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**LOAN AGREEMENT**

**by and between the**

**CITY OF SAN JOSE, CALIFORNIA,  
as Governmental Lender**

**and**

**SAN JOSE W. SAN CARLOS LP,  
a California Limited Partnership,  
as Borrower**

**dated as of January 1, 2022**

**relating to:  
\$31,341,010  
City of San José, California  
Multifamily Housing Revenue Note  
(Mariposa Place), Series 2021E-1 (Tax-Exempt)  
and  
\$4,658,990  
City of San José, California  
Multifamily Housing Revenue Note  
(Mariposa Place), Series 2021E-2 (Taxable)**

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## LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of January 1, 2022 (this "Borrower Loan Agreement"), is by and between the City of San Jose, California, a municipal corporation and charter city organized and existing under its charter and the laws of the State of California (together with its successors and assigns, the "Governmental Lender"), and San Jose W. San Carlos LP, a California limited partnership (the "Borrower").

For and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS AND INTERPRETATION

Section 1.1. Definitions. The capitalized terms used in this Borrower Loan Agreement shall have the following meanings unless the context or use otherwise requires or, if not defined herein, are as defined in the Loan Agreement, dated as of January 1, 2022, among the Governmental Lender, Pacific Western Bank and U.S. Bank National Association, as fiscal agent:

"Act of Bankruptcy" shall mean the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) by or against the Borrower, or any guarantor of the Borrower under any applicable bankruptcy, insolvency, reorganization, or similar law, now or hereafter in effect; provided that, in the case of an involuntary proceeding, such proceeding is not dismissed within ninety (90) days after the commencement thereof.

"Conversion Date" has the meaning given that term in the Continuing Covenant Agreement.

"Costs of Issuance" means all fees, costs and expenses directly associated with the authorization, issuance, sale and delivery of the Governmental Lender Notes, and the making of the Bank Loan and the Borrower Loan, including fees paid to the Bank in connection with the origination of the Bank Loan.

"Danco Communities" means Danco Communities, a California corporation.

"Equity Contributions" shall mean the equity to be contributed by the Equity Investor in accordance with and subject to the terms of the Partnership Agreement.

"Environmental Indemnity Agreement" means the Environmental Indemnity Agreement, dated as of January 1, 2022, by the Borrower and the Guarantor in favor of the Bank.

"Environmental Site Assessments" has the meaning ascribed to such term in Section 4.01(k) of the Continuing Covenant Agreement.

"Event of Default" means any of the events described as an event of default in Section 7.1 hereof.

"Force Majeure" shall mean without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of terrorism or of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or any cause, circumstance or event not reasonably within the control of the Borrower; provided Borrower shall notify the Bank of any such event within 10 calendar days after the occurrence thereof.

"Gross Income" has the meaning given to the term "Adjusted Income" in the Regulatory Agreement.

"Guarantor" means, collectively, Danco Communities, Johnson & Johnson Investments, LLC and Daniel J. Johnson.

"Guaranty" means the Guaranty of Payment and Performance, dated as of January 1, 2022, by the Guarantor in favor of the Bank.

"Hazardous Substance" means and includes asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials and any items defined as hazardous, special or toxic materials, substances or waste under any Hazardous Substance Law, or any such material which shall be removed from the Project pursuant to any administrative order or enforcement proceeding or in order to place the Project in a condition that is suitable for ordinary use. "Hazardous Substance" shall not include substances typically used in the ordinary course of developing, operating and maintaining apartment complexes provided that such substances are used in accordance with applicable laws.

"Hazardous Substance Laws" collectively means and includes any present and future local, state, federal or international law or treaty relating to public health, safety or the environment including without limitation, the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., as amended by the

Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, as amended 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Uranium Mill Tailings Radiation Control Act, 42 U.S.C. § 7901 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 655 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq., the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., the Noise Control Act, 42 U.S.C. § 4901 et seq., and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereunder, and any similar law, regulation, order, decree, permit, license or deed restriction of the State.

"Inducement Date" has the meaning given to such term in the Regulatory Agreement.

"Loan Documents" means this Borrower Loan Agreement, the Bank Loan Agreement, the Regulatory Agreement, the Borrower Notes, the Governmental Lender Notes, the Borrower Assignments, and the Deed of Trust.

"Low Income Tenants" has the meaning given such term in the Regulatory Agreement.

"Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership of San Jose W. San Carlos LP, as executed by the parties thereto or as thereafter amended or restated in accordance with its terms.

"Prepayment Premium" means any premium payable hereunder which shall be equal to the amount payable by the Borrower as such as set forth in the Borrower Tax-Exempt Note.

"Prohibited Activities or Conditions" has the meaning given such term in the Continuing Covenant Agreement.

"Project Costs" has the meaning given such term in the Regulatory Agreement.

"Property" means, the site on which the Project is located.

"Purchase Option" means any option of a partner of the Borrower to purchase the Project and or fee interest, as applicable, in the Property contemplated by the Partnership Agreement or documents related to the Partnership Agreement.

"Qualified Project Period" has the meaning given such term in the Regulatory Agreement.

"Taxes" shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against all or part of the Project.

Section 1.2. Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Borrower Loan Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

Section 1.3. Recitals, Titles and Headings. The terms and phrases used in the recitals of this Borrower Loan Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all such terms and phrases for purposes of this Borrower Loan Agreement shall be determined by references to Section 1.1 hereof. The titles and headings of the Articles and Sections of this Borrower Loan Agreement have been inserted for convenience of reference only and are not to be considered a part hereof, and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Borrower Loan Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the Governmental Lender. The Governmental Lender represents, warrants and covenants that:

(a) The Governmental Lender is a public body, corporate and politic, organized and existing under its charter and the laws of the State, and is duly authorized to execute and deliver the Governmental Lender Notes and to perform its obligations under this Borrower Loan Agreement.

(b) The Loan Documents to which the Governmental Lender is a party have been duly executed and delivered by the Governmental Lender, and the Governmental Lender has taken such actions as are necessary to cause the Loan Documents to which it is a party, when duly authorized, executed and delivered by the other respective parties thereto, to be valid and binding obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally.

(c) The execution and delivery of this Borrower Loan Agreement and the Regulatory Agreement, the performance by the Governmental Lender of its obligations hereunder and thereunder and the consummation of the transactions on its part contemplated hereby and thereby, including, without limitation, the loaning of the amounts herein set forth to the Borrower, do not violate any law, rule, regulation or ordinance or any order, judgment or decree of any federal, state or local court, and do

not conflict with, or constitute a breach of, or a default under the terms and conditions of any agreement, instrument or commitment to which the Governmental Lender is a party or by which the Governmental Lender or any of its property is bound.

(d) To the best knowledge of the Governmental Lender, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or threatened against the Governmental Lender which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any members of the City Council of the Governmental Lender; (ii) affects or questions the validity or enforceability of this Borrower Loan Agreement or the Regulatory Agreement; or (iii) questions the tax-exempt status of interest on the Governmental Lender Tax-Exempt Note.

The Governmental Lender makes no representation or warranty, either express or implied, that the Project will be adequate or sufficient for the purposes of the Borrower. Nothing in this Borrower Loan Agreement shall be construed as requiring the Governmental Lender to provide any financing for the Project other than the proceeds of the Borrower Loan, or to provide sufficient moneys for all of the costs of the Project.

Section 2.2. Representations, Warranties and Covenants of the Borrower. The Borrower represents, warrants and covenants that:

(a) The Borrower is a limited partnership, duly organized and in good standing under the laws of the State and has full legal right, power and authority (i) to enter into this Borrower Loan Agreement and the other Loan Documents to which it is a party; (ii) to perform its obligations hereunder and thereunder; and (iii) to consummate the transactions on its part contemplated by the Loan Documents.

(b) The Loan Documents to which it is a party have been duly authorized, executed and delivered by the Borrower and, upon the execution thereof by the other respective parties thereto, constitute valid and binding obligations of the Borrower, enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions affecting the rights of creditors generally.

(c) The execution and delivery of the Loan Documents to which it is a party, the performance by the Borrower of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby do not require the consent or approval of any other person, regulatory agency or governmental body (other than the other parties to the Loan Documents) and will not violate the Borrower's Partnership Agreement, or any law, regulation, rule or ordinance or any order, judgment or decree of any federal, state or local court and do not conflict with, or constitute a breach of, or a default under, any document, instrument or commitment to which the Borrower is a party or by which the Borrower or any of its property is bound.



(d) There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or threatened against the Borrower which (i) affects or seeks to prohibit, restrain or enjoin the loaning of the amounts set forth herein to the Borrower or the execution and delivery of this Borrower Loan Agreement or the other Loan Documents, (ii) affects or questions the validity or enforceability of this Borrower Loan Agreement or the other Loan Documents, or (iii) questions the power or authority of the Borrower to carry out the transactions contemplated by, or to perform its obligations under, this Borrower Loan Agreement or the other Loan Documents to which it is a party, or the powers of the Borrower to own, acquire, construct or operate the Project; and no other event has occurred which may materially adversely affect the Borrower's financial condition or its properties.

(e) The Borrower is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) under any document, instrument or commitment to which the Borrower is a party or to which it or any of its property is subject which default would or could affect the ability of the Borrower to carry out its obligations under this Borrower Loan Agreement or the other Loan Documents.

(f) Any certificate signed by a Borrower Representative and delivered pursuant to this Borrower Loan Agreement or the other Loan Documents shall be deemed a representation and warranty by the Borrower as to the statements made therein.

(g) The Project is located wholly within the City.

(h) The Borrower will obtain all necessary certificates, approvals, permits and authorizations with respect to the acquisition, construction and operation of the Project from applicable local governmental agencies and agencies of the State and the federal government.

(i) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or the Code, or impair the exclusion from gross income for federal income tax purposes of the interest on the Governmental Lender Tax-Exempt Note. The Borrower intends to utilize the Project as multifamily rental housing for a period ending on the later of the end of the Qualified Project Period or the expiration of the Compliance Period (as defined in the Regulatory Agreement).

(j) Not in excess of two percent (2.0%) of the proceeds of the Borrower Tax-Exempt Note will be used to pay Costs of Issuance.

(k) The acquisition, construction and operation of the Project in the manner presently contemplated and as described herein and in the Regulatory Agreement will

not conflict with any zoning, water or air pollution or other ordinance, order, law or regulation applicable thereto. The Borrower will cause the Project to be operated in all material respects in accordance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.

(l) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the Project; that it is familiar with the provisions of all of the documents and instruments relating to the financing of the Project to which it or the Governmental Lender is a party or of which it is a beneficiary; and that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Governmental Lender for any guidance or expertise in analyzing financial or other consequences of the transactions contemplated by the Loan Documents or otherwise relied on the Governmental Lender for advice.

(m) The Borrower intends to hold the Project for its own account, has no current plans to sell and has not entered into any agreement to sell the Project, except in accordance with the terms of the Regulatory Agreement, the Deed of Trust, the Continuing Covenant Agreement, and any Purchase Option.

(n) The Borrower has contacted all "related persons" thereof (within the meaning of Section 147(a) of the Code) of which it is aware; and none of them shall, at any time, pursuant to any arrangement, formal or informal, acquire any interest in the Governmental Lender Tax-Exempt Note in an amount related to the amount of the portion of the Borrower Loan represented by Borrower Tax-Exempt Note.

(o) In the event the Bank Loan proceeds are not sufficient to complete the acquisition and construction of the Project, the Borrower will furnish any additional moneys necessary to complete the acquisition and construction of the Project.

(p) All of the proceeds from the Governmental Lender Tax-Exempt Note plus the income from the investment of the proceeds of the Governmental Lender Tax-Exempt Note will be used to pay or reimburse the Borrower for Project Costs, and at least 97% of the proceeds of the Governmental Lender Tax-Exempt Note will be used to pay or reimburse the Borrower for Qualified Project Costs and less than 25% of the proceeds of the Governmental Lender Tax-Exempt Note will be used to pay or reimburse the Borrower for the cost of land or any interest therein. The Borrower shall assure that the proceeds of the Governmental Lender Tax-Exempt Note are expended so as to cause the Governmental Lender Tax-Exempt Note to constitute a "qualified residential rental bond" within the meaning of Section 142(d) of the Code.

(q) The estimated total cost of the financing of the acquisition and construction of the Project is equal to or in excess of the maximum principal amount of the Bank Loan.

(r) The Borrower has not knowingly taken or permitted to be taken and will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of causing interest on the Governmental Lender Tax-Exempt Note to be included in the gross income of the owner thereof for purposes of federal income taxation.

(s) The Borrower covenants that it shall not take, or permit or suffer to be taken by the Bank or otherwise, any action with respect to the proceeds of the Governmental Lender Tax-Exempt Note which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken on the Closing Date, would have caused the Governmental Lender Tax-Exempt Note to be an "arbitrage bond" within the meaning of Section 148(a) of the Code.

(t) The Borrower has examined and is familiar with all the easements, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements affecting the Project. The Project will at all times and in all respects conform to and comply with the requirements of such easements, covenants, conditions, restrictions and reservations.

(u) Each financial statement of Borrower supplied to the Governmental Lender or the Bank truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to the Governmental Lender or the Bank except as disclosed on a subsequent financial statement. Borrower has no material contingent obligations except as disclosed in such financial statements.

(v) The Project Costs as set forth by the Borrower to the Governmental Lender and the Bank in writing prior to the date of the first disbursement of the Borrower Loan truly and accurately reflect the Borrower's reasonable estimate of the costs necessary to complete the acquisition and construction of the Project.

(w) All utility services appropriate to the use of the Project are being or upon completion of construction will be provided to the Project.

(x) The Project is contiguous to publicly dedicated streets, roads, or highways providing access to the Project.

(y) The Borrower shall take all actions required under the Partnership Agreement to cause the funding of all capital contributions to the Borrower at the times and in the amounts set forth in the Partnership Agreement.

Section 2.3. Hazardous Waste Covenant. The Borrower further represents, warrants and covenants that (a) the Borrower will not use Hazardous Substances on, in or under the Project

except those that are both (i) in compliance with all Hazardous Substance Laws and with permits issued pursuant thereto, if and to the extent required, and (ii) in amounts not in excess of that necessary to operate the Project, and (b) to the best of the Borrower's knowledge and based solely upon the Environmental Site Assessment, there are no Hazardous Substances in, on or under the Property except those that are in compliance with Hazardous Substances Laws and with permits issued pursuant thereto (if such permits are required), if any, as described in the Environmental Site Assessment. The Borrower shall use its best efforts to not allow any tenant of the Property to violate any Hazardous Substance Law. The Borrower shall defend, indemnify, and hold harmless the Governmental Lender from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, release, or threatened release of any Hazardous Substances which are on or from the Project which affect, the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances on or from the Project, and/or (c) any violation of Hazardous Substances Laws, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. The provisions of this paragraph: (a) shall be in addition to any and all other obligations and liabilities the Borrower may have to the Governmental Lender at common law, and (b) with respect to any liability or cost arising as a result of acts or omissions of the Borrower during the term of this Borrower Loan Agreement, shall survive the termination of this Borrower Loan Agreement. This paragraph shall not obligate the Borrower in any way with respect to any acts or omissions of any entity to which the Project is sold or transferred in accordance with the provisions of Section 13 of the Regulatory Agreement or to the extent to the willful misconduct of the Governmental Lender or its agents or assigns.

The indemnifications and protections set forth in this Section 2.3 shall be extended, with respect to the Governmental Lender, to its Councilmembers, directors, officers, employees, agents and servants and persons under the Governmental Lender's control or supervision but shall not extend to the Bank.

Anything to the contrary in this Borrower Loan Agreement notwithstanding, the covenants of the Borrower contained in this Section 2.3 shall remain in full force and effect after the termination of this Borrower Loan Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Governmental Lender relating to the enforcement of the provisions herein specified.

For the purposes of this Section 2.3, the Borrower shall not be deemed an employee, agent or servant of the Governmental Lender or person under Governmental Lender's control or supervision.

Section 2.4. Additional Environmental Matters. (a) The Borrower shall require in any management agreement for the Project that the management company shall operate and maintain the Project in material compliance with all applicable Hazardous Substances Laws.

(b) The Borrower shall use its best efforts to prevent the imposition of any liens or encumbrances against the Project for the costs of any response, removal or remedial action or cleanup of Hazardous Substances.

(c) The Borrower covenants and agrees that it will not knowingly conduct or allow to be conducted any business, operations or activity on the Project, or employ or use the Project to manufacture, treat, store (except with respect to storage in the ordinary operation of the Project), or dispose of any Hazardous Substance (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof), or any other substance the disposal of which is prohibited, controlled or regulated under applicable law, or which poses a threat or nuisance to safety, health or the environment, including, without limitation, any business, operation or activity which would bring the Project within the ambit of, or otherwise violate, the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6901 et seq., or cause or knowingly allow to be caused, a release or threat of release, of a nondiminimis quantity of hazardous substances on the Project as defined by, and within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601 et seq., or any similar state, county, regional or local statute providing for financial responsibility for cleanup for the release or threatened release of substances provided for thereunder.

(d) The Borrower covenants and agrees that it shall take all appropriate response action, including any removal and remedial action, in the event of a release of Hazardous Substances in violation of Hazardous Substances Laws.

(e) The Borrower shall, as soon as practical and in any event within 15 days, notify the Governmental Lender and the Bank of any notice, letter, citation, order, warning, complaint, claim or demand that (i) any non-compliance with any Hazardous Substances Laws related to the Project, (ii) a Release or material threat of Release of Hazardous Substances from the Project, (iii) any required or proposed remediation of environmental conditions relating to the Project or (iv) the Project is subject to an environmental lien.

(f) During the period in which the Borrower Loan Agreement is in effect, the Borrower hereby grants, and will cause any tenants to grant, to the Governmental Lender and the Bank, their respective agents, attorneys, employees, consultants and contractors an irrevocable license and authorization upon reasonable notice of not less than 24 hours and at a reasonable time to enter upon and inspect the Project and perform such tests, including, without limitation, subsurface testing, soils and ground water testing, and other tests which may physically invade the Project, as the Governmental Lender or the Bank, in its respective reasonable discretion, determines are necessary to protect the lien created by the Deed of Trust. The Governmental

Lender and the Bank and their officers, employees and agents shall indemnify and hold harmless the Borrower, its partners, employees and agents from any and all claims for damages to persons or property arising from any activity of the Governmental Lender, the Bank, their employees, officers, agents, representatives, contractors, subcontractors or consultants on the Property. The provisions of this Section 2.4 shall be for the full and equal benefit of the Governmental Lender, and of the Bank as assignee of the Governmental Lender under the Assignment Agreement.

### ARTICLE III

#### THE BORROWER LOAN

Section 3.1. Closing of the Borrower Loan. The closing of the Borrower Loan shall not occur until the following conditions are met:

(a) the Governmental Lender shall have received an original executed counterpart of this Borrower Loan Agreement, the Regulatory Agreement, the Borrower Assignments, the Disbursement Agreement, the Continuing Covenant Agreement and the Deed of Trust, and a copy of each Borrower Note (the original of each Borrower Note to be endorsed by the Governmental Lender to the Bank without recourse, and is to be delivered to the Bank), as well as evidence satisfactory to the Governmental Lender and the Bank of (i) the recordation of the Regulatory Agreement, the Subordination Agreement and the Deed of Trust (the "Recording Documents") in the official records of the County Recorder of the County, which may be by telephonic notice from the Title Company, or (ii) an insured lien in the form of gap coverage from the Title Company, together with escrow instructions providing for the recording of the Recording Documents in the official records of the County Recorder of the County after the Closing Date;

(b) no Event of Default nor any event which with the passage of time and/or the giving of notice would constitute an Event of Default under this Borrower Loan Agreement shall have occurred as evidenced by a certificate received from the Borrower;

(c) the conditions to the Initial Disbursement set forth in the Disbursement Agreement and the Continuing Covenant Agreement have been satisfied in full;

(d) the delivery to the Fiscal Agent and/or to an escrow at the Title Company of all amounts required to be paid in connection with the Bank Loan and the Borrower Loan on the Closing Date, including amounts related to the underlying real estate transaction to be paid on the Closing Date;

(e) the Governmental Lender and the Bank shall have received an opinion of counsel to the Borrower addressed to the Governmental Lender and the Bank to the effect that the Loan Documents to which the Borrower is a party are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their

terms, subject to such exceptions and qualifications as are acceptable to the Governmental Lender and the Bank; and

(f) the Bank and the Governmental Lender shall have received such other documents or opinions as the Bank or the Governmental Lender may reasonably require.

Section 3.2. Commitment to Execute the Borrower Notes. The Borrower agrees to execute and deliver the Borrower Notes and the Deed of Trust simultaneously with the execution of this Borrower Loan Agreement.

Section 3.3. Amount and Source of Loan. The Governmental Lender hereby makes to the Borrower and agrees to fund, and the Borrower hereby accepts from the Governmental Lender, upon the terms and conditions set forth herein, the Borrower Loan and agrees to have the proceeds of the Borrower Loan applied and disbursed in accordance with the provisions of this Borrower Loan Agreement.

Section 3.4. Disbursement of Borrower Loan Proceeds. (a) The Governmental Lender hereby authorizes and directs the funding and disbursement of the initial principal amount of the Borrower Loan on the Closing Date in the amount set forth in the Bank's Receipt of the Governmental Lender Notes and Borrower Notes, as executed and delivered by the Bank on the Closing Date, subject to the condition that (i) the Regulatory Agreement and the Deed of Trust shall have been executed and signed by the Borrower and duly recorded in the office records of the County Recorder of the County, and (ii) the Borrower has complied with the conditions to the initial funding set forth in the Disbursement Agreement and the Continuing Covenant Agreement. The Borrower hereby authorizes the Governmental Lender to disburse on the date of execution and delivery of the Borrower Notes the amount representing the Initial Disbursement to the Title Company, to be used to pay costs identified in the instructions to the Title Company delivered in connection with the recordation of the Deed of Trust and the Regulatory Agreement.

(b) The Governmental Lender hereby authorizes and directs the funding and disbursement of the remaining principal amount of the Borrower Loan (not referenced in Section 3.4(a) above), subject to the conditions set forth in the Disbursement Agreement and the Continuing Covenant Agreement. Any disbursement of the remaining principal amount of the Borrower Loan shall be used to pay Project Costs. No further disbursements of the Borrower Loan shall be made after the date which is three (3) years after the Closing Date.

(c) The Borrower has advised the Governmental Lender of the Borrower's intent that not less than 97% of the proceeds of the Governmental Lender Tax-Exempt Note be used to pay Qualified Project Costs.

## ARTICLE IV

### LIMITED LIABILITY

Section 4.1. Limited Liability. All obligations and any liability of the Governmental Lender incurred hereunder shall be limited, special obligations of the Governmental Lender, payable solely and only from amounts received from the Bank pursuant to the Bank Loan Agreement. All obligations and any liability of the Governmental Lender shall be further limited as provided in Sections 4.01, 5.02 and 6.14 of the Bank Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of moneys to repay the Governmental Lender Notes will be provided by the Security, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment price) and interest on the Governmental Lender Notes as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Bank, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment price) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Bank, the Borrower, the Fiscal Agent, the Governmental Lender or any third party, subject to any right of reimbursement from the Bank, the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor but solely, in the case of the Governmental Lender and the Fiscal Agent, from the Security, other than with respect to any deficiency caused by the willful misconduct of the Governmental Lender and the Fiscal Agent, as applicable.

## ARTICLE V

### REPAYMENT OF THE BORROWER LOAN

Section 5.1. Borrower Loan Repayment. (a) The Borrower Loan shall be evidenced by the Borrower Notes which shall be executed by the Borrower in the form attached hereto as Exhibit A. The Borrower agrees to pay to the Bank, as agent of the Governmental Lender under the Assignment Agreement, principal of, any applicable Prepayment Premium and interest on the Borrower Loan at the times, in the manner, in the amount and at the rate of interest provided in the Borrower Notes and this Borrower Loan Agreement.

(b) The Borrower further agrees to pay all taxes and assessments, general or special, including, without limitation, all ad valorem taxes, concerning or in any way related to the Project, or any part thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments with respect thereto; provided, however, that the Borrower reserves the right to contest in good faith the legality of any tax or governmental charge concerning or in any way related to the Project. In addition, the Borrower agrees to pay any loan fee, processing fee and all title, escrow, recording and closing costs and expenses (including legal fees), any appraisal costs and all other reasonable fees and costs associated with or required in connection with the Governmental Lender Notes, the Regulatory



Agreement and Bank Loan Agreement; including but not limited to any such amounts described in Section 5.1(c) of the Bank Loan Agreement.

(c) The Borrower hereby acknowledges and consents to the assignment by the Governmental Lender to the Bank of its rights under this Borrower Loan Agreement (excepting only the Governmental Lender's rights under Section 6.7 hereof, and its retained rights under Sections 2.3, 2.4, 5.1(b), 5.1(d), 5.1(e), 7.4, 8.7, 8.12 and 8.13 hereunder, together with its rights to receive notice and consent to amendments pursuant to the Loan Documents), and the appointment of the Bank as agent of the Governmental Lender to collect the payments on the Borrower Loan, all as set forth in the Assignment Agreement.

(d) The Borrower further agrees to pay the annual fee of the Governmental Lender and other fees and expenses due the Governmental Lender as described in Sections 7(a) and (q) of the Regulatory Agreement, and within thirty (30) days after receipt of request for payment thereof, all reasonable out-of-pocket expenses of the Governmental Lender related to the Project and the financing thereof that are not otherwise required to be paid by the Borrower under the terms of this Borrower Loan Agreement and are not paid from disbursements of the Borrower Loan, including, without limitation, legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Bank Loan or in connection with any litigation which may at any time be instituted involving this Borrower Loan Agreement, the Regulatory Agreement, the Bank Loan Agreement, the Governmental Lender Notes or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing.

(e) Notwithstanding anything to the contrary herein, the Borrower further agrees to pay all taxes and assessments of any type or character charged to the Governmental Lender, the Fiscal Agent or to the Bank affecting the amount available to the Governmental Lender, the Fiscal Agent or the Bank from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Bank or Fiscal Agent and taxes based upon or measured by the net income of the Bank or the Fiscal Agent; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Governmental Lender, the Fiscal Agent or the Bank, at the Borrower's expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Governmental Lender or the Bank;

These obligations in Sections 5.1(d) and 5.1(e) and those in Section 6.7 shall remain valid and in effect notwithstanding repayment of the Borrower Loan or termination of this Borrower Loan Agreement or the Bank Loan Agreement.

Section 5.2. Nature of the Borrower's Obligations. The Borrower shall repay the Borrower Loan pursuant to the terms of the Borrower Notes irrespective of any rights of set-off, recoupment or counterclaim the Borrower might otherwise have against the Governmental Lender, the Bank or any other person. The Borrower will not suspend, discontinue or reduce any such payment or (except as expressly provided herein) terminate this Borrower Loan Agreement for any cause, including, without limiting the generality of the foregoing, (i) any delay or interruption in the operation of the Project; (ii) the failure to obtain any permit, order or action of any kind from any governmental agency relating to the Borrower Loan or the Project; (iii) any event constituting Force Majeure; (iv) any acts or circumstances that may constitute commercial frustration of purpose; (v) any change in the laws of the United States of America, the State or any political subdivision thereof; or (vi) any failure of the Governmental Lender or the Borrower to perform or observe any covenant, whether expressed or implied, or to discharge any duty, liability or obligation arising out of or connected with the Borrower Notes; it being the intention of the parties that, as long as the Borrower Notes or any portion thereof remain outstanding and unpaid, the obligation of the Borrower to repay the Borrower Loan and provide such moneys shall continue in all events. This Section 5.2 shall not be construed to release the Borrower from any of its obligations hereunder, or, except as provided in this Section 5.2, to prevent or restrict the Borrower from asserting any rights which it may have against the Governmental Lender under the Borrower Notes or the Deed of Trust or under any provision of law or to prevent or restrict the Borrower, at its own cost and expense, from prosecuting or defending any action or proceeding by or against the Governmental Lender or the Bank or taking any other action to protect or secure its rights.

Notwithstanding the foregoing, except for obligations under the Guaranty and the Environmental Indemnity Agreement, neither the general partners nor any limited partner of the Borrower shall be personally liable for the amounts owing under this Borrower Loan Agreement, the Borrower Notes or the Deed of Trust; and the Governmental Lender's remedies in the event of a default under the Borrower Loan shall be limited to those remedies set forth in Section 7.3 hereof and the commencement of foreclosure under the Deed of Trust and the exercise of the power of sale or other rights granted thereunder. Notwithstanding the Assignment Agreement, no assignment by the Governmental Lender of its rights hereunder shall preclude the Governmental Lender from proceeding directly against the Borrower in connection with the obligation of the Borrower to indemnify the Governmental Lender under Section 6.7 hereof or Section 9 of the Regulatory Agreement or to make any payment to the Governmental Lender required to be paid by the Borrower pursuant to the provisions of Sections 2.3, 2.4, 5.1(b), 5.1(d), 5.1(e), 7.4 or 8.12 hereof. Nothing in this Section 5.2 shall prohibit the Borrower from contesting in good faith any lien (other than the liens of the Deed of Trust). For avoidance of doubt, the Borrower Loan shall be non-recourse to the Borrower, its general partners and any limited partner of the Borrower on and after the Conversion Date.

Section 5.3. No Encumbrances. The Borrower shall not create, permit, file or record against the Project without the prior written consent of the Bank and the Governmental Lender any deed of trust lien or other lien, inferior or superior to the lien of the Deed of Trust, other than (i) the Permitted Encumbrances, as defined in the Disbursement Agreement, and grants and

loans which are being subordinated concurrently with the making of the Borrower Loan; (ii) the Purchase Option; and (iii) liens for taxes not yet due and payable.

Section 5.4. Exceptions to Non-Recourse Liability. Notwithstanding Section 5.2 or any other provision of this Borrower Loan Agreement, the Governmental Lender (and the Bank, as assignee of the Governmental Lender) shall have the right to recover from the Borrower any loss, damage or cost (including, but not limited to attorney's fees) suffered by the Governmental Lender as a result of any of the following:

(a) fraud or intentional misrepresentation by the Borrower in connection with obtaining the Borrower Loan or in complying with any of Borrower's obligations under the Loan Documents;

(b) failure of Borrower to apply insurance proceeds, condemnation awards, security deposits from tenants or other sums or payments received by or on behalf of Borrower in its capacity as owner of the Project in accordance with the provisions of the Continuing Covenant Agreement;

(c) all rents not applied, first, to the payment of the reasonable operating expenses as such operating expenses become due and payable, and then, to the payment of principal (any applicable Prepayment Premium) and interest then due and payable under this Borrower Loan Agreement, the Borrower Notes and any other sums due under the Deed of Trust and all other Loan Documents (including but not limited to deposits or reserves payable under any Loan Document) except that Borrower will not be personally liable (i) to the extent that Borrower lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding, or (ii) with respect to rents that are distributed on account of any calendar year if Borrower has paid all operating expenses and Debt Service Amounts for that calendar year;

(d) [Reserved];

(e) failure of Borrower to pay to Governmental Lender upon demand all rents and profits, and security deposits received by the Borrower to which Governmental Lender is entitled after an Event of Default under this Borrower Loan Agreement;

(f) the commission of material waste by the Borrower;

(g) the presence or release of Hazardous Substances on, in or under the Project;

(h) all sums owing by the Borrower under all indemnities contained in this Borrower Loan Agreement or the Regulatory Agreement; and

(i) the failure by the Borrower to pay taxes and charges that may become a lien on the Project, to maintain and pay premiums for insurance required pursuant to this

Borrower Loan Agreement or the Deed of Trust, or to repay any sums advanced by the Governmental Lender or the Bank for any such purpose.

The exceptions to non-recourse liability contained in this Section 5.4 shall not limit the rights of the Governmental Lender, the Fiscal Agent (or the Bank, as assignee of the Governmental Lender) to:

(i) name the Borrower as a party defendant in any action, proceeding or arbitration, subject to the limitations of this Section 5.4 as to personal liability; or

(ii) assert any unpaid amounts on the Borrower Loan as a defense or offset to or against any claim or cause of action made or alleged against the Governmental Lender or the Bank by the Borrower or any indemnitor with respect to the Borrower Loan; or

(iii) exercise self-help remedies such as set-off or nonjudicial foreclosure against, or sale of, any real or personal property collateral security.

No provision of this Section 5.4 shall (i) affect any guaranty or similar agreement executed in connection with the debt evidenced by the Borrower Notes or this Borrower Loan Agreement, (ii) release or reduce the debt evidenced by the Borrower Notes or this Borrower Loan Agreement, (iii) impair the right of the Bank to enforce any provisions of the Deed of Trust or any other collateral security for the repayment of the Borrower Loan, (iv) impair the lien of the Deed of Trust or any other collateral security for the repayment of the Borrower Loan, or (v) impair the right of the Bank to enforce the provisions of any Loan Document other than by collection of amounts owed on the Borrower Notes. Nothing herein shall directly or indirectly limit the right of the Bank to collect or recover any collateral from Borrower or any person holding or receiving the same without the written consent of the Bank, including any affiliate who receives the rents and profits assigned to the Bank after the same become payable to the Bank or under circumstances where the same are recoverable by the Bank under applicable law or by contract. Furthermore, nothing in any other provision of the Borrower Notes, this Borrower Loan Agreement or the other Loan Documents shall be deemed to limit the Bank's right to enforce collection from Borrower (or any other person liable therefor) of all reasonable attorneys' fees, costs, expenses, indemnity liabilities and other amounts payable to the Bank apart from principal, any applicable Prepayment Premium or interest owing under the Borrower Notes.

Nothing in this Section 5.4 shall be interpreted to subordinate any obligation or liability of Borrower to the Bank to any operating expenses, and upon an Event of Default the Bank may apply revenues derived from the Project to any secured or unsecured obligation owing to the Bank, in any order.

## ARTICLE VI

### FURTHER AGREEMENTS

Section 6.1. Successor to the Governmental Lender. The Governmental Lender will at all times use its best efforts to maintain the powers, functions, duties and obligations now reposed in it pursuant to law or assure the assumptions of its obligations hereunder by any public trust or political subdivision succeeding to its powers.

Section 6.2. Borrower Not to Dispose of Assets; Conditions Under Which Exceptions Permitted. The Borrower agrees that during the term of this Borrower Loan Agreement it will not dispose of all or substantially all of its assets nor consolidate with nor merge into any entity unless (i) the Governmental Lender and the Bank shall consent to the disposition, consolidation or merger, (ii) the acquirer of its assets or the entity with which it shall consolidate or into which it shall merge shall be an individual or a corporation, partnership or other legal entity organized and existing under the laws of the United States of America or one of the states of the United States of America and shall be qualified and admitted to do business in the State, and (iii) such acquiring or remaining entity shall assume in writing all of the obligations of the Borrower under the Loan Documents. The consent of Bank and the Governmental Lender shall not be required for any transfers pursuant to the Partnership Agreement provided that the Borrower and any transferee comply with the requirements set forth in Section 13 of the Regulatory Agreement (other than any requirement in said Section 13 for the consent of the Governmental Lender or the Bank) and that they comply with any applicable requirements of the Continuing Covenant Agreement.

Section 6.3. Cooperation in Enforcement of Regulatory Agreement. The Borrower hereby covenants and agrees as follows:

- (a) to comply with all provisions of the Regulatory Agreement;
- (b) to advise the Governmental Lender in writing promptly upon learning of any default with respect to the covenants, obligations and agreements of the Borrower set forth in the Regulatory Agreement;
- (c) upon written direction by the Governmental Lender, to cooperate fully and promptly with the Governmental Lender in enforcing the terms and provisions of the Regulatory Agreement; and
- (d) to file in accordance with the time limits established by the Regulatory Agreement all reports and certificates required thereunder, and the Certification to the Secretary of the Treasury required by Section 4(g) of the Regulatory Agreement.

The Governmental Lender shall not incur any liability in the event of any breach or violation of the Regulatory Agreement by the Borrower, and the Borrower agrees to indemnify

the Governmental Lender from any claim or liability for such breach pursuant to Section 6.7 hereof.

Section 6.4. Additional Instruments. The Borrower hereby covenants to execute and deliver such additional instruments and to perform such additional acts as may be necessary, in the opinion of the Governmental Lender, to carry out the intent of the Loan Documents or to perfect or give further assurances of any of the rights granted or provided for in the Borrower Loan, the Deed of Trust and the Borrower Notes, provided, however, that no such additional instruments or acts shall change the economic terms of the transactions described herein or expand the liability of the parties hereunder.

Section 6.5. Books and Records. The Borrower hereby covenants to permit the Governmental Lender, the Fiscal Agent and the Bank or their duly authorized representatives access during normal business hours and upon reasonable notice to the books and records of the Borrower pertaining to the Borrower Loan and the Project, and to make such books and records available for audit and inspection, at reasonable times and under reasonable conditions to the Governmental Lender, the Fiscal Agent and the Bank and their duly authorized representatives and at the sole expense of the Borrower.

Section 6.6. Notice of Certain Events. The Borrower hereby covenants to advise the Governmental Lender, the Fiscal Agent and the Bank promptly in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. In addition, the Borrower hereby covenants to advise the Governmental Lender, the Fiscal Agent and the Bank promptly in writing of the occurrence of any Act of Bankruptcy.

Section 6.7. Indemnification of the Governmental Lender, Fiscal Agent and Bank. (a) To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend (by counsel approved by the indemnitee in its reasonable discretion) the Governmental Lender, the Fiscal Agent and the Bank and each of their respective officers, Councilmembers, directors, officials, employees, attorneys and agents past, present and future (collectively, the "Indemnified Parties"), against any and all losses, damages, claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject arising out of or based upon or in any way relating to:

(i) the Loan Documents or the execution or amendment thereof or in connection with transactions contemplated thereby, including the issuance and sale of the Governmental Lender Notes;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan or the Project, the

construction and operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition or construction of the Project or any part thereof;

(iii) any lien or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent and/or the Bank hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender, the Fiscal Agent or the Bank in respect of any portion of the Project;

(iv) any violation of any environmental law, rule or regulation, including any Hazardous Substances Laws with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(v) the payment or prepayment, in whole or in part, of the Borrower Notes;

(vi) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any closing certificate or disclosure document for the Borrower Notes or any of the documents relating to the Borrower Loan to which the Borrower is a party, or any omission or alleged omission from any disclosure document for the Borrower Loan of any material fact necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(vii) any declaration of taxability of interest on the Governmental Lender Tax-Exempt Note, or allegations (or regulatory inquiry) that interest on the Governmental Lender Tax-Exempt Note is taxable, for State or federal tax purposes; and

(viii) the Bank's acceptance of the assignment under the Assignment Agreement or administration of any of the Loan Documents, or the exercise or performance of any of its powers or duties thereunder or under any of the Loan Documents to which it is a party;

except (A) in the case of the foregoing indemnification of the Bank, the Fiscal Agent or any their respective officers, governing members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party, or (B) in the case of the foregoing indemnification of the Governmental Lender or any of its officers, Councilmembers, officials, employees, attorneys and agents, to the extent such damages are caused by the willful misconduct of such Indemnified Party; and provided that this Section 6.7(a) is not intended to give rise to a right of the Governmental Lender, the Fiscal Agent or the Bank to claim payment of the principal (any applicable Prepayment Premium) and accrued interest with respect to the Borrower Loan as a result of an indemnified third party claim. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the

Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if in the judgment of such Indemnified Party a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Borrower Loan Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 6.7 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Bank and the Governmental Lender have consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

(b) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant to Sections 5.1 and 7.4 hereof shall survive the final payment or defeasance of the Governmental Lender Notes and the Borrower Notes. The provisions of this Section 6.7 shall survive the termination of this Borrower Loan Agreement.

(c) In the event of any conflict between the provisions of this Section 6.7 and the provisions of Section 9 of the Regulatory Agreement, the provisions providing the most benefit and protection to the Indemnified Parties shall prevail. The provisions of this Section 6.7 shall in no way limit the indemnities set forth in the Deed of Trust and the Continuing Covenant Agreement.

(d) The obligations of the Borrower to the Indemnified Parties under this Section 6.7 are recourse obligations of the Borrower; provided, however, that nothing contained in this Section 6.7 shall be deemed to cause the Borrower or its partners to be personally liable for any principal or interest on the Borrower Notes other than as set forth in Section 5.4 hereof.

Section 6.8. Consent to Assignment. The Governmental Lender has made an assignment to the Bank of all rights and interest of the Governmental Lender in and to this Borrower Loan Agreement (except the Governmental Lender's rights under Section 6.7 hereof, and its retained rights under Sections 2.3, 2.4, 5.1(b), 5.1(d), 5.1(e), 7.4, 8.7, 8.12 and 8.13 hereof, together with its rights to receive notice and consent to amendments pursuant to the Loan Documents), the Borrower Notes and the Deed of Trust and has appointed the Bank as its agent to collect the payments by the Borrower on the Borrower Loan; and the Borrower hereby consents to all such assignments and such appointment.



Section 6.9. Compliance with Usury Laws. Notwithstanding any other provision of this Borrower Loan Agreement, it is agreed and understood that in no event shall this Borrower Loan Agreement, with respect to the Borrower Notes or other instrument of indebtedness, be construed as requiring the Borrower or any other person to pay interest and other costs or considerations that constitute interest under any applicable law which are contracted for, charged or received pursuant to this Borrower Loan Agreement in an amount in excess of the maximum amount of interest allowed under any applicable law.

In the event of any acceleration of the payment of the principal amount of the Borrower Notes or other evidence of indebtedness, that portion of any interest payment in excess of the maximum legal rate of interest, if any, provided for in this Borrower Loan Agreement or related documents shall be cancelled automatically as of the date of such acceleration, or if theretofore paid, credited to the principal amount.

The provisions of this Section 6.9 prevail over any other provision of this Borrower Loan Agreement.

Section 6.10. Title to the Project. The Borrower shall concurrently with the closing of the Borrower Loan have a leasehold interest in the site on which the Project is located free and clear of any lien or encumbrance except for (i) liens for nondelinquent assessments and taxes not yet due or which are being contested in good faith by appropriate proceedings; (ii) the Deed of Trust; (iii) Permitted Encumbrances (as defined in the Disbursement Agreement); and (iv) any other encumbrances approved by the Bank. Concurrently with the closing of the Borrower Loan, the Borrower shall cause to be delivered to the Bank one or more title policies, naming the Bank as the insured, as its interests may appear with endorsements specified in the Bank's escrow instructions, as required by the Bank.

Section 6.11. Payment of Taxes. The Borrower has filed or caused to be filed all federal, state and local tax returns or information returns which are required to be filed with respect to the Project and of which Borrower has knowledge, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due and payable other than those payable without penalty or interest.

Section 6.12. No Untrue Statements. Neither this Borrower Loan Agreement nor any other document, certificate or statement furnished to the Governmental Lender or the Bank by or on behalf of the Borrower, contains to the best of the Borrower's knowledge any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading or incomplete as of the date hereof. It is specifically understood by Borrower that all such statements, representations and warranties shall be deemed to have been relied upon by the Governmental Lender as an inducement to make the Borrower Loan, and by the Bank as an inducement to make the Bank Loan, and that if any such statements, representations and warranties were materially incorrect at the time they were made, the Governmental Lender may consider any such misrepresentation or breach an Event of Default.

Section 6.13. Insurance. The Borrower shall provide policies of property damage (fire, extended coverage, vandalism and malicious mischief), loss of rent, public liability and worker's compensation insurance with respect to the Project and the operation thereof as more fully described in the Continuing Covenant Agreement and the Deed of Trust.

Section 6.14. Tax Exempt Status of the Governmental Lender Tax-Exempt Note.

(a) It is the intention of the Governmental Lender and the Borrower that interest on the Governmental Lender Tax-Exempt Note shall be and remain excludable from the gross income of the owner of the Governmental Lender Tax-Exempt Note for federal income taxation purposes, and to that end the covenants and agreements of the Borrower in this Section 6.14 are for the benefit of the Bank and the Governmental Lender.

(b) The Borrower covenants and agrees that it will not knowingly and willingly use or permit the use of any of the funds provided by the Governmental Lender hereunder or any other funds of the Borrower, directly or indirectly, in such manner as would, or enter into, or allow any "related person" (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the Governmental Lender Tax-Exempt Note that would, or take or omit to take any other action that would cause the Governmental Lender Tax-Exempt Note to be an "arbitrage bond" within the meaning of Section 148 of the Code or "federally guaranteed" within the meaning of Section 149(b) of the Code and applicable regulations promulgated from time to time thereunder.

(c) In the event that at any time the Borrower is of the opinion or becomes otherwise aware that for purposes of this Section 6.14 it is necessary to restrict or to limit the yield on the investment of any moneys held by the Bank, the Borrower shall determine the limitations and so instruct the Bank in writing and cause the Bank to comply with those limitations.

(d) The Borrower will take such action or actions as may be reasonably necessary in the opinion of Tax Counsel, or of which it otherwise becomes aware, to fully comply with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service under Section 142 or Section 148 of the Code which are applicable to the Governmental Lender Tax-Exempt Note.

(e) The Borrower further agrees that it shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g., AFDC, SSI), physical disability, national origin or marital status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, to the extent required by applicable State or federal law.

(f) The Borrower further warrants and covenants that it has not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with

provisions contradictory to, or in opposition to, the provisions of this Borrower Loan Agreement and of the Regulatory Agreement, and that in any event, the requirements of this Borrower Loan Agreement and the Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.

(g) The Borrower shall not purchase, or permit any related party to the Borrower to purchase, the Governmental Lender Tax-Exempt Note in an amount related to the Borrower Loan as represented by the Tax-Exempt Borrower Note.

(h) The Borrower will use due diligence to complete the construction of the Project and reasonably expects to fully expend the full authorized principal of the Borrower Loan within three years of the date of execution of this Borrower Loan Agreement.

(i) The Borrower will take such action or actions as necessary to ensure compliance with the Tax Certificate and Sections 2.2(j), (n), (p), (r) and (s) hereof.

(j) The Borrower will make timely payment of any rebate amount due to the federal government by reason of any investment of the proceeds of the Borrower Tax-Exempt Note or any moneys pledged to the repayment of the Borrower Tax-Exempt Note or the Governmental Lender Tax-Exempt Note, at a yield in excess of the yield on the Governmental Lender Tax-Exempt Note, or otherwise as required under the Code.

(k) The Borrower has retained or shall retain the services of a Rebate Analyst to perform any and all calculations required to demonstrate compliance with its covenants herein with respect to the requirements of Section 148 of the Code as applicable to the Governmental Lender Tax-Exempt Note.

(l) In furtherance of the covenants in this Section 6.14, the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which are by this reference incorporated into this Borrower Loan Agreement and made a part of this Borrower Loan Agreement as if set forth in this Borrower Loan Agreement in full. In the event of conflict between the terms of this Borrower Loan Agreement and the Tax Certificate, the terms of the Tax Certificate shall control.

Section 6.15. Regulatory Agreement. In order to maintain the exclusion from gross income under federal tax law of interest on the Governmental Lender Tax-Exempt Note and to assure compliance with the laws of the State and the Act, the Borrower hereby agrees that it shall, concurrently with or before the execution and delivery of the Governmental Lender Tax-Exempt Note, execute and deliver and cause to be recorded the Regulatory Agreement.

Section 6.16. Useful Life. The Borrower hereby represents and warrants that, within the meaning of Section 147(a)(14) of the Code, the average maturity of the Governmental Lender Tax-Exempt Note does not exceed 120 percent of the average reasonably expected remaining

economic life of the facilities being financed with the proceeds of the Governmental Lender Tax-Exempt Note.

Section 6.17. Federal Guarantee Prohibition. The Borrower shall take no action, nor permit nor suffer any action to be taken if the result of the same would be to cause the Governmental Lender Tax-Exempt Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

Section 6.18. Prohibited Facilities. The Borrower represents and warrants that no portion of the proceeds of the Borrower Tax-Exempt Note shall be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises, and no portion of the proceeds of the Borrower Loan shall be used for an office unless (i) the office is located on the premises of the facilities constituting the Project and (ii) not more than a de minimus amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.

Section 6.19. Election of Applicable Income Limit. The Governmental Lender hereby elects to have the Project meet the requirements of Section 142(d)(1)(B) of the Code in that forty percent (40%) or more of the residential units in the Project shall be occupied by persons or families whose Gross Income is sixty percent (60%) or less of median income for the Area, adjusted for household size.

Section 6.20. Continuing Covenant Agreement. The Borrower agrees to comply with all of the covenants and agreements set forth in the Continuing Covenant Agreement.

Section 6.21. Removal of General Partner(s). Notwithstanding anything to the contrary contained in the Loan Documents (other than the Regulatory Agreement), removal, or withdrawal in lieu of removal, of a general partner for cause in accordance with the Borrower’s Partnership Agreement as in effect from time to time, and which comply with the applicable requirements of the Continuing Covenant Agreement, shall not constitute a default under any of the Loan Documents or accelerate the maturity of the Borrower Loan. If such general partner is removed, or withdraws in lieu of removal, the Bank shall not unreasonably withhold its consent to the admission of a substitute general partner; provided that if the Equity Investor designates itself, or an affiliate of the Equity Investor or of the Governmental Lender, as a substitute general partner, the Bank’s consent to the admission of such substitute general partner shall not be required. Any amendment to the Partnership Agreement to effectuate such removal and/or withdrawal and such admission of a substitute general partner shall not require consent of the Bank.

Notwithstanding the foregoing, a change in the general partner of the Borrower shall be subject to the applicable provisions of Section 13 of the Regulatory Agreement.

Section 6.22. Assignment of Equity Investor Interests. Subject to provisions of Section 13 of Regulatory Agreement and except as may be provided in the Continuing Covenant Agreement, the respective interests in the Borrower of any Equity Investor of the Borrower shall be freely transferable and any amendment to the Partnership Agreement to effectuate such transfers shall not require consent of the Governmental Lender.

Section 6.23. Insurance and Condemnation Proceeds. Except as provided in the Continuing Covenant Agreement, in the event of any fire or other casualty to the Project or any portion thereof or eminent domain proceedings resulting in condemnation of the Project or any portion thereof, the Borrower shall have the right to rebuild the respective portion of the Project, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the Borrower Loan in balance and rebuild the respective portion of the Project in a manner that provides adequate security to the Governmental Lender (as determined by the Bank) for repayment of the Borrower Loan, or if such proceeds are insufficient, then the Borrower shall have funded any deficiency, (b) the Bank shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no continuing material default then exists by the Borrower under the Loan Documents. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Borrower Loan in a manner that provides adequate security to the Governmental Lender (as determined by the Bank) for repayment of the remaining balance of the Borrower Loan.

Section 6.24. Purchase Option. Notwithstanding anything to the contrary contained in the Loan Documents, (i) the exercise of the Purchase Option provided for in the Partnership Agreement shall not constitute a default under the Loan Documents or accelerate the maturity of the Borrower Loan thereunder, and (ii) the consummation of the transfer pursuant to the Purchase Option to any general partner of the Borrower or an Affiliate of such partner shall not require the consent of the Bank. The exercise of the Purchase Option and any rights related to either thereof shall not constitute a default or accelerate the maturity of the Borrower Loan.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default. Each of the following shall be an "Event of Default":

(a) The Borrower shall fail to pay when due the amounts required to be paid under this Borrower Loan Agreement, the Deed of Trust, the Borrower Assignments or the Borrower Notes when the same shall become due and payable in accordance with the terms of this Borrower Loan Agreement or the Borrower Notes, including a failure to repay any amounts which have been previously paid but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings; or

(b) The Borrower shall fail to perform or observe any of its covenants or agreements contained in this Borrower Loan Agreement, the Regulatory Agreement, the Borrower Notes, the Disbursement Agreement, the Continuing Covenant Agreement or the Deed of Trust, other than as specified in paragraph (a) above, and such failure shall continue during and after the period specified in Section 7.2; or

(c) Any representation or warranty of the Borrower hereunder shall be determined by the Bank or the Governmental Lender to have been false or misleading in any material respect when made; or

(d) If there is, in the reasonable determination of the Bank, any material or adverse change in the financial condition of the Borrower affecting the Borrower's ability to repay the Borrower Loan or a filing of a complaint for receivership against the Borrower, or an Act of Bankruptcy, or if the Borrower becomes insolvent or makes a general assignment for the benefit of creditors or consents to the appointment of a receiver of all or any of its assets, or voluntarily suspends its usual business; or

(e) [Reserved];

(f) This Borrower Loan Agreement or any of the other Loan Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason; or

(g) Any of the events set forth in Sections 7.1(d) occurs with respect to a general partner of the Borrower unless such general partner is replaced in accordance with the Partnership Agreement and the Continuing Covenant Agreement within the period provided in Section 7.2(b) below; or

(h) Except as permitted by Section 6.21 hereof, the resignation or expulsion of a general partner of the Borrower, unless such general partner is replaced in accordance with the Partnership Agreement within the period provided in Section 7.2(b) below; or

(i) Prior to the completion of construction of the Project, the construction of the Project is abandoned or work thereon ceases for a period of more than thirty (30) consecutive days for any reason except delays caused by Force Majeure, or the construction of the Project is not completed prior to the Completion Date (as defined in the Disbursement Agreement) unless such date has been extended with the written approval of the Bank, regardless of the reason for the delay except delays caused by Force Majeure; or

(j) Other than as permitted by the Loan Documents, any sale, transfer, hypothecation, assignment or conveyance of the Project or any portion thereof or interest therein by the Borrower except in accordance with the requirements set forth in the Regulatory Agreement; or

(k) [Reserved]

(l) The commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Borrower Loan, including a garnishment of any of the Borrower's accounts, including deposit accounts, with the Bank; however, this Event of Default shall not apply if there is a good faith dispute by the Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if the Borrower gives the Bank written notice of the creditor or forfeiture proceeding and deposits with the Bank monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by the Bank, in its sole discretion, as being an adequate reserve or bond for the dispute.

Section 7.2. Notice of Default; Opportunity to Cure. If the Borrower has not been given notice of a similar default within the past twelve (12) months, default under Section 7.1(b), (c), (g), (h), (i), (j), (k), or (l) hereof shall not constitute an Event of Default until:

(a) The Governmental Lender or the Bank, by registered or certified mail, shall give notice to the Borrower of such default specifying the same and stating that such notice is a "Notice of Default"; and

(b) The Borrower and Equity Investor shall have had 30 days after receipt of such notice to correct the default and shall not have corrected it; provided, however, that if the default stated in the notice is of such a nature that it cannot be corrected within 30 days, such default shall not constitute an Event of Default hereunder so long as (i) the Borrower or the Equity Investor institute corrective action within said 30 days and diligently pursues such action until the default is corrected, but in no event later than 60 days after the occurrence of such Event of Default, and (ii) in the opinion of Tax Counsel to the Governmental Lender, the failure to cure said default within 30 days will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Lender Tax-Exempt Note.

Notwithstanding anything to the contrary contained in the Loan Documents, if a monetary default or event of default occurs under the terms of any of the Loan Documents, prior to exercising any remedies thereunder, the Governmental Lender or the Bank shall give the Borrower and the Equity Investor of the Borrower under its Partnership Agreement simultaneous written notice of such default. The Borrower and Equity Investor shall have a period of ten (10) days after receipt of such notice, or such longer period of time as may be set forth in the applicable Loan Documents, to cure the default prior to exercise of remedies by the Governmental Lender under the Loan Documents.

Notwithstanding anything to the contrary contained in the Loan Documents, the Governmental Lender and the Bank hereby agree that any cure of any default made or tendered by the one or more of the Borrower's limited partners shall be deemed to be a cure by the

Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

Section 7.3. Remedies. Whenever any Event of Default under Section 7.1 hereof shall have happened and be continuing, the Governmental Lender, the Fiscal Agent (at the written direction of the Bank or the Governmental Lender) and the Bank may take whatever remedial steps as may be allowed under the law, this Borrower Loan Agreement and the other Loan Documents. WHETHER OR NOT GOVERNMENTAL LENDER, FISCAL AGENT OR BANK ELECT TO EMPLOY ANY OR ALL OF THE REMEDIES AVAILABLE TO GOVERNMENTAL LENDER, FISCAL AGENT OR BANK UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, NEITHER GOVERNMENTAL LENDER, FISCAL AGENT NOR BANK SHALL BE LIABLE FOR THE CONSTRUCTION OF, OR FAILURE TO CONSTRUCT, COMPLETE OR PROTECT, THE PROJECT.

Section 7.4. Attorneys' Fees and Expenses. If an Event of Default occurs and if the Governmental Lender, the Fiscal Agent or the Bank should employ attorneys or incur expenses for the enforcement of any obligation or agreement of the Borrower contained herein, the Borrower on demand will pay to the Governmental Lender, the Fiscal Agent and/or the Bank the reasonable fees of such attorneys and the reasonable expenses so incurred, including court appeals.

Section 7.5. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Governmental Lender, the Fiscal Agent or the Bank is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Borrower Loan Agreement or now or hereafter existing at law or in equity or by statute; provided, that the remedies are subject to the provisions of Section 5.2 of this Borrower Loan Agreement. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Governmental Lender, the Fiscal Agent or the Bank to exercise any remedy reserved to either of them in this Article VII, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. Such rights and remedies as are given the Governmental Lender hereunder shall also extend to the Bank, as assignee of the Governmental Lender's interests in the Borrower Notes, the Deed of Trust and this Borrower Loan Agreement, and the Bank, as assignee of the Governmental Lender's interests in the Borrower Notes, the Deed of Trust and this Borrower Loan Agreement shall be deemed a third party beneficiary of all covenants and agreements herein contained.

Section 7.6. No Additional Waiver Implied by One Waiver. In the event any agreement or covenant contained in this Borrower Loan Agreement should be breached by the Borrower and thereafter waived by the Governmental Lender, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder including any other breach of the same agreement or covenant.



## ARTICLE VIII

### MISCELLANEOUS

Section 8.1. Entire Agreement. This Borrower Loan Agreement, the Borrower Notes, the Regulatory Agreement, the Deed of Trust and the other Loan Documents to which the Borrower is a party constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the Governmental Lender and the Borrower with respect to the subject matter hereof.

Section 8.2. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Borrower Loan Document or Bank Loan Document shall be provided in accordance with, and subject to the provisions of Section 10.02 of the Bank Loan Agreement.

Section 8.3. Assignments. This Borrower Loan Agreement may not be assigned by any party without the prior written consent of the other, except that the Governmental Lender shall assign to the Bank its rights under this Borrower Loan Agreement, the Bank may assign its rights hereunder to any transferee of the Governmental Lender Notes subject to the requirements of the Bank Loan Agreement, and except also that the Borrower may assign to any transferee its rights under this Borrower Loan Agreement as provided by Section 6.2.

Section 8.4. Severability. If any provision of this Borrower Loan Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

Section 8.5. Execution of Counterparts. This Borrower Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.6. Amendments, Changes and Modifications. Except as otherwise provided in this Borrower Loan Agreement, subsequent to the issuance of the Borrower Notes and prior to their payment in full, this Borrower Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto and the Bank.

Section 8.7. Governing Law and Venue. This Borrower Loan Agreement and the Governmental Lender Notes are contracts made under the laws of the State and shall be governed by and construed in accordance with the Constitution and laws of the State applicable to contracts made and performed in the State. This Borrower Loan Agreement and the Governmental Lender Notes shall be enforceable in the State, and any action arising out of this Borrower Loan Agreement or the Governmental Lender Notes shall be filed and maintained in the Superior Court of California, County of Santa Clara, unless the Governmental Lender waives this requirement.

Section 8.8. Waiver of Jury Trial. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE BORROWER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BORROWER LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY, AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY SUCH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL. IF, FOR ANY REASON, THIS PROVISION IS DETERMINED TO BE UNENFORCEABLE, ALL MATTERS OTHERWISE SUBJECT TO JURY TRIAL SHALL BE SUBJECT TO THE JUDICIAL REFERENCE PROCEDURES SET FORTH IN THE FOLLOWING SECTION 8.9 OF THIS BORROWER LOAN AGREEMENT.

Section 8.9. Judicial Reference. The Borrower hereby covenants the following:

(a) The Borrower prefers that any dispute involving it be resolved in litigation subject to a jury trial waiver as set forth in this Borrower Loan Agreement, but the California Supreme Court has held that such pre-dispute jury trial waivers are unenforceable. This Section 8.9 will be applicable until: (i) the California Supreme Court holds that a pre-dispute jury trial waiver provision similar to that contained in Section 8.8 of this Borrower Loan Agreement is valid or enforceable; or (ii) the California Legislature passes legislation and the governor of the State signs into law a statute authorizing pre-dispute jury trial waivers and as a result such waivers become enforceable.

(b) Other than the exercise of provisional remedies (any of which may be initiated pursuant to applicable law), any controversy, dispute or claim (each, a "Claim") between the parties arising out of or relating to this Borrower Loan Agreement will be resolved by a reference proceeding in California in accordance with the provisions of Section 638 et seq. of the California Code of Civil Procedure ("CCP"), or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to the reference proceeding. Venue for the reference proceeding will be in the Superior Court or Federal District Court in Santa Clara County, California (the "Court") unless waived by the Governmental Lender in writing.

(c) The referee shall be a retired Judge or Justice selected by mutual written agreement of the parties. If the parties do not agree, the referee shall be selected by the Presiding Judge of the Court (or his or her representative). A request for appointment of a referee may be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted. The referee shall be appointed to sit with all the powers provided by law. Pending appointment of the referee, the Court has power to issue temporary or provisional remedies.

(d) The parties agree that time is of the essence in conducting the reference proceedings. Accordingly, the referee shall be requested, subject to change in the time

periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within fifteen (15) days after the date of selection of the referee, (ii) if practicable, try all issues of law or fact within ninety (90) days after the date of the conference, and (iii) report a statement of decision within twenty (20) days after the matter has been submitted for decision.

(e) The referee will have power to expand or limit the amount and duration of discovery. The referee may set or extend discovery deadlines or cutoffs for good cause, including a party's failure to provide requested discovery for any reason whatsoever. Unless otherwise ordered based upon good cause shown, no party shall be entitled to "priority" in conducting discovery, depositions may be taken by either party upon seven (7) days written notice, and all other discovery shall be responded to within fifteen (15) days after service. All disputes relating to discovery which cannot be resolved by the parties shall be submitted to the referee whose decision shall be final and binding.

(f) Except as expressly set forth in this Borrower Loan Agreement, the referee shall determine the manner in which the reference proceeding is conducted including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when either party so requests, a court reporter will be used at any hearing conducted before the referee, and the referee will be provided a courtesy copy of the transcript. The party making such a request shall have the obligation to arrange for and pay the court reporter. Subject to the referee's power to award costs to the prevailing party, the parties will equally share the cost of the referee and the court reporter at trial.

(g) The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State. The rules of evidence applicable to proceedings at law in the State will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, provide all temporary or provisional remedies, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a trial, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision, and pursuant to CCP Section 644 the referee's decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court. The final judgment or order or from any appealable decision or order entered by the referee shall be fully appealable as provided by law. The parties reserve the right to findings of fact, conclusions of laws, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

(h) If the enabling legislation which provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that

would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted by a retired Judge or Justice, in accordance with the California Arbitration Act Section 1280 through 1294.2 of the CCP as amended from time to time. The limitations with respect to discovery set forth above shall apply to any such arbitration proceeding.

(i) THE PARTIES RECOGNIZE AND AGREE THAT ALL DISPUTES RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION WILL APPLY TO ANY DISPUTE BETWEEN THEM WHICH ARISES OUT OF OR IS RELATED TO THIS BORROWER LOAN AGREEMENT.

Section 8.10. Term of Agreement. This Borrower Loan Agreement shall be in full force and effect from the date hereof until such time as the Borrower Notes shall have been fully paid or provision made for such payment. Time is of the essence in this Borrower Loan Agreement.

Section 8.11. Survival of Agreement. All agreements, representations and warranties made herein shall survive the making of the Borrower Loan.

Section 8.12. Expenses. The Borrower shall pay and indemnify the Governmental Lender, the Fiscal Agent and the Bank against all reasonable fees, costs and charges, including reasonable fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith (and with respect to the Bank, without gross negligence) and arising out of or in connection with the Loan Documents. These obligations and those in Section 6.7 shall remain valid and in effect notwithstanding repayment of the loan hereunder or the Governmental Lender Notes or termination of this Borrower Loan Agreement or the Bank Loan Agreement.

Section 8.13. Waiver of Personal Liability. No director, Councilmember, officer, agent or employee of the Governmental Lender shall be individually or personally liable for the payment of any principal (or prepayment price) or interest on the Governmental Lender Notes or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Borrower Loan Agreement; but nothing herein contained shall relieve any such Councilmember, officer, agent or employee from the performance of any official duty provided by law or by this Borrower Loan Agreement.

Section 8.14. Binding Effect; Third Party Beneficiary. This Borrower Loan Agreement shall inure to the benefit of and shall be binding upon the Governmental Lender, the Borrower and their respective successors and assigns. The Bank and the Fiscal Agent are each intended to be a third party beneficiary of this Borrower Loan Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Borrower Loan Agreement, all as of the date first above written.

CITY OF SAN JOSÉ, CALIFORNIA, as  
Governmental Lender

By: \_\_\_\_\_  
Julia H. Cooper,  
Director of Financing

By: \_\_\_\_\_  
Jacky Morales-Ferrand,  
Director of Housing Development

Approved as to form:

By: \_\_\_\_\_  
Hana Hardy,  
Senior Deputy City Attorney

19026.20:J17885

[Signature Page of the City to Mariposa Place Borrower Loan Agreement]

SAN JOSE W. SAN CARLOS LP,  
a California limited partnership

By: San Jose W. San Carlos LLC,  
a California limited liability company,  
its Administrative General Partner

By: Danco Communities,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
Daniel Johnson,  
President

By: Community Revitalization and  
Development Corporation, a California  
nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
David Rutledge,  
President

19026.20:J17885

[Signature Page of the Borrower to Mariposa Place Borrower Loan Agreement]

## EXHIBIT A

### FORM OF BORROWER [TAX-EXEMPT/TAXABLE] NOTE

January \_\_, 2022

San Jose W. San Carlos LP, a California limited partnership (the "Borrower"), for value received hereby promises to pay to the order of the City of San José, California (the "Governmental Lender"), or its successors and assigns, the sum of [\_\_\_\_\_] DOLLARS (\$[[\_\_\_\_\_] ]), or so much thereof as may be advanced from time to time, together with interest on the advanced and unpaid amount of this Borrower [Tax-Exempt/Taxable] Note (this "Borrower Note") at the applicable interest rate referred to below from \_\_\_\_\_, 2022 (the "Closing Date") until the Borrower's obligation to pay the Outstanding Balance (as hereinafter defined) shall be discharged. The Outstanding Balance shall mean the principal balance of the portion of the Borrower Loan evidenced by this Borrower Note which has been advanced by or on behalf of the Governmental Lender under Section 3.4 of the Borrower Loan Agreement described below, and has not been repaid by the Borrower to the Governmental Lender as of the date of calculation of the Outstanding Balance.

All capitalized terms used in this Borrower Note but not defined herein shall have the meanings given to them in the Borrower Loan Agreement referenced below.

This Borrower Note is issued to evidence a portion of the Borrower Loan by the Governmental Lender to the Borrower and the obligation of the Borrower to repay the same and shall be governed by and be payable in accordance with the terms and conditions (including the provisions of Section 5.2) of a Loan Agreement (the "Borrower Loan Agreement"), dated as of January 1, 2022, between the Governmental Lender and the Borrower pursuant to which Governmental Lender has made the Borrower Loan. This Borrower Note, together with the Borrower Loan Agreement, have been assigned to Pacific Western Bank (the "Bank") pursuant to an Assignment Agreement, dated as of January 1, 2022, by and between the Governmental Lender and the Bank. All payments on this Borrower Note shall be made by the Borrower to the Bank, as assignee of the Governmental Lender under said Assignment Agreement.

The Outstanding Balance of this Borrower Note shall be due and payable in its entirety [Tax-Exempt Note – [\_\_\_\_\_] 1, 20[\_\_\_\_\_] ] [Taxable Note – on the Conversion Date as required by Section 2.01(e) of the Continuing Covenant Agreement, but no later than [\_\_\_\_\_] 1, 20[\_\_\_\_\_] ] (the "Maturity Date").

Interest on this Borrower Note shall be payable to the Bank, as assignee of the Governmental Lender, in immediately available funds on the first day of each month, commencing [\_\_\_\_\_] 1, 2022. This Borrower Note shall bear interest at a rate of [\_\_\_\_\_] PERCENT ([\_\_\_\_\_]%) per annum from the Closing Date to (but not including) [Tax-Exempt Note – [\_\_\_\_\_] 1,

20[ ], and at a rate of [ ] PERCENT ([ ]%) per annum on and after [ ] 1, 20[ ] to (but not including) [ ] 1, 20[ ], and at a rate of [ ] PERCENT ([ ]%) on and after [ ] 1, 20[ ] [Taxable Note – [ ] 1, 20[ ]]. Interest on this Borrower Note shall be computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Borrower Note shall be computed using this method. [Tax-Exempt Note – Principal of this Borrower Note shall be paid in part on the Conversion Date, as provided in Section 2.01(e)(i) of the Continuing Covenant Agreement, and thereafter on the first day of the month based upon a schedule provided by the Bank computed upon a thirty year amortization schedule.] [Taxable Note – Principal of this Borrower Note shall be paid no later than the Maturity Date.]

[Tax-Exempt Note – On and after a Determination of Taxability (as defined in the Continuing Covenant Agreement), this Borrower Note shall bear interest at the Taxable Interest Rate (as defined in the Continuing Covenant Agreement).]

In the event the Borrower fails to make the timely payment of any monthly payment, and such payment remains unpaid for a period of ten (10) days subsequent to the established payment date, the Borrower shall pay to the Bank a late charge in the amount of five percent (5.0%) of the monthly payment so due and payable. Upon the occurrence and during the continuance of an Event of Default (as defined in the Borrower Loan Agreement), the interest rate on this Borrower Note shall immediately increase to an interest rate equal to the interest rate that would otherwise be in effect plus five percent (5.0%) (the "Default Rate").

The Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the Borrower Loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law.

[Tax-Exempt Note – The principal of the portion of the Borrower Loan evidenced by this Borrower Note may be prepaid on any date, on and prior to the Conversion Date in whole or in part and after [ ] 1, 20[ ] only in whole, upon 30 days prior written notice to the Bank.

A Prepayment Premium will be due and payable by the Borrower in connection with any prepayment of principal under this Borrower Note during each of the first four (4) years following [ ] 1, 20[ ]. The Prepayment Premium will be computed as follows, the product obtained by multiplying the amount of principal being prepaid by:

- (a) four percent (4%) for any prepayment made during the period of [ ] 1, 20[ ] through [ ] 31, 20[ ];
- (b) three percent (3%) for any prepayment made during the period of [ ] 1, 20[ ] through [ ] 31, 20[ ];



(c) two percent (2%) for any prepayment made during the period of [\_\_\_\_] 1, 20[\_\_\_\_] through [\_\_\_\_] 31, 20[\_\_\_\_]; or

(d) one percent (1%) for any prepayment made during the period of [\_\_\_\_] 1, 20[\_\_\_\_] through [\_\_\_\_] 31, 20[\_\_\_\_].

Notwithstanding any other provision of this Borrower Note, no Prepayment Premium will be payable with respect to any scheduled principal payment in accordance with the amortization schedule provided by the Bank.

THIS BORROWER NOTE SHALL BE SECURED BY THE DEED OF TRUST, SECURITY AGREEMENT, ABSOLUTE ASSIGNMENT OF RENTS AND FIXTURE FILING (THE "DEED OF TRUST") MADE BY THE BORROWER, AS TRUSTOR, FOR THE BENEFIT OF THE GOVERNMENTAL LENDER, AS BENEFICIARY, NAMING FIRST AMERICAN TITLE COMPANY AS TRUSTEE THEREUNDER, AND DATED AS OF JANUARY 1, 2022. THE GOVERNMENTAL LENDER HAS ASSIGNED ITS INTERESTS UNDER SAID DEED OF TRUST TO THE BANK.

Upon the occurrence of an Event of Default under and as defined in the Borrower Loan Agreement and the decision by the Bank to accelerate the Borrower Loan, then all obligations secured by this Borrower Note may be declared due and payable, as provided in the Borrower Loan Agreement.

All sums due hereunder shall be paid in lawful money of the United States of America. All payments made hereunder shall be credited first against accrued and previously unpaid interest, against principal, with the balance applied against unpaid late charges.

The Borrower, for itself and its legal representatives, successors, and assigns expressly waives demand, notice of nonpayment, presentment for demand, presentment for the purpose of accelerating maturity, dishonor, notice of dishonor, protest, notice of protest, notice, notice of maturity, and diligence in collection. The Borrower agrees to pay all court costs and reasonable attorneys' fees if counsel is engaged to assist in the collection of this Borrower Note after an Event of Default hereunder if any action is commenced to construe or enforce the terms of this Borrower Note.

[Tax-Exempt Note – From and after the Conversion Date, this Borrower Note and the Borrower Loan shall be nonrecourse obligations of the Borrower. From and after the Conversion Date, neither the Borrower or its partners, nor any director or employee of the Borrower or its partners, shall have any personal liability for repaying the principal of or interest on the Borrower Loan. From and after the Conversion Date, the sole recourse of the Governmental Lender or its assignee for repayment of the principal of and interest on the Borrower Loan shall be the exercise of rights under the Loan Documents (as defined in the Borrower Loan Agreement) and against such other property pledged or held thereunder for the benefit of the Governmental Lender or its assignee.]

This Borrower Note is a contract made under the laws of the State and shall be governed by and construed in accordance with the Constitution and laws of the State applicable to contracts made and performed in the State. This Borrower Note shall be enforceable in the State, and any action arising out of this Borrower Note shall be filed and maintained in the Superior Court of California, County of Santa Clara, unless the Governmental Lender waives this requirement.

IN WITNESS WHEREOF, San Jose W. San Carlos LP, a California limited partnership, has caused this Borrower Note to be executed in its name and on its behalf all as of the date set forth above.

SAN JOSE W. SAN CARLOS LP,  
a California limited partnership

By: San Jose W. San Carlos LLC,  
a California limited liability company,  
its Administrative General Partner

By: Danco Communities,  
a California corporation,  
its Manager

By: \_\_\_\_\_  
Daniel Johnson,  
President

By: Community Revitalization and  
Development Corporation, a California  
nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
David Rutledge,  
President

[Signature Page to Borrower [Tax-Exempt/Taxable] Note – Mariposa Place]

Endorsement to Bank

Pay to the order of Pacific Western Bank, without recourse or warranty.

Dated: \_\_\_\_\_, 2022

CITY OF SAN JOSE, CALIFORNIA

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

Julia Cooper,  
Director of Finance

[Signature Page to Endorsement to Bank for Borrower [Tax-Exempt/Taxable] Note –  
Mariposa Place]