or from Borrower's Funds, Borrower shall immediately deposit with Lender, upon written demand, an amount equal to such payment. If such payment is made from funds of Lender, Borrower shall immediately repay such funds upon written demand of Lender. In either case, the Default with respect to which any such payment has been made by Lender shall not be deemed cured until such deposit or repayment (as the case may be) has been made by Borrower to Lender.

**11.4 LENDER'S COMPLETION OF CONSTRUCTION.** Upon the occurrence of a Default, Lender may, upon five (5) days prior written notice to Borrower, and with or without legal process, take possession of the Property and Improvements, remove Borrower and all agents, employees and contractors of Borrower from the Property and Improvements, complete the work of construction and market, operate and sell or lease the Property and/or Improvements. For this purpose, Borrower irrevocably appoints Lender as its attorney-in-fact, which agency is coupled with an interest. As attorney-in-fact, Lender may, in Borrower's name, take or omit to take any action Lender may deem appropriate,

including, without limitation, exercising Borrower's rights under the Loan Documents and all contracts concerning the Property and/or Improvements.

**11.5 LENDER'S CESSATION OF CONSTRUCTION.** If Lender determines at any time that the Improvements are not being constructed in accordance with the Plans and Specifications and all governmental requirements, Lender may immediately cause all construction to cease on any of the Improvements affected by the condition of nonconformance. Borrower shall thereafter not allow any construction work, other than corrective work, to be performed on any of the Improvements affected by the condition of nonconformance until such time as Lender notifies Borrower in writing that the nonconforming condition has been corrected.

**11.6 REPAYMENT OF FUNDS ADVANCED.** Any funds expended by Lender in the exercise of its rights or remedies under this Agreement and the other Loan Documents shall be payable to Lender upon demand, together with interest at the rate applicable to the principal balance of the Note from the date the funds were expended.

**11.7 RIGHTS CUMULATIVE, NO WAIVER.** All Lender's rights and remedies provided in this Agreement and the other Loan Documents, together with those granted by law or at equity, are cumulative and may be exercised by Lender at any time. Lender's exercise of any right or remedy shall not constitute a cure of any Default unless all sums then due and payable to Lender under the Loan Documents are repaid and Borrower has cured all other Defaults. No waiver shall be implied from any failure of Lender to take, or any delay by Lender in taking, action concerning any Default or failure of condition under the Loan Documents, or from any previous waiver of any similar or unrelated Default or failure of condition. Any waiver or approval under any of the Loan Documents must be in writing and shall be limited to its specific terms.

## ARTICLE 12. MISCELLANEOUS PROVISIONS

**12.1 INDEMNITY.** BORROWER HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES), EXCEPT TO THE EXTENT ARISING FROM LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT WHICH LENDER MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF: (A) THE PURPOSE TO WHICH BORROWER APPLIES THE LOAN PROCEEDS; (B) THE FAILURE OF BORROWER TO PERFORM ANY OBLIGATIONS AS AND WHEN REQUIRED BY THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; (C) ANY FAILURE AT ANY TIME OF ANY OF BORROWER'S REPRESENTATIONS OR WARRANTIES TO BE TRUE AND CORRECT; OR (D) ANY ACT OR OMISSION BY BORROWER, CONSTITUENT PARTNER OR MEMBER OF BORROWER, ANY CONTRACTOR, SUBCONTRACTOR OR MATERIAL SUPPLIER, ENGINEER, ARCHITECT OR OTHER PERSON OR ENTITY WITH RESPECT TO ANY OF THE PROPERTY OR IMPROVEMENTS. BORROWER SHALL IMMEDIATELY PAY TO LENDER UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE NOTE. BORROWER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS LENDER SHALL SURVIVE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE DEED OF TRUST.

**12.2 FORM OF DOCUMENTS.** The form and substance of all documents, instruments, and forms of evidence to be delivered to Lender under the terms of this Agreement and any of the other Loan Documents shall be subject to Lender's approval and shall not be modified, superseded or terminated in any respect without Lender's prior written approval.

**12.3 NO THIRD PARTIES BENEFITED.** No person other than Lender and Borrower and their permitted successors and assigns shall have any right of action under any of the Loan Documents.

**12.4 NOTICES.** All notices, demands, or other communications under this Agreement and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth on the signature page of this Agreement and as specified in Exhibit D (subject to change from time to time by written notice to all other parties to this Agreement). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of a Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. Copies of any notices of default delivered to Borrower under any of the Loan Documents shall be concurrently delivered to Special Limited Partner and Tax Credit Investor in the manner provided above at the following addresses:

Tax Credit Investor:                      Related Capital Company  
625 Madison Avenue  
New York, NY 10022  
Attn: Mark D. Schnitzer

with a copy to:                              Proskauer Rose, LLP  
2049 Century Park E., 3200  
Los Angeles, CA 90067  
Attn: Kenneth Krug, Esq.

**12.5 ATTORNEY-IN-FACT.** After a Default, Borrower hereby irrevocably appoints and authorizes Lender, as Borrower's attorney-in-fact, which agency is coupled with an interest, to execute and/or record in Lender's or Borrower's name any notices, instruments or documents that Lender deems appropriate to protect Lender's interest under any of the Loan Documents.

**12.6 ACTIONS.** Borrower agrees that Lender, in exercising the rights, duties or liabilities of Lender or Borrower under the Loan Documents, may commence, appear in or defend any action or proceeding purporting to affect the Property, the Improvements, or the Loan Documents and Borrower shall immediately reimburse Lender upon demand for all such expenses so incurred or paid by Lender, including, without limitation, attorneys' fees and expenses and court costs.

**12.7 RIGHT OF CONTEST.** Borrower may contest in good faith any claim, demand, levy or assessment (other than liens and stop notices) by any person other than Lender which would constitute a Default if: (a) Borrower pursues the contest diligently, in a manner which Lender determines is not prejudicial to Lender, and does not impair the rights of Lender under any of the Loan Documents; and (b) Borrower deposits with Lender any funds or other forms of assurance which Lender in good faith determines from time to time appropriate to protect Lender from the consequences of the contest being unsuccessful. Borrower's compliance with this Section shall operate to prevent such claim, demand, levy or assessment from becoming a Default.

**12.8 RELATIONSHIP OF PARTIES.** The relationship of Borrower and Lender under the Loan Documents is, and shall at all times remain, solely that of borrower and lender, and Lender neither undertakes nor assumes any responsibility or duty to Borrower or to any third party with respect to the Property or Improvements, except as expressly provided in this Agreement and the other Loan Documents.

**12.9 DELAY OUTSIDE LENDER'S CONTROL.** Lender shall not be liable in any way to Borrower or any third party for Lender's failure to perform or delay in performing under the Loan Documents (and Lender may suspend or terminate all or any portion of Lender's obligations under the Loan Documents) if such failure to perform or delay in performing results directly or indirectly from, or is based

upon, the action or inaction of any governmental or local authority, or because of war, rebellion, insurrection, strike, lock-out, boycott or blockade (whether presently in effect, announced or in the sole judgment of Lender deemed probable), or from any Act of God or other cause or event beyond Lender's control.

**12.10 ATTORNEYS' FEES AND EXPENSES; ENFORCEMENT.** If any attorney is engaged by Lender to enforce or defend any provision of this Agreement, any of the other Loan Documents or Other Related Documents, or as a consequence of any Default under the Loan Documents, with or without the filing of any legal action or proceeding, and including, without limitation, any fees and expenses incurred in any bankruptcy proceeding of the Borrower, then Borrower shall immediately pay to Lender, upon demand, the amount of all attorneys' fees and expenses and all costs incurred by Lender in connection therewith, together with interest thereon from the date of such demand until paid at the rate of interest applicable to the principal balance of the Note as specified therein.

**12.11 IMMEDIATELY AVAILABLE FUNDS.** Unless otherwise expressly provided for in this Agreement, all amounts payable by Borrower to Lender shall be payable only in United States currency, immediately available funds.

**12.12 LENDER'S CONSENT.** Wherever in this Agreement there is a requirement for Lender's consent and/or a document to be provided or an action taken "to the satisfaction of Lender", it is understood by such phrase that Lender shall exercise its consent, right or judgment in a reasonable manner given the specific facts and circumstance applicable at the time.

**12.13 LOAN SALES AND PARTICIPATIONS; DISCLOSURE OF INFORMATION.** Borrower agrees that Lender may elect, at any time, to sell, assign or grant participations in all or any portion of its rights and obligations under the Loan Documents, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities, at Lender's sole discretion ("Participant"). Borrower further agrees that Lender may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Lender with respect to: (a) the Property and Improvements and its operation; (b) any party connected with the Loan (including, without limitation, the Borrower, any partner of Borrower, any constituent partner or member of Borrower, any Guarantor, any Indemnitor and any Non-Borrower Trustor); and/or (c) any lending relationship other than the Loan which Lender may have with any party connected with the Loan. In the event of any such sale, assignment or participation, Lender and the parties to such transaction shall share in the rights and obligations of Lender as set forth in the Loan Documents only as and to the extent they agree among themselves. In connection with any such sale, assignment or participation, Borrower further agrees that the Loan Documents shall be sufficient evidence of the obligations of Borrower to each purchaser, assignee, or participant, and upon written request by Lender, Borrower shall enter into such amendments or modifications to the Loan Documents as may be reasonably required in order to evidence any such sale, assignment or participation. The indemnity obligations of Borrower under the Loan Documents shall also apply with respect to any purchaser, assignee or participant. Subject to any provision in the Loan Documents (or subsequent modification thereto) relieving Lender of any obligations of Lender upon a sale or assignment of all or part of the Loan, Lender shall not be relieved of any of its obligations under the Loan Documents upon a sale, assignment or grant of participations with respect to the Loan.

**12.14 SIGNS.** Lender may place on the Property reasonable signs standard to construction loan transactions stating that construction financing is being provided by Lender and any other lenders or participants in the Loan.

**12.15 LENDER'S AGENTS.** Lender may designate an agent or independent contractor to exercise any of Lender's rights under this Agreement and any of the other Loan Documents. Any reference to Lender in any of the Loan Documents shall include Lender's agents, employees or independent contractors. Borrower shall pay the costs of such agent or independent contractor either directly to such person or to Lender in reimbursement of such costs, as applicable.

**12.16 TAX SERVICE.** Lender is authorized to secure, at Borrower's expense, a tax service contract with a third party vendor which shall provide tax information on the Property and Improvements satisfactory to Lender.

**12.17 WAIVER OF RIGHT TO TRIAL BY JURY.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

**12.18 SEVERABILITY.** If any provision or obligation under this Agreement and the other Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from the Loan Documents and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of the Loan Documents, provided, however, that if the rate of interest or any other amount payable under the Note or this Agreement or any other Loan Document, or the right of collectibility therefor, are declared to be or become invalid, illegal or unenforceable, Lender's obligations to make advances under the Loan Documents shall not be enforceable by Borrower.

**12.19 HEIRS, SUCCESSORS AND ASSIGNS.** Except as otherwise expressly provided under the terms and conditions of this Agreement, the terms of the Loan Documents shall bind and inure to the benefit of the heirs, successors and assigns of the parties.

**12.20 TIME.** Time is of the essence of each and every term of this Agreement.

**12.21 HEADINGS.** All article, section or other headings appearing in this Agreement and any of the other Loan Documents are for convenience of reference only and shall be disregarded in construing this Agreement and any of the other Loan Documents.

**12.22 GOVERNING LAW.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California, except to the extent preempted by federal laws. Borrower and all persons and entities in any manner obligated to Lender under the Loan Documents consent to the jurisdiction of any federal or state court within the State of California having proper venue and also consent to service of process by any means authorized by California or federal law.

**12.23 INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing.

**12.24 JOINT AND SEVERAL LIABILITY.** The liability of all persons and entities obligated in any manner under this Agreement and any of the Loan Documents shall be joint and several.

**12.25 COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

**12.26 REMOVAL OF GENERAL PARTNER.** Notwithstanding anything to the contrary herein, Special Limited Partner shall be permitted to remove a general partner of Borrower for cause in accordance with the Partnership Agreement without the consent of Lender provided that, prior to such removal, Special Limited Partner shall notify Lender of such removal and the grounds therefor, and provided further that, within 30 days after such removal, Special Limited Partner shall replace the General Partner with a substitute General Partner acceptable to Lender and such General Partner shall assume all of the rights and obligations of the removed General Partner under all of the Loan Documents. Lender's approval of the substitute General Partner shall not be unreasonably withheld or delayed. If required pursuant to the CHFA Commitment, Ground Lease, the R&O, the Declaration of Trust, or any of the Authority Loan documents, or the Agency Loan documents or the City Loan Documents, Special Limited Partner shall obtain the prior written consent of CHFA, Authority, HUD and Agency and City to the substitution of the General Partner and shall deliver evidence of such approval to Lender.

**12.27 TRANSFER OF LIMITED PARTNER INTERESTS.** Notwithstanding anything to the contrary contained herein, all of the limited partnership interests in Borrower originally owned by Related Capital Oakland Partners LLC, a Delaware limited liability company and Related Direct SLP LLC, a Delaware limited liability company may be transferred, without Lender's consent, at any time to any entity whose general partner or managing member is an affiliate of Related Capital Company, provided that such transferee shall assume all obligations of the transferor under the Partnership Documents and Borrower or Special Limited Partner shall notify Lender of such transfer, which notice shall include the date of the transfer and the identity of the transferee. In addition, membership interests in such limited partners may be transferred, without Lender's consent, at any time to any entity so long as an affiliate of Related Capital Company remains the managing member or general partner or such entities. If required pursuant to the CHFA Commitment, the R&O, the Declaration of Trust or any of the Authority Loan Documents, Agency Loan Documents or City Loan Documents, Borrower shall obtain the prior written consent of CHFA, HUD, Authority Agency and City prior to any transfer described above and shall deliver evidence of such approval to Lender.

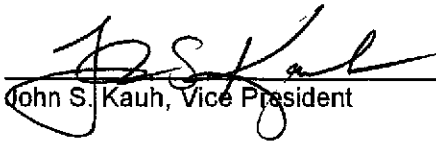
**12.28 CURE OF DEFAULTS.** Notwithstanding anything to the contrary herein any cure of any default or Event of Default made or tendered by the Special Limited Partner, shall be deemed to be a cure tendered by Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.



IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement as of the date appearing on the first page of this Agreement.

"LENDER"

WELLS FARGO BANK,  
NATIONAL ASSOCIATION

By:   
John S. Kauh, Vice President

Lender's Address:

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Real Estate Group (AU# 07652)  
420 Montgomery Street, 11<sup>th</sup> Floor  
San Francisco, CA 94104  
Attention: Susan Toyofuku  
Loan No. 1599 OK

"BORROWER"

MANDELA GATEWAY ASSOCIATES,  
A CALIFORNIA LIMITED PARTNERSHIP

By: BRIDGE Housing Ventures, Inc.,  
a California nonprofit public benefit corporation,  
General Partner

By:   
Carol Galante, President

Borrower's Address:

c/o BRIDGE Housing Corporation  
One Hawthorne Street, Fourth Floor  
San Francisco, CA 92105  
Attention: Carol Galante

**EXHIBIT A**

REAL PROPERTY IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

**TRACT ONE:**

A LEASEHOLD ESTATE CREATED PURSUANT TO THAT CERTAIN "GROUND LEASE AGREEMENT" (HEREAFTER "GROUND LEASE"), DATED FEBRUARY 1, 2003, MADE BY AND BETWEEN THE HOUSING AUTHORITY OF THE CITY OF OAKLAND, CALIFORNIA, A PUBLIC BODY, CORPORATE AND POLITIC, AS LESSOR AND MANDELA GATEWAY ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP, AS LESSEE, SUBJECT TO THE TERMS AND PROVISIONS THEREOF, FOR A TERM OF 75 YEARS COMMENCING AS OF FEBRUARY 1, 2003, AND EXPIRING ON A DATE CERTAIN DEFINED THEREIN, IN AND TO THE LAND DESCRIBED IN THE FOLLOWING PARCELS ONE-A AND ONE-B:

**PARCEL ONE-A:**

PARCEL A, AS SAID PARCEL IS SHOWN ON PARCEL MAP NO. 8059, FILED FEBRUARY 11, 2003, IN BOOK 270, OF PARCEL MAPS, PAGES 12 THROUGH 13, INCLUSIVE, ALAMEDA COUNTY RECORDS.

**PARCEL ONE-B:**

PARCEL B, AS SAID PARCEL IS SHOWN ON PARCEL MAP NO. 8058, FILED FEBRUARY 11, 2003, IN BOOK 270, OF PARCEL MAPS, PAGES 14 THROUGH 17, INCLUSIVE, ALAMEDA COUNTY RECORDS.

EXCEPTING FROM SUCH PARCELS ONE-A AND TWO-A, HOWEVER, ALL IMPROVEMENTS (AS "IMPROVEMENTS" ARE DEFINED IN SUCH GROUND LEASE AND SO REFERRED TO HEREAFTER) NOW OR HEREAFTER LOCATED THEREON, AS GRANTED TO MANDELA GATEWAY ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP, PURSUANT TO SECTION 3.4 OF SUCH GROUND LEASE.

**TRACT TWO:**

ALL IMPROVEMENTS NOW OR HEREAFTER LOCATED ON THE FOLLOWING DESCRIBED PARCELS TWO-A AND TWO-B, AS GRANTED TO MANDELA GATEWAY ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP, PURSUANT TO SECTION 3.4 OF SUCH GROUND LEASE:

(CONTINUE ON NEXT PAGE)

**PARCEL TWO-A:**

PARCEL A, AS SAID PARCEL IS SHOWN ON PARCEL MAP NO. 8059, FILED FEBRUARY 11, 2003, IN BOOK 270, OF PARCEL MAPS, PAGES 12 THROUGH 13, INCLUSIVE, ALAMEDA COUNTY RECORDS.

**PARCEL TWO-B:**

PARCEL B, AS SAID PARCEL IS SHOWN ON PARCEL MAP NO. 8058, FILED FEBRUARY 11, 2003, IN BOOK 270, OF PARCEL MAPS, PAGES 14 THROUGH 17, INCLUSIVE, ALAMEDA COUNTY RECORDS.

**TRACT THREE:**

EASEMENTS, APPURTENANT TO PARCELS ONE-B AND TWO-B HEREINABOVE, AS SET FORTH AND FURTHER DEFINED IN THAT CERTAIN INSTRUMENT ENTITLED "MANDELA GATEWAY DECLARATION ESTABLISHING RECIPROCAL EASEMENTS AND COVENANTS RUNNING WITH THE LAND", EXECUTED BY THE HOUSING AUTHORITY OF THE CITY OF OAKLAND, A PUBLIC BODY, CORPORATE AND POLITIC, RECORDED FEBRUARY 11, 2003, AS SERIES NO. 2003-084088, OFFICIAL RECORDS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, WITHIN PARCEL C SHOWN ON PARCEL MAP NO. 8058, FILED FEBRUARY 11, 2003, IN BOOK 270, OF PARCEL MAPS, PAGES 14 THROUGH 17, INCLUSIVE, ALAMEDA COUNTY RECORDS.

**EXHIBIT B - DOCUMENTS**

**Exhibit B to BUILDING LOAN AGREEMENT between MANDELA GATEWAY ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP, as "Borrower", and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Lender", dated as of February 1, 2003 ("Agreement").**

1. Loan Documents. The documents listed below, numbered 1.1 through 1.17, inclusive, and amendments, modifications and supplements thereto which have received the prior written consent of Lender, together with any documents executed in the future that are approved by Lender and that recite that they are "Loan Documents" for purposes of this Agreement are collectively referred to herein as the Loan Documents.
  - 1.1 This Agreement.
  - 1.2 The Promissory Note secured by Deed of Trust in the original principal amount of the Loan made by Borrower payable to the order of Lender.
  - 1.3 The Construction Deed of Trust with Absolute Assignment of Leases and Rents Security Agreement and Fixture Filing of even date herewith executed by Borrower, as Trustor, to American Securities Company, a California corporation, as Trustee, for the benefit of Lender, as Beneficiary.
  - 1.4 CoPartnership, Joint Venture or Association Borrowing Certificate of even date herewith executed by General Partner and CLI.
  - 1.5 Corporate Resolution Authorizing Partnership Activity, the Execution of Guaranty and Indemnity and Hypothecation of Property executed by Assistant Secretary of BRIDGE Housing Ventures, Inc.
  - 1.6 Corporate Resolution Authorizing Guaranty and Indemnity executed by Secretary of BRIDGE Housing Corporation.
  - 1.7 Assignment of Construction Agreements executed by Borrower and Contractor in favor of Lender.
  - 1.8 Assignment of Architectural Agreements and Plans and Specifications executed by Borrower and Architect in favor of Lender.
  - 1.9 Assignment of Management Agreement executed by Borrower and The John Stewart Company in favor of Lender.
  - 1.10 Assignment of HAP Contract executed by Borrower and consented to in writing by Authority.
  - 1.11 Uniform Commercial Code – National Financing Statement – form UCC-1, showing Borrower as Debtor and Lender as Secured Party.
  - 1.12 Uniform Commercial Code – National Financing Statement – form UCC-1 (Tax Credits), showing Borrower as Debtor and General Partner and CLI, as Additional Debtors and Lender as Secured Party.
  - 1.13 Security Agreement (Tax Credits) to be executed by Borrower, General Partner, CLI and Lender.

- 1.14 Subordination Agreement executed by Authority.
- 1.15 Subordination Agreement executed by Agency and City.
- 1.16 Subordination Agreement executed by AHP Lender.
- 1.17 Subordination Agreements executed by Authority, BRIDGE Housing Corporation, BRIDGE Housing Ventures, Inc., and CLI in connection with the option to purchase the Property.

Other Related Documents (Which Are Not Loan Documents):

- i. Completion Guaranty of even date herewith executed by Guarantors in favor of Lender.
- ii. Repayment Guaranty of even date herewith executed by Guarantors in favor of Lender.
- iii. Funds Transfer Agreement for Disbursement of Loan Proceeds of even date herewith executed by and between Borrower and Lender.
- iv. Unsecured Hazardous Materials Indemnity Agreement of even date herewith executed by and between Indemnitors and Lender.
- v. Signature Authorization Form of even date herewith executed by Borrower.
- vi. Fully executed Payment and Performance Bond with Dual Obligee Rider in recordable form.
- vii. Estoppel Certificate executed by CHFA in form and substance satisfactory to Lender with respect to the Permanent Financing.

FINANCIAL REQUIREMENT ANALYSIS

02/10/03  
LOAN #: 1599OK

BORROWER: MANDELA GATEWAY ASSOCIATES  
CONTRACTOR: Roberts - Obayashi

	(A) Total Costs	(B) Permanent Period Cost	(C)	(D) Construction Period Disbursement Budget
1 Acquisition (Land and Carry Costs)	\$ -	\$ -	\$ -	\$ -
2 <b>TOTAL ACQUISITION COSTS</b>	\$ -	\$ -	\$ -	\$ -
3 Construction Contract - Partnership	\$ 30,721,601			\$ 30,721,601
4 Hard Cost Contingency (unrestricted)	\$ 1,451,922			\$ 1,451,922
5 Hard Cost Contingency (Wells Restricted)	\$ 699,078			\$ 699,078
6 <b>TOTAL HARD COSTS</b>	\$ 32,872,601	\$ -	\$ -	\$ 32,872,601
7 Municipal & Utility Fees	\$ 1,339,367			\$ 1,339,367
8 Furnishings & Equipment (Outside of Contract)	\$ 300,000			\$ 300,000
9 Architectural & Engineering/Testing/Consultants	\$ 2,134,650			\$ 2,134,650
10 Taxes & Insurance	\$ 717,500			\$ 717,500
11 Escrow & Title	\$ 60,000			\$ 60,000
12 TCAC Fees & Deposit	\$ 211,176			\$ 211,176
13 Marketing, Rent Up & Lease Up Reserve	\$ 300,000			\$ 300,000
14 Market Study	\$ 15,000			\$ 15,000
15 CalHFA Bonding Requirement	\$ 5,000			\$ 5,000
16 CalHFA Construction Inspections	\$ 27,000			\$ 27,000
17 Legal (Construction/Syndication/Organization)	\$ 98,000			\$ 98,000
18 WFB IR	\$ 1,834,165			\$ 1,834,165
19 Developer Fee	\$ 1,000,000	\$ 250,000		\$ 750,000
20 Loan/LC Expenses (WFB Expenses )	\$ 65,000			\$ 65,000
21 WFB Origination Fee @ 50 bp + 25 bp ext. fees	\$ 204,263			\$ 204,263
22 CHFA Permanent Loan Fee	\$ 96,500			\$ 96,500
23 Predevelopment Loan Interest	\$ 20,000			\$ 20,000
24 Soft Cost Contingency	\$ 392,658	\$ 23,158		\$ 369,500
25 Audit & Cost Certification	\$ 17,100			\$ 17,100
26 City Loan Origination Fee	\$ 35,000			\$ 35,000
31 Syndication Consultant	\$ 30,000			\$ 30,000
33 Permanent Legal	\$ 10,000	\$ 10,000		\$ -
34 Permanent Title	\$ 20,000	\$ 20,000		\$ -
35 ACC Operating Reserve	\$ 210,000	\$ 210,000		\$ -
36 Replacement Reserve	\$ 252,000	\$ 252,000		\$ -
37 Operating Reserve	\$ 630,000	\$ 630,000		\$ -
38 <b>TOTAL SOFT COSTS</b>	\$ 10,024,378	\$ 1,395,158	\$ -	\$ 8,629,220
39 <b>TOTAL DEVELOPMENT COSTS</b>	\$ 42,896,979	\$ 1,395,158	\$ -	\$ 41,501,821

Disbursement Budget (Column D)

SOURCES OF FUNDS

HUD Hope VI	\$ 3,260,000
Tax Credit Investor PayIn 1, 2, & 3	\$ 5,956,800
Oakland HA Local Funds	\$ 550,000
AHP Loan	\$ 1,000,000
City of Oakland - HOME	\$ 1,000,000
City of Oakland - RDA/CEDA	\$ 2,500,000
WFB Loan	\$ 27,235,021
<b>TOTAL DISBURSEMENT BUDGET</b>	\$ 41,501,821

Notes: Column (B) cost to be paid after construction completion by a combination of tax credit equity and permanent loan proceeds.

Sources in Column (D) to be fully funded, except applicable retention, prior to funding of Wells Fargo Bank Loan Proceeds.  
\*Restricted Contingency not to be used during construction without satisfaction of release conditions.

EXHIBIT D - DISBURSEMENT PLAN

Exhibit D to BUILDING LOAN AGREEMENT between MANDELA GATEWAY ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP, as "Borrower", and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Lender", dated as of February 1, 2003.

1. Timing of Disbursement. Unless another provision of this Agreement specifies otherwise, by not later than the first day of each calendar month, or at such other times as Lender may approve or determine more appropriate, Borrower shall submit to:

Wells Fargo Bank, National Association  
Disbursement and Operations Center  
2120 East Park Place, Suite 100  
El Segundo, CA 90245  
Attention: Vivian Lee

a written itemized statement, signed by Borrower ("Application for Payment") setting forth:

- 1.1 a description of the work performed, material supplied and/or costs incurred or due for which disbursement is requested with respect to any line item ("Item") shown in Column D ("Disbursement Budget") of the Financial Requirement Analysis attached as Exhibit C to this Agreement; and
  - 1.2 the total amount incurred, expended and/or due for each requested Item less prior disbursements.
  - 1.3 Each Application for Payment by Borrower shall constitute a representation and warranty by Borrower that Borrower is in compliance with all the conditions precedent to a disbursement specified in this Agreement.
2. Lender's Right to Condition Disbursements. Lender shall have the right to condition any disbursement upon Lender's receipt and approval of the following:
- 2.1 the Application for Payment and an itemized requisition for payment of line items 5-7 shown in the Disbursement Budget ("Hard Costs");
  - 2.2 bills, invoices, documents of title, vouchers, statements, payroll records, receipts and any other documents evidencing the total amount expended, incurred or due for any requested Items;
  - 2.3 evidence of Borrower's use of a lien release, joint check and voucher system acceptable to Lender for payments or disbursements to any contractor, subcontractor, materialman, supplier or lien claimant;
  - 2.4 architect's, inspector's and/or engineer's periodic certifications of the percentage and/or stage of construction that has been completed and its conformance to the Plans and Specifications and governmental requirements based upon any such architect's, inspector's and/or engineer's periodic physical inspections of the Property and Improvements;
  - 2.5 issuance of a CLTA form 122 endorsement to Lender's Title Policy reasonably satisfactory to Lender, which Lender shall require as a condition to the first Loan

disbursement and may, in Lender's sole discretion, require for any subsequent disbursements; waivers and releases of any mechanics' lien, stop notice claim, equitable lien claim or other lien claim rights;

- 2.6 evidence of Borrower's compliance with the provisions of the Articles and Sections of this Agreement entitled **Construction** and **Authority/Enforceability**;
- 2.7 a written release executed by any surety to whom Lender has issued or will issue a set-aside letter and/or any public entity or agency which is a beneficiary under any instrument of credit or standby letter of credit which Lender has issued or will issue with respect to the Loan;
- 2.8 valid, recorded Notice(s) of Completion for the Improvements or any portions of the Improvements for which Notice(s) of Completion may be recorded under applicable law;
- 2.9 Certificate of Substantial Completion from the Architect and Engineer, if any, prior to the final retention disbursement or the final stage disbursement of Hard Costs, as applicable;
- 2.10 evidence satisfactory to Lender that the Permanent Lender, if any, has approved the completed Improvements and that all conditions precedent to the initial funding of the permanent financing, if any, have been satisfied prior to the final retention disbursement or the final stage disbursement of Hard Costs, as applicable;
- 2.11 any other document, requirement, evidence or information that Lender may request under any provision of the Loan Documents;
- 2.12 evidence that any goods, materials, supplies, fixtures or other work in process for which disbursement is requested have been incorporated into the Improvements;
- 2.13 in the event any Application for Payment includes the cost of materials stored at a location other than the Property ("Offsite Materials"), such Application for Payment shall include each of the following: (a) evidence that the Offsite Materials have been purchased by Borrower, have been segregated from other materials in the facility and have been appropriately marked to indicate Borrower's ownership thereof and Lender's security interest therein; and (b) evidence that the Offsite Materials are insured as required by this Agreement; and (c) at Lender's request, a security agreement, financing statement and/or subordination agreement in form and substance satisfactory to Lender executed by the supplier of the Offsite Materials, and/or such other persons as Lender determines may have an interest in or claim to the Offsite Materials, together with such other additional documentation and evidence as Lender may reasonably require to assure itself that it has a perfected first priority lien on the Offsite Materials; and
- 2.14 in the event that any Application for Payment includes the cost of materials stored on the Property ("Onsite Materials"), such Application for Payment shall include each of the following: (a) evidence that the Onsite Materials have been purchased by Borrower; (b) evidence that the Onsite Materials are insured as required hereunder; and (c) evidence that the Onsite Materials are stored in an area on the Property for which adequate security is provided against theft and vandalism.

Borrower acknowledges that this approval process may result in disbursement delays and Borrower hereby consents to all such delays.



Borrower acknowledges disbursement of certain funds other than the Loan proceeds shall be made pursuant to the Intercreditor Agreement of even date herewith, among Borrower, Authority, and Special Limited Partner.

3. Periodic Disbursement of Certain Construction Costs. As construction progresses, the portion of the Disbursement Budget attributable to line item 3 shall be periodically disbursed into the Account or to or for the benefit or account of the Borrower. Up to ninety percent (90%) of the maximum amount allocated for such Item less prior disbursements. The remaining ten percent (10%) ("Retention") shall be disbursed into the Account or to or for the benefit or account of the Borrower upon completion of the Improvements in accordance with the Plans and Specifications, governmental requirements, the statutory lien period has expired and Lender has received an LP-10 Re-Write of the Title Policy. Notwithstanding the foregoing, the retention for the following items shall be released upon satisfactory completion of such items and delivery of conditional lien releases: demolition, environmental remediation, grading, foundation work and rough carpentry. Borrower shall obtain and deliver to Lender final lien releases for the above items, promptly after release of the retention.
4. Hard Costs Contingency Reserve (Unrestricted). The portion of the Disbursement Budget identified as line item 4, allocated for the payment of Hard Cost Contingencies, shall be periodically reallocated within the Disbursement Budget or disbursed into the Account or to or for the benefit or account of the Borrower for cost overruns that have been approved by Lender for Hard Cost Items and disbursed in accordance with paragraphs hereof depending upon the intended use of any such funds.
5. Restricted Contingency. The portion of the Disbursement Budget identified as line item 5, "Restricted Contingency" will be disbursed to pay Hard Costs subject to all terms and conditions of this Agreement and if, and only if, Borrower delivers to Lender an irrevocable standby letter of credit in such amount in form and substance and issued by a banking institution reasonably acceptable to Lender, or other cash collateral in such amount acceptable to Lender in its sole discretion.
6. Certain Soft Costs. The portion of the Disbursement Budget allocated for the payment of certain Soft Costs identified as line items 7-9, 12-17, 22, 23, and 25-27 shall be periodically disbursed into the Account or to or for the benefit or account of Borrower for the payment of such Soft Costs.
7. Periodic Disbursement of Interest Reserve. The portion of the Disbursement Budget allocated as an Interest Reserve identified as line item 18, shall be periodically disbursed directly to Lender for the payment of interest which accrues and becomes due under the Note. Lender is hereby authorized to charge the Loan and Borrower's Funds Account directly for such interest payments when due. Lender shall provide Borrower with a monthly interest statement. Depletion of the Interest Reserve shall not release Borrower from any of Borrower's obligations under the Loan Documents including, without limitation, payment of all accrued and due interest and the deposit of Borrower's Funds with Lender pursuant to Section 3.1 (b) of this Agreement.
8. Periodic Disbursement of Taxes and Insurance Premiums. The portion of the Disbursement Budget identified as line item 9, shall be periodically disbursed into the Account or to or for the benefit or account of the Borrower for the payment of Taxes and Insurance premiums incurred during the Loan term as Taxes and Insurance premiums become due and payable.
9. Disbursement of Lender's Loan Fee. The portion of the Disbursement Budget identified as line item 21 ( other than the extension fees, which will be disbursed if and when due pursuant to Section 2.8 and 2.9 of the Loan Agreement ), shall be disbursed directly to Lender from other funding sources upon the closing of the Loan.

10. Disbursement of Legal, Appraisal, Costing, Inspection and other Fees. The portion of the Disbursement Budget identified as line item 20 shall be disbursed to Lender from other funding sources upon the closing of the Loan for the payment of Legal, Appraisal, Costing, Inspection and other fees incurred in connection with the Loan. Payment of fees in this category shall not release Borrower from any of Borrower's obligations under the Loan Documents, including but not limited to paying fees incurred in connection with the Loan pursuant to that certain Section of this Agreement entitled Expenses and depositing Borrower's Funds with Lender pursuant to Section 3.1 (b) of this Agreement.
11. Soft Costs Contingency Reserve. The portion of the Disbursement Budget allocated for the payment of Soft Cost Contingencies identified as line item 24 shall be periodically reallocated within the Disbursement Budget or disbursed into the Account or to or for the benefit or account of the Borrower for cost overruns that have been approved by Lender for Soft Costs Items and disbursed in accordance with this Exhibit D, depending upon the intended use of any such funds.
12. Developer Fee. The portion of the Disbursement Budget identified as line item 23, "Developer Fee" which is to be disbursed from Loan proceeds in the amount of \$250,000 shall be disbursed to Borrower only upon completion of construction of the Improvements substantially in accordance with the Plans and Specifications, delivery of a certificate of completion from Architect in form and substance reasonably satisfactory to Lender, a copy of the recorded notice of completion and the No Further Action Letter.