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9.3.3 No consent by Bondowner Representative under this Section 9.3 shall constitute (a) a consent by Issuer under the Regulatory Agreement to any sale, assignment, encumbrance, transfer or other disposition of all or any part of the Property, or any direct or indirect interest therein, (b) a waiver by Issuer of any term or condition of the Regulatory Agreement, or (c) any waiver by a party in interest under the Subordinate Loan Documents or any of them.

9.3.4 No transfer of a General Partner interest or any substitution, replacement or addition of a General Partner shall, under any circumstances, adversely affect the exemption or availability or eligibility for an exemption from real property taxes for the Property.

9.4 Removal of Personal Property. Borrower shall not cause or permit the removal from the Property of any items of Personal Property (other than tools and equipment used in the development of the Project) unless (i) no Event of Default remains uncured and (ii) Borrower promptly substitutes and installs on the Property other items of equal or greater value in the operation of the Property, all of which items shall be free of liens (other than Permitted Liens) and shall be subject to the liens of the Deeds of Trust and the Security Agreement, and executes and delivers to Bondowner Representative all documents required by Bondowner Representative in connection with the attachment of such liens to such items. Borrower shall keep detailed records of each such removal and shall make such records available to Bondowner Representative upon written request from time to time.

9.5 Management Agreements. Without the prior written consent of Bondowner Representative (which shall not be unreasonably withheld), Borrower shall not enter into any agreement providing for the management, leasing or operation of any portion of the Property, other than the initial management agreement with John Stewart Company, as property manager, which is assigned to Bondowner Representative with the written consent of such property manager pursuant to Section 6.11 hereof.

9.6 Assessment and Community Facilities Districts. Unless otherwise required by applicable law, Borrower shall not, without Bondowner Representative's prior written consent, which consent shall not be unreasonably withheld, cause or suffer to become effective or otherwise consent to the formation of any community facilities district which includes the Property or any part of the Property pursuant to the Mello-Roos Community Facilities Act of 1982, any assessment district which includes the Property or any part of the Property pursuant to the Municipal Improvement Act of 1913, or any other comparable or similar district, area or territory which includes the Property or any part of the Property pursuant to any Law, or cause or otherwise consent to the levying of special taxes by any community facilities district against the Property or any part thereof, the levying of assessments by any such assessment district against the Property or any part thereof, or the levying of assessments, taxes and/or other impositions by any such district, area or territory.

9.7 Bond Documents, Subordinate Loan Documents, Partnership Agreement [and Swap Agreement.] Borrower shall not enter into any new Bond Document, Subordinate Loan Document, [or the Swap Agreement,] or amend, modify, supplement, cancel or terminate any Bond Document, any Subordinate Loan Document, the Partnership Agreement, [or the Swap Agreement,] without the prior written consent of Lender and Bondowner Representative.

9.8 Amendment to Partnership Agreement. Borrower shall not, without the prior written consent of Bondowner Representative (which consent shall not be unreasonably withheld, conditioned or delayed), amend, supplement or restate, whether in whole or in part, the Partnership Agreement other than amendments which are strictly limited to memorializing Permitted Transfers.

9.9 Limitations on Additional Indebtedness and Other Transactions. Borrower shall not, without the prior written consent of Bondowner Representative, incur any indebtedness of any kind other than the Subordinate Loans; provided that in the instance of the Subordinate Loans the Subordination Agreements shall remain in full force and effect and of record in the real property records of the County at all times while any portion of the Loans or the amounts payable under or in respect of the Loan Documents remain unpaid. In addition to the foregoing, Borrower shall not, without the prior written consent of Bondowner Representative (which consent shall not be unreasonably withheld), engage in any off balance sheet or hedge transactions, including without limitation, interest rate swaps, other than with Bondowner Representative or its affiliates.

9.10 [Swap Agreement. (a) Upon the Maturity Date, or such earlier date that the Loan becomes due by reason of prepayment or an Event of Default, or otherwise, Lender may direct that all Transactions (as defined in the Swap Agreement) be terminated in accordance with the Swap Agreement and any and all termination payments, breakage fees, discontinuance fees and any other fees and costs with respect to such Swap Agreement shall become due and payable by Borrower in accordance with the Swap Agreement. Unless otherwise specifically agreed in writing by Borrower and U.S. Bank in its capacity as counterparty under the Swap Agreement, Borrower's obligations (including any payment obligations) with respect to the Swap Agreement shall be secured by the Deeds of Trust and any default by Borrower (after the expiration of any applicable notice and cure period) under the Swap Agreement shall constitute an Event of Default under this Agreement.

(b) U.S. Bank shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower such action as U.S. Bank may at any time determine to be necessary or advisable to cure any default under the Swap Agreement or to protect the rights of Borrower or U.S. Bank thereunder; provided, however, that before the occurrence of an Event of Default, U.S. Bank shall give prior written notice to Borrower before taking any such action. For this purpose, Borrower hereby constitutes U.S. Bank its true and lawful attorney-in-fact with full power of substitution, which power of attorney is coupled with an interest and irrevocable by Borrower in any manner, or for any reason, to exercise, at the election of U.S. Bank, any and all rights and remedies of Borrower under the Swap Agreement, including making any payments thereunder and consummating any transactions contemplated thereby and to take any action that U.S. Bank may deem proper in order to collect, assert or enforce any claim, right or title, in and to the Swap Agreement hereby assigned and conveyed, from time to time, to

institute and prosecute in the name and at the expense of Borrower, or otherwise, but for the benefit of U.S. Bank any and all proceedings at law, in equity, or otherwise, that U.S. Bank may deem proper in order to collect, assert or enforce any claim, right or title, of any kind, in and to the Swap Agreement hereby assigned and conveyed, or intended so to be, and to defend and compromise, at the election of U.S. Bank, any and all actions, suits or proceedings with respect to the Swap Agreement, and generally to do all and any such action in relation thereto as U.S. Bank shall deem advisable. U.S. Bank shall not incur any liability if any action so taken by U.S. Bank or on its behalf shall prove to be inadequate or invalid. Borrower expressly understands and agrees that U.S. Bank is not hereby assuming any duties or obligations of Borrower to make payments to U.S. Bank under the Swap Agreement or under any other Loan Document. Such payment duties and obligations remain the responsibility of Borrower notwithstanding any language in this Agreement.]

9.11 [Automatic Deduction and Credit. At Bondowner Representative's option, payments owed by U.S. Bank as swap counterparty under the Swap Contract may be credited against accrued interest and other payments owed by Borrower under the Construction Loan and/or the Construction Note. U.S. Bank will credit the applicable amounts on the dates the foregoing payments become due; provided, however, that if a due date does not fall on a Banking Day, U.S. Bank will credit the applicable amounts on the first Banking Day following such due date.]

9.12 TCAP/MHP Backfill Loan Documents. Borrower agrees that:

(a) Bondowner Representative and its counsel shall (at the sole cost and expense of Borrower) be provided an opportunity to review and approve the TCAP/MHP Backfill Loan Documents prior to the execution and delivery thereof.

(b) The terms and conditions upon which the TCAP/MHP Backfill Loan will be made will be pursuant to the understandings memorialized in the forms of the TCAP/MHP Backfill Loan Documents, as provided to and approved by Bondowner Representative and its counsel as of the date of this Agreement.

(c) The TCAP/MHP Backfill Loan Documents shall be the only documents, agreements and understandings with respect to the TCAP/MHP Backfill Loan, other than the usual and customary Uniform Commercial Code financing statements, which Bondowner Representative and its counsel shall (at the sole cost and expense of Borrower) have been given an opportunity to review and approve.

(d) For all purposes of this Agreement, all documents relating to the TCAP/MHP Backfill Loan shall be considered to be part of the Subordinate Loan Documents and the TCAP/MHP Backfill Loan shall constitute a Subordinate Loan.

(e) Borrower acknowledges and agrees that TCAC shall be required to enter into a subordination agreement in the form and substance acceptable to Bondowner Representative ("TCAP/MHP Backfill Subordination Agreement") and its counsel at or prior to the time the TCAP/MHP Backfill Loan Documents are expected to be executed and delivered as described in Section 9.12(a) hereof.

(f) Without limiting anything in this Section 9.12, the Borrower understands, acknowledges and agrees that the TCAP/MHP Backfill Tri-Party Agreement shall be executed and delivered in form and substance satisfactory to Bondowner Representative on or prior to the Issuance Date.

10. Tax and Other Covenants. While any obligation of Borrower or Guarantor under the Loan Documents remains outstanding, the following provisions shall apply, except to the extent Issuer otherwise consents in writing:

10.1 Payment of Issuer Fees and Expenses.

(a) The Borrower hereby agrees to pay, when due, the amounts, if any (“Issuer Fees”), described in the Bond Documents.

(b) The Borrower agrees to pay to the Issuer, within thirty (30) days after receipt of request for payment thereof, all reasonable out-of-pocket expenses of the Issuer related to the Project and the financing thereof that are not otherwise required to be paid by the Borrower under the terms of this Agreement and are not paid from disbursements of the Loans, including, without limitation, reasonable legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Bonds.

10.2 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 Issuer and Bondowner Representative 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 Issuer, to cooperate fully and promptly with the Issuer 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 the Regulatory Agreement.

Neither Lender nor Bondowner Representative shall 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 Lender and Bondowner Representative from any claim or liability for such breach pursuant to Section 13.2 hereof.

11. Insurance, Casualty and Condemnation.

11.1 Policies Required. While any obligation of Borrower or Guarantor under any Loan Document remains outstanding, Borrower shall maintain at Borrower's sole expense, with insurers reasonably approved by Bondowner Representative, the policies of insurance, in form and substance reasonably satisfactory to Bondowner Representative, identified in Exhibit "C" attached hereto. In addition to the foregoing, Borrower shall also maintain at its sole expense with insurers approved by Bondowner Representative all other insurance reasonably required by Bondowner Representative from time to time for commercial construction loans made for residential rental properties.

All such insurance shall meet all of the requirements set forth in Exhibit "C" and shall provide that it may not be cancelled or materially modified without thirty (30) days' prior written notice to Bondowner Representative. No such insurance shall include deductible amounts to which Bondowner Representative has not previously consented in writing. Certificates of insurance for the required policies (and/or original policies, if required by Bondowner Representative) shall be delivered to Bondowner Representative annually and otherwise from time to time within ten (10) days after demand therefor. All policies insuring against damage to the Project shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. No less than thirty (30) days prior to the expiration of each policy, Borrower shall deliver to Bondowner Representative evidence of renewal or replacement of such policy reasonably satisfactory to Bondowner Representative.

Without limiting the generality of the language of this Section 11.1, the specific insurance requirements of Bondowner Representative are set forth in Exhibit "C" attached hereto. In the event of any inconsistency between the requirements set forth herein and the insurance requirements set forth in Exhibit C attached hereto, the requirements set forth in Exhibit "C" shall control to the extent of such inconsistency.

11.2 Claims and Proceedings. Borrower shall give Bondowner Representative immediate notice of any casualty to any portion of the Property and of the institution or, if Borrower obtains actual knowledge of any threatened institution, such threatened institution, of any proceeding for the condemnation or other taking for public or quasi-public use of any portion of the Property (collectively, "Condemnation"), and shall provide Bondowner Representative with copies of all documents in Borrower's possession which pertain to any such casualty or Condemnation. Borrower shall take all action reasonably required by Bondowner Representative in connection therewith to protect the interests of Borrower and/or Bondowner Representative, and Bondowner Representative shall be entitled (without regard to the adequacy of its security) to participate in any action, claim, adjustment or proceeding and to be represented therein by counsel of its choice.

11.3 Delivery of Proceeds. In the event that, notwithstanding the "Lender's loss payable endorsement" requirement set forth above, the proceeds of any casualty insurance policy described herein are paid to Borrower, Borrower shall deliver such proceeds to Bondowner Representative immediately upon receipt. Bondowner Representative shall, upon written request, deliver to Lender, or such payee properly designated in writing thereby, accompanied by all requested waivers, consents and acknowledgements as Bondowner

Representative may reasonably request, any amount to which Lender is rightfully entitled under the liability policies required under Section 11.1; provided that it is understood, acknowledged and agreed Bondowner Representative shall have no liability or become guarantor or surety as to the payment on any such policy.

11.4 Application of Casualty Insurance Proceeds. Any proceeds collected (the “Proceeds”) under any casualty insurance policy described in this Agreement shall be disbursed to Borrower as provided below, but only upon fulfillment of each of the following conditions (the “Restoration Conditions”) within one hundred twenty (120) days following the occurrence of the damage for which the Proceeds are collected:

(a) Borrower shall have demonstrated to Bondowner Representative’s reasonable satisfaction that the Proceeds (together with amounts deposited by Borrower pursuant to subparagraph (b)) will be adequate to repair the Improvements and to restore the fair market value of the Property, within a time period reasonably determined by Bondowner Representative, to at least the value it had immediately prior to sustaining the damage. Such demonstration shall include delivery to Bondowner Representative of (i) plans and specifications reasonably satisfactory to Bondowner Representative and (ii) a construction contract in form and content, and with a contractor, reasonably satisfactory to Bondowner Representative.

(b) To the extent that the Proceeds are insufficient to accomplish the restoration required above, Borrower shall have delivered funds (the “Shortfall Funds”) in the amount of such shortfall, which funds shall be assigned to Lender as security for Borrower’s obligation hereunder and held and disbursed in the same manner as the Proceeds.

(c) Borrower shall have executed such documents as Bondowner Representative requires to evidence and secure Borrower’s obligation to use all amounts disbursed for the diligent restoration of the Property.

(d) No Event of Default shall remain uncured (other than any Event of Default which relates to such casualty and will be cured by completion of the repair or restoration).

11.4.2 Any Proceeds and Shortfall Funds to be disbursed to Borrower shall be held by Bondowner Representative and disbursed in accordance with the disbursement procedures and related provisions of this Agreement and all other disbursement provisions then customarily required by Bondowner Representative. Any amounts remaining undisbursed following completion of such restoration shall be returned to Borrower up to the amount of any Shortfall Funds deposited by Borrower, and any other amounts remaining shall either be paid to Borrower or applied, at Bondowner Representative’s direction, against any obligations to Lender or Bondowner Representative that are secured by a lien on the Property, as Bondowner Representative elects in its absolute discretion.

11.4.3 In the event that Borrower fails to fulfill the Restoration Conditions within one hundred twenty (120) days (unless a longer period is agreed to in writing by Bondowner Representative prior to the 120<sup>th</sup> day) following the date on which the damage occurs, the Proceeds shall be applied against any obligations to Lender and Bondowner Representative that are secured by a lien on the Property, and the selection of which such obligations to apply the Proceeds against shall be made by Bondowner Representative in its absolute discretion.

11.5 Restoration. Nothing in this Article 11 shall be construed to excuse Borrower from repairing and restoring all damage to the Property in accordance with other Loan Document provisions, regardless of whether insurance proceeds are available or sufficient.

11.6 Treatment of Compensation. Borrower hereby assigns to Lender and Bondowner Representative, as security for all obligations to Lender and Bondowner Representative secured by a lien on the Property, all amounts payable to Borrower in connection with any Condemnation, and any proceeds of any related settlement (collectively, "Compensation"). Borrower shall deliver all Compensation to Bondowner Representative immediately upon receipt. In the event that Bondowner Representative chooses, in its absolute discretion, to waive the Event of Default described in Section 12.1(f), any Compensation received shall be (i) disbursed to Borrower for repairs and reconstruction in accordance with the rights, procedures and other provisions set forth in this Agreement for the application of casualty insurance proceeds (including, without limitation, requirements with respect to Borrower's deposit of Shortfall Funds) and/or (ii) applied against obligations to Lender and Bondowner Representative secured by a lien on the Property in such order as Bondowner Representative shall determine in its absolute discretion.

## 12. Defaults and Remedies.

12.1 Events of Default. The occurrence of any of the following, whatever the reason therefor, shall constitute an Event of Default; provided that cure shall be accepted from any Limited Partner of Borrower or any Affiliate of any such Limited Partner on the same terms as if offered by the Borrower itself, within the periods for timely performance or observance of obligations as set forth below:

(a) Borrower fails to make any payment of principal and/or interest under the Notes and when such payments first become due and payable; or

(b) Borrower fails to perform any other obligation for the payment of money (other than (1) payments described in subparagraph (a) above, or (2) amounts due for the maintenance, protection and/or preservation of collateral and security and (interests therein and proceeds of any kind therefrom) in respect of the Borrower's obligations under any Loan Document within five (5) days after Bondowner Representative gives Borrower and Investor Limited Partner written notice that such obligation has not been performed; or

(c) Borrower fails to timely perform any obligation (other than obligations described in subparagraphs (a) and (b) above and (v) below) under



any Loan Document [(including, without limitation, the Swap Agreement)] executed by Borrower within thirty (30) days after Bondowner Representative gives Borrower and the Investor Limited Partner written notice that such obligation was not performed; or

(d) Guarantor fails to perform any obligation (following any applicable notice and cure period) under any Guaranty executed by Guarantor; or

(e) Any representation or warranty in any Loan Document or Subordinate Loan Document proves to have been incorrect in any material respect when made; or

(f) All or any material portion of the Property is condemned, seized or appropriated by a Governmental Agency; or

(g) The Property is materially damaged or destroyed by fire or other casualty unless Borrower fulfills the Restoration Conditions set forth in the insurance provisions of this Agreement within one hundred twenty (120) days and thereafter diligently restores the Property in accordance with this Agreement; provided that such one hundred twenty (120) day period may be extended with the prior written consent of Bondowner Representative, which consent may be withheld or conditioned in the Bondowner Representative's absolute discretion; or

(h) Work on the Project ceases for thirty (30) consecutive days for any reason other than governmental orders, decrees or regulations, acts of God, strikes or other causes beyond Borrower's reasonable control, provided that the same do not, in the aggregate and in Bondowner Representative's reasonable judgment, threaten to delay the completion of the Project beyond the required completion date (together with any extensions thereof) set forth in this Agreement; or

(i) Work on the Project ceases for forty-five (45) days in the aggregate for any reason; or

(j) Any contractor for the Project whose contract (or aggregation of contracts) exceeds \$100,000 in value materially breaches such contract, and Borrower fails to enter into an agreement with a substitute contractor acceptable to Bondowner Representative within the Approved Budget allocation for such contract, within thirty (30) days after such event; or

(k) Borrower or any Partner or Guarantor is dissolved, liquidated or terminated, or all or substantially all of the assets of Borrower or any Partner or Guarantor are sold or otherwise transferred without Bondowner Representative's prior written consent, or, except for any Permitted Transfer, any Partner withdraws as a partner of Borrower; or

(l) Borrower or any Partner or Guarantor is the subject of an order for relief by a bankruptcy court, or is unable or admits its inability to pay its debts as

they mature, or makes an assignment for the benefit of creditors; or Borrower or any Partner or Guarantor applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Borrower or any Partner or Guarantor, as the case may be, and the appointment continues undischarged or unstayed for sixty (60) days; or Borrower or any Partner or Guarantor institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of Borrower or any Partner or Guarantor, as the case may be, and continues undismissed or unstayed for sixty (60) days; or any judgment, writ, warrant of attachment or execution, or similar process is issued or levied against any property of Borrower or any Partner or Guarantor and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(m) Any Guaranty is repudiated, revoked or terminated without Bondowner Representative's prior written consent; or Guarantor claims that its Guaranty is ineffective or unenforceable, in whole or in part and for any reason, with respect to amounts then outstanding or amounts that might in the future be outstanding; or

(n) Borrower is enjoined or otherwise prohibited by any Governmental Agency from constructing and/or occupying the Improvements and such injunction or prohibition continues unstayed for thirty (30) days or more for any reason; or

(o) Any Bond Document or the Partnership Agreement is amended, modified or terminated without Bondowner Representative's prior written consent; or a default occurs under any Bond Document, within any applicable notice and/or cure period set forth therein; or

(p) Any Equity Construction Deposit is not made or otherwise provided to the reasonable satisfaction of the Bondowner Representative in accordance with and subject to the terms of the Partnership Agreement; or

(q) Any default or event of default occurs and continues beyond any applicable cure period under the Partnership Agreement, any Bond Document, any Subordinate Loan Document, [the Swap Agreement] or any other Loan Document; or

(r) Interest on the Bonds is no longer excludable from the gross income of the holders thereof for federal income tax purposes; or

(s) Any Subordinate Loan Document is amended, modified or terminated without Bondowner Representative's prior written consent; or a

default occurs under any Subordinate Loan Document, which default is not cured within any applicable cure period set forth therein; or

(t) Borrower or any General Partner defaults in any obligation to Bondowner Representative other than in connection with the Loans, subject to any applicable cure period(s); or

(u) [Reserved];

(v) Any Construction Source shown on Exhibit I is not made or otherwise provided to the reasonable satisfaction of the Bondowner Representative on the date such amount is scheduled to be made as shown on Exhibit I; or

(w) A Recapture Event (as defined in the TCAC/MHP Backfill Documents) occurs; or

(x) A default or any event of default occurs under the Ground Lease, which default is not cured within any applicable cure period set forth therein.

12.2 Remedies Upon Default. Upon the occurrence of any Event of Default, Lender shall take such action or actions as Bondowner Representative may direct, at Bondowner Representative's option and in its absolute discretion, including, but not limited to, any or all of the following actions:

(a) Terminate any obligation to make further disbursements of proceeds of Loans or amounts held in the Project Funds Account under the Disbursement Agreement;

(b) Declare the outstanding principal balance of the Loans, together with all accrued interest thereon and other amounts owing in connection therewith, to be immediately due and payable in full, regardless of any other specified due date; provided that any Event of Default described in Section 12.1(l) shall automatically, without notice or other action on Lender's or Bondowner Representative's part, cause all such amounts to be immediately due and payable in full;

(c) In its own right or by a court-appointed receiver, take possession of the Property, enter into contracts for and otherwise proceed with the completion of the Project, and pay the costs thereof out of the proceeds of the Bonds and funds in the Project Funds Account; and in the event that such costs exceed the total of such funds, Lender and Bondowner Representative shall have the right, but not the obligation, to pay such excess costs by expenditure of their own respective funds; and/or

(d) Exercise any of its rights and/or remedies under the Loan Documents and any rights and/or remedies provided by Law or in equity, including the right to foreclose on any security and exercise any other rights with

respect to any security, all in such order and manner as Bondowner Representative elects in its absolute discretion.

12.3 Cumulative Remedies; No Waiver. Lender's and Bondowner Representative's rights and remedies under the Loan Documents are cumulative and in addition to all rights and remedies provided by Law from time to time. The exercise or direction to exercise by Lender or Bondowner Representative of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice Lender or Bondowner Representative in the exercise of any other right or remedy. No waiver of any default shall be implied from any omission by Lender or Bondowner Representative to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of any Loan Document shall be construed as a waiver of any subsequent breach of the same provision. The consent by Lender or Bondowner Representative to any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary Lender's or Bondowner Representative's consent to or approval of any subsequent act. Lender's or Bondowner Representative's acceptance of the late performance of any obligation shall not constitute a waiver by Lender or Bondowner Representative of the right to require prompt performance of all further obligations; Lender's or Bondowner Representative's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of Lender's or Bondowner Representative's right to proceed with the exercise of remedies for any unfulfilled obligations; and Lender's or Bondowner Representative's acceptance of any partial performance shall not constitute a waiver by Lender or Bondowner Representative of any rights relating to the unfulfilled portion of the applicable obligation.

13. Miscellaneous.

13.1 Nonliability. Borrower acknowledges and agrees that:

(a) the relationship among Borrower, Issuer, Lender and Bondowner Representative is and shall remain solely that of Borrower, Issuer, Lender, and Bondowner Representative and none of Lender, Issuer or Bondowner Representative undertakes nor assumes any responsibility to review, inspect, supervise, approve or inform Borrower of any matter in connection with the Project, including matters relating to: (i) the Plans, (ii) architects, engineers, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them, or (iii) the progress of the Project and its conformity with the Plans; and Borrower shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection, supervision, approval or information supplied to Borrower by Lender, Issuer or Bondowner Representative in connection with such matters is solely for the protection of Lender, Issuer and Bondowner Representative and that neither Borrower nor any third party is entitled to rely on it;

(b) notwithstanding any other provision of any Loan Document:  
(i) none of Lender, Issuer or Bondowner Representative is or shall be deemed a

partner, joint venturer, alter-ego, manager, controlling person or other business associate or participant of any kind of Borrower and none of Lender, Issuer or Bondowner Representative intends to ever assume any such status; (ii) none of Lender's, Issuer's or Bondowner Representative's respective or collective activities in connection with the Loans or either of them shall be "outside the scope of the activities of a lender of money" within the meaning of California Civil Code Section 3434, as modified or recodified from time to time, and none of Lender, Issuer or Bondowner Representative intends to ever assume any responsibility to any Person for the quality or safety of the Property; and (iii) none of Lender, Issuer or Bondowner Representative shall be deemed responsible for or a participant in any acts, omissions or decisions of Borrower;

(c) none of Lender, Issuer or Bondowner Representative shall be directly or indirectly liable or responsible in any way for any loss, cost, damage, penalty, expense, liabilities or injury of any kind to any Person or property resulting from any construction on, or development, occupancy, ownership, management, operation, possession, condition, or use of, the Property (except to the extent proximately caused by Lender's, Issuer's or Bondowner Representative's proven gross negligence or willful misconduct), including without limitation those resulting or arising directly or indirectly, from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of Borrower or any of Borrower's agents, employees, independent contractors, licensees or invitees; or (iii) any accident on the Property or any fire or other casualty or hazard thereon; and

(d) By accepting or approving anything required to be performed or given to Lender, Issuer or Bondowner Representative under the Loan Documents, including any certificate, financial statement, survey, appraisal or insurance policy, none of Lender, Issuer or Bondowner Representative shall be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by Lender, Issuer or Bondowner Representative to anyone.

### 13.2 Indemnification of the Issuer, Bondowner Representative and Trustee.

(a) The Borrower releases the Issuer, the Bondowner Representative and the Trustee, and their respective officers, directors, agents, officials, employees (and, as to the Issuer, members of its governing body) and any person who controls the Issuer, the Bondowner Representative or the Trustee within the meaning of the Securities Act of 1933, from, and covenants and agrees to indemnify, hold harmless and defend the Issuer, the Bondowner Representative and the Trustee and their respective officers, directors, employees, agents, members of its governing body, officials and any person who controls such party within the meaning of the Securities Act of 1933 and employees and each of them (each an "Indemnified Party") from and against, any and all losses, claims, damages, demands, liabilities and expenses (including attorney's fees and

expenses), taxes, causes of action, suits, claims, demands and judgments of any nature, joint or several, by or on behalf of any person arising out of:

(i) the transactions provided for in the Bond Documents, the Loan Documents or the Subordinate Loan Documents;

(ii) the execution and delivery or amendment of any document entered into in connection with the transactions provided for in the Bond Documents, the Loan Documents or the Subordinate Loan Documents, including any certifications or representations made by any person other than the party seeking indemnification;

(iii) the approval of the financing for the Project;

(iv) the Loans (excluding the actual repayment of the principal thereof and interest thereon);

(v) any and all claims arising in connection with the interpretation, performance, enforcement, breach, default or amendment of the Bond Documents, the Loan Documents, the Subordinate Loan Documents or any other documents relating to the Project or the Bonds or in connection with any other matters relating to the Bonds or the Project, including, but not limited to, any federal or state tax audit, or any questions or other matters arising under such documents;

(vi) the Trustee's acceptance or administration of the trusts created by the Indenture or the exercise of its powers or duties under the Indenture, this Loan Agreement, the Regulatory Agreement or any other agreements to which it is a party or otherwise in connection with the transactions provided for in the Bond Documents, the Loan Documents or the Subordinate Loan Documents;

(vii) any and all claims arising in connection with (A) the issuance, sale or repricing of any Bonds or any certifications or representations made by any person other than the party seeking indemnification, including, but not limited to, any (1) statement or information made by the Borrower with respect to the Borrower or the Project in the Tax Certificate of the Borrower or in any other certificate executed by the Borrower which, at the time made, is misleading, untrue or incorrect in any material respect, (2) untrue statement or alleged untrue statement of a material fact relating to the Borrower or the Project made to any or all of the Issuer, Bondowner Representative and/or Trustee, as the case may be, or arising out of or based upon the omission or alleged omission to state to any or all of the Issuer, Bondowner Representative and/or Trustee, as the case may be, a material fact relating to the Borrower or the Project in order to make the statements in such offering material not misleading, (3) failure to properly register or otherwise qualify the sale of

the Bonds or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bonds could be sold, and (B) the carrying out by the Borrower of any of the transactions provided for in the Bond Documents, the Loan Documents and the Subordinate Loan Documents;

(viii) the Borrower's failure to comply with any requirement of this Loan Agreement or the Regulatory Agreement;

(ix) any act or omission of the Borrower or any of its agents, servants, employees or licensees in connection with the Loans or the Project, including violation of any law, ordinance, court order or regulation affecting the Project or any part of it or the ownership, occupancy or use of it;

(x) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to property (including loss of use of property) or persons, occurring or allegedly occurring in, on or about the Project or arising out of any action or inaction of the Borrower, whether or not related to the Project, or resulting from or in any way connected with the acquisition, construction, development, operation, leasing or management of the Project, including without limitation, providing social services whether directly or through leases with service providers, the issuance of the Bonds or otherwise in connection with transactions provided for in the Bond Documents, the Loan Documents and the Subordinate Loan Documents or otherwise in connection with the Project, the Bonds or the execution or amendment of any document relating to the Project or the Bonds;

(xi) any violation of any environmental law applicable to, or the release of any toxic substance from, the Project; and

(xii) any and all claims arising in connection with the operation of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or supervision of work done in or about, or from the planning, design, acquisition, rehabilitation, repair or equipping of, the Project or any part of it, including, but not limited to, the ADA (as evidenced by an architect's certificate to such effect);

provided, however, that there shall be no such duty of the Borrower for indemnification in connection with any such claim listed in subsection (i) through (xii) above, or proceeding brought with respect to such claim (a) in the case of the Trustee or any of its Indemnified Parties, to the extent such damages are caused by the proven gross negligence or willful misconduct of such Person, (b) in the case of the Bondowner Representative or any of its Indemnified Parties, to the extent such damages are caused by the proven gross negligence or willful misconduct of such Person; and (c) in the case of the Issuer or any of its Indemnified Parties, to the extent such damages are caused by the proven gross negligence or willful misconduct of such Person;

This indemnification shall extend to and include, without limitation, all costs, counsel fees, expenses or liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim.

(b) In addition, the Borrower shall indemnify, save and hold harmless the Issuer and its officers, members of its governing board, officials, employees, advisors and agents (collectively, the “Issuer’s Agents”) against any and all claims asserted by or on behalf of any person, firm, corporation, private or public, arising or resulting from, or in any way connected with:

(i) any act, failure to act, misrepresentation or omission by any person, firm, corporation or governmental authority, including the Issuer or the Issuer’s Agents (other than willful misrepresentations knowingly made by the Issuer or the Issuer’s Agents and willful or wanton misconduct on the part of the Issuer or the Issuer’s Agents), in connection with the issuance, sale or delivery of the Bonds; and

(ii) any act, failure to act or misrepresentation by the Issuer or the Issuer’s Agents (other than willful misrepresentations knowingly made by the Issuer or the Issuer’s Agents and willful or wanton misconduct on the part of the Issuer or the Issuer’s Agents) in connection with, or in the performance of, any obligation under this Loan Agreement, the Regulatory Agreement or the Indenture.

(c) Borrower’s obligations under this Section 13.2 shall not be construed to include any obligation of Borrower set forth in the Hazardous Materials Agreement. Notwithstanding the foregoing, Borrower shall not be obligated to indemnify Lender, Bondowner Representative or Trustee, as applicable with respect to the consequences of any act of proven gross negligence or willful misconduct of Lender, Bondowner Representative or Trustee, as the case may be. Borrower’s obligations under this Section 13.2 shall survive the repayment and cancellation of the Notes and the release and reconveyance of the Security Documents.

(d) Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Loan Agreement, the Borrower shall remain obligated to indemnify each Indemnatee pursuant to this Section 13.2 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless such Indemnatee has consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

(e) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant to this Agreement shall survive the final payment or defeasance of the Bonds and, in the case of the Trustee and Bondowner Representative, any resignation by the Trustee under the Indenture or any transfer, negotiation or participation of the Bonds or interests therein by Bondowner Representative. The provisions of this Section 13.2 shall



survive repayment of the Loans and the termination of this Loan Agreement and the transfer and sale of the Series 2010A-1 Bonds by U.S. Bank to CCRC.

13.3 Reimbursement of Lender, Trustee and Bondowner Representative.

Borrower shall reimburse Lender, Trustee and Bondowner Representative, as the case may be, promptly upon written demand for all costs reasonably incurred by Lender, Trustee and Bondowner Representative, as the case may be (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of Lender, Trustee and Bondowner Representative, as the case may be) in connection with the negotiation, preparation, execution, delivery, administration, modification, performance and enforcement of the Loan Documents (other than the Hazardous Materials Agreement, the obligations under which are separate from those under the other Loan Documents) and all related matters, including the following: (a) Lender's, Trustee's and/or Bondowner Representative's, as the case may be, commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Loan Document; and (b) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which Lender, Trustee and/or Bondowner Representative, as the case may be, is indemnified under the Bond Documents and/or Loan Documents; (c) the sale and transfer of the Series 2010A-1 Bonds by U.S. Bank to CCRC on or about the Conversion Date; and (d) the transfer of the agency relationship under the Agency Agreement from U.S. Bank to CCRC on or about the Conversion Date. Such reimbursement obligations shall bear interest following written demand at the Default Rate, and shall be secured by the Security Documents. Such reimbursement obligations shall survive the cancellation of the Notes and the release and reconveyance of the Security Documents and the transfer and sale of the Series 2010A-1 Bonds by U.S. Bank to CCRC.

13.4 Obligations Unconditional and Independent.

Notwithstanding the existence at any time of any obligation or liability of Lender or Bondowner Representative, as the case may be, to Borrower, or any other claim by Borrower against Lender or Bondowner Representative, as the case may be, in connection with the Loans or otherwise, Borrower hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Borrower's obligations under the Loan Documents or (b) to claim that the existence of any such outstanding obligation, liability or claim excuses the nonperformance by Borrower of any of its obligations under the Loan Documents.

13.5 Notices.

All notices, demands, approvals and other communications provided for in the Loan Documents shall be in writing and be delivered to the appropriate party at its address as follows:

If to Borrower:

Fourth Street Apartments, L.P.  
c/o First Community Housing  
75 East Santa Clara Street, Suite 1300  
San José, California 95113  
Attention: Tom Iamesi  
Facsimile: (408) 993-9098  
Telephone: (408) 291-8650

with a copy to:

The Law Offices of Goldfarb & Lipman  
1300 Clay Street, Ninth Floor  
Oakland, California 94612  
Attention: Jennifer Bell  
Facsimile: (510) 836-1035  
Telephone: (510) 836-6336

and a copy to:

Red Stone Equity Partners  
200 Public Square, Suite 1550  
Cleveland, Ohio 44114  
Attention: Managing Director and General Counsel  
Facsimile: (216) 820-4751  
Telephone: (216) 820-4750

and a copy to:

Bocarsly Emden Cowan Esmail Parker & Arndt LLP  
633 West Fifth Street, 70<sup>th</sup> Floor  
Los Angeles, California 90071  
Attention: Kyle B. Arndt, Esq.  
Facsimile: (213) 559-0704  
Telephone: (213) 239-8048

If to Lender:

City of San José  
Debt Management/Finance Department  
200 East Santa Clara Street, 13<sup>th</sup> Floor  
San José, California 95113  
Facsimile: (408) 292-6482  
Telephone: (408) 535-7010  
Email: [debt.management@sanjoseca.gov](mailto:debt.management@sanjoseca.gov)

with a copy to:

Office of the City Attorney  
City of San José  
200 East Santa Clara Street  
San José, California 95113-1905  
Facsimile: (408) 535-1905  
Telephone: (408) 998-3131

If to Bondowner Representative:

US Bank National Association  
One California Street, Suite 2100  
San Francisco, California 94111  
Attention: Josh Evju  
Facsimile: (925) 273-4558  
Telephone: (415) 293-8082

with a copy to:

Kutak Rock LLP  
8601 North Scottsdale Road, Suite 300  
Scottsdale, Arizona 85253  
Attention: Public Finance Department  
Facsimile: (480) 229-5001  
Telephone: (480) 229-5000

with a copy to:

California Community Reinvestment Corporation  
225 West Broadway, Suite 120  
Glendale, California 91204  
Attention: Attention: Renee Cooks

Addresses for notice may be changed from time to time by written notice to all other parties. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

13.6 Survival of Representations and Warranties. All representations and warranties of Borrower, each General Partner and Guarantor in the Loan Documents shall survive the making of the Loans and have been or will be relied on by Lender and Bondowner Representative notwithstanding any investigation made by Lender or Bondowner Representative, as the case may be.

13.7 Signs. Lender and Bondowner Representative may each place signs on the Property reasonably acceptable to Borrower during the term of the Loans stating that financing is being provided by and through Lender and Bondowner Representative and any other participant in the Loans.

13.8 No Third Parties Benefited. This Agreement is made for the purpose of setting forth rights and obligations of Borrower, Lender and Bondowner Representative and, with respect to Sections 13.2 and 13.3, the Trustee, and no other Person shall have any rights hereunder or by reason hereof.

13.9 Binding Effect; Assignment of Obligations. This Agreement shall bind, and shall inure to the benefit of, Borrower, Lender and Bondowner Representative and their respective successors and assigns. Borrower shall not assign any of its rights or obligations

under any Loan Document without the prior written consent of Lender, which consent may be withheld in Lender's absolute discretion. Any such assignment without such consent shall be void.

13.10 Counterparts. Any Loan Document, other than the Notes, may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

13.11 Prior Agreements; Amendments; Consents. This Agreement (together with the other Loan Documents, the Supplemental Agreement and the CCRC Bond Purchase Agreement) contains the entire agreement among Lender, Borrower and Bondowner Representative with respect to the Loans, and all prior negotiations, understandings and agreements (including, but not limited to, the Commitment issued by U.S. Bank to Borrower (or one of Borrower's Affiliates)) are superseded by this Agreement and such Loan Documents. No modification of any Loan Document (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given. Notwithstanding the foregoing, Bondowner Representative shall have the right to waive or modify, conditionally or unconditionally, the conditions to its approvals and consents hereunder, without the consent of any party other than Borrower. Consents and approvals to be obtained from Lender and Bondowner Representative shall be in writing.

13.12 Governing Law. All of the Loan Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California without regard to the conflicts of laws principles thereof; provided that if Bondowner Representative has greater rights or remedies under federal law, then such rights and/or remedies under federal law shall also be available to Bondowner Representative.

13.13 Severability of Provisions. No provision of any Loan Document that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of the Loan Documents are hereby declared to be severable.

13.14 Headings. Article and section headings are included in the Loan Documents for convenience of reference only and shall not be used in construing the Loan Documents.

13.15 Conflicts. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, this Agreement shall prevail; provided however that, with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

13.16 Time of the Essence. Time is of the essence of all of the Loan Documents.

13.17 Transfer and Participation in Bonds. Bondowner Representative may transfer, or sell participations in, the Bonds, Loans, [the Swap Agreement,] and/or the Loan

Documents at any time, in whole and in part, and may furnish any transferee or participant or prospective transferee or participant with all documents and information relating to Borrower, each Partner, Guarantor, the Bonds and the Loans that Bondowner Representative deems advisable in connection therewith; provided, however, the transfer or sale of any participation is subject to the same limitations as are in effect for a transfer or sale of Bonds as set forth in Section 2.05 of the Indenture. Prior to any transfer or sale of a participation pursuant to this Section 13.17, Bondowner Representative shall give notice to the Issuer of the name of the participant and the terms of the participation. Borrower's indemnity obligations under the Loan Documents shall also apply with respect to any transferee or participant and the directors, officers, agents and employees of any transferee or participant. Notwithstanding the foregoing on or prior to the Conversion Date, U.S. Bank as the initial purchaser and holder of the Bonds shall have full right, power and authority to sell and transfer in whole, the Series 2010A-1 Bonds as further described in the Bond Purchase Agreement

13.18 Hazardous Materials Agreement. In consideration of Lender's entry into this Agreement and Bondowner Representative's purchase of the Bonds, Borrower shall deliver the Hazardous Materials Agreement. Notwithstanding any other provision of any Bond Document or Loan Document to the contrary, express or implied, Borrower's obligations under such Hazardous Materials Agreement shall not be secured, directly or indirectly, by the Deeds of Trust (or either of them) or any other real property (or any interest therein) now or hereafter granted to or for the benefit of Lender or Bondowner Representative as security for any Bond Document or Loan Document.

13.19 Guaranties Unsecured. The Security Documents shall secure Borrower's obligations under the Loan Documents. Notwithstanding the fact that the Loan Documents may now or hereafter include one or more Guaranties and/or other documents creating obligations of Persons other than Borrower, and notwithstanding the fact that any Security Document may now or hereafter contain general language to the effect that it secures "the Loan Documents," no Security Document shall secure any Guaranty, or any other obligation of any Person other than Borrower, unless such Security Document specifically describes such Guaranty or other obligation as being secured thereby.

13.20 Limited Liability of Issuer and Lender.

(a) No recourse under or upon any obligation, covenant, or agreement or in any Bonds, or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner or officer, as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Holder of any Bonds, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner or officer, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Holder of any Bonds, of any

sum that may remain due and unpaid upon the Bonds or any of them, is hereby expressly waived and released as a condition of and consideration for the execution of this Loan Agreement and the issuance of the Bonds.

(b) Nothing in this Loan Agreement, the Regulatory Agreement or the Indenture is intended, nor shall it be construed, to in any way limit the actions of the Issuer in the exercise of its governmental powers, as contrasted with any contractual rights or powers. Subject to the provisions of the Agreement, it is the express intention of the parties hereto that the Issuer shall retain the full right and ability to exercise its governmental powers with respect to the Borrower, the Project, the Bondholder, the Bondholder Representative and the transactions contemplated by this Loan Agreement, the Indenture, the Regulatory Agreement and the Loan Documents to the same extent as if it were not a party to this Agreement, the Indenture, the Regulatory Agreement or the transactions contemplated thereby, and in no event shall the Issuer have any liability in contract arising under this Loan Agreement, the Indenture or the Regulatory Agreement by virtue of any exercise of its governmental powers.

13.21 Waiver of Right to Trial by Jury; Judicial Reference. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT (OTHER THAN THE ISSUER AND THE LENDER BUT INCLUDING THE TRUSTEE BY ASSIGNMENT) HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY (OTHER THAN THE ISSUER AND THE LENDER BUT INCLUDING THE TRUSTEE BY ASSIGNMENT) HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT (OTHER THAN THE ISSUER AND THE LENDER BUT INCLUDING THE TRUSTEE BY ASSIGNMENT) MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NOTWITHSTANDING THE FOREGOING, THIS AGREEMENT SHALL BE SUBJECT TO THE PROVISIONS OF THE JUDICIAL REFERENCE AGREEMENT.

13.22 Assignment to Trustee. Borrower acknowledges that, concurrently herewith, and in accordance with the Indenture, Lender has assigned all of its right, title and interest, other than its Reserved Rights, in, to, and under this Agreement, the Notes and the other Loan Documents to Trustee for the benefit of the holders from time to time of the Bonds, initially being the Bondowner Representative.

13.23 Subordination to Extended Use Agreement. In order to receive an allocation of federal low income housing tax credits, Borrower will be required to record in the

real property records of the County in which the property is located, an “extended low-income housing commitment” (as defined in Code Section 42(h)(6)(B)) (the “Extended Use Agreement”). If Borrower demonstrates to the reasonable satisfaction of Bondowner Representative that the Tax Credit Allocation Committee of the State of California or applicable federal law requires that the liens of the Deeds of Trust be subordinate to the Extended Use Agreement, then Bondowner Representative shall execute a subordination agreement (the “Tax Credit Subordination Agreement”), wherein the liens of the Deeds of Trust are subordinated to the Extended Use Agreement, provided, however, that the following conditions are met:

(a) under the terms of the Extended Use Agreement and the Tax Credit Subordination Agreement, if Bondowner Representative or its successors or assigns (collectively, the “REO Owner”) acquires the Property and Improvements by foreclosure (or instrument in lieu of foreclosure), then the “extended use period” (as defined in Code Section 42(h)(6)(D)) shall terminate, except for the obligation of the REO Owner to comply with the limitations on evictions, termination of tenancy and increase in rents for the three year period following the REO Owner’s acquisition of the Property, as set forth in Code Section 42(h)(6)(E)(ii); and

(b) the Tax Credit Subordination Agreement shall otherwise be in a form, and shall contain terms, reasonably acceptable to Bondowner Representative.

13.24 Information Regarding the Project. Bondowner Representative shall have the right to discuss the affairs of the Borrower with any Partner thereof, including but not limited to the Limited Partner, and to discuss the course of construction, lease-up, operation and management of the Project, the financial condition of the Borrower, any Guarantor and the Project, and to disclose any information received by Bondowner Representative regarding the Borrower, any Guarantor or the Project or any Partner of the Borrower with any other Partner of the Borrower, singularly or together as Bondowner Representative may determine in its sole discretion.

13.25 Right of Setoff. Borrower grants to Bondowner Representative a contractual security interest in, and hereby assigns, conveys, delivers, pledges, and transfers to Bondowner Representative all Borrower’s right, title and interest in and to, Borrower’s accounts with Bondowner Representative (whether checking, savings, or some other account), including without limitation all accounts held jointly with someone else and all accounts Borrower may open in the future, excluding however all IRA and Keogh accounts, and all trust accounts for which the grant of a security interest would be prohibited by law. Borrower authorizes Bondowner Representative, to the extent permitted by applicable law, to charge or setoff all sums owing on the Notes against any and all such accounts.

13.26 Right to Inspect Records of Bondowner Representative. Upon reasonable prior written notice to Bondowner Representative, Lender shall have the right to inspect all nonconfidential and nonproprietary records maintained by Bondowner Representative with respect to the administration of the Loans in accordance with the terms of this Agreement. Bondowner Representative agrees to maintain all records relating to the Disbursements under the

Loans for as long as the Bonds are outstanding. Bondowner Representative agrees to maintain copies of such items so long as it remains the holder of the Bonds. Upon any transfer of the Bonds in accordance with the terms of the Bond Documents and the Loan Documents, Bondowner Representative shall transfer all of its records relating to Disbursement requests, including all related attachments, provided that Bondowner Representative shall be permitted to retain copies thereof for its permanent records.

13.27 USA PATRIOT Act Notice. Bondowner Representative (for itself and not on behalf of any other party) hereby notifies the Borrower that, pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56, signed into law October 26, 2001 (“Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow U.S. Bank to identify the Borrower in accordance with the Act.

13.28 Additional Banking Laws. The Borrower shall (a) ensure, and cause each Affiliate to ensure, that no person who owns a controlling interest in or otherwise controls the Borrower or any Affiliate is or shall be listed on the “Specially Designated Nationals and Blocked Person List” or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury, or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loans to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause each Affiliate to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

*[Remainder of page intentionally left blank.]*



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

**BORROWER:**

**FOURTH STREET APARTMENTS, L.P.,**  
a California limited partnership

By: Fourth Street Apartments, LLC,  
a California limited liability company,  
Its: General Partner

By: First Community Housing,  
a California nonprofit public benefit  
corporation,  
Its: Sole Member

By: \_\_\_\_\_  
Name: Jeff Oberdorfer  
Title: Executive Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Board Member

[Signature Page for Loan Agreement]

**LENDER:**

**CITY OF SAN JOSÉ,**  
a municipal corporation and chartered city

By: \_\_\_\_\_  
Name: Julia H. Cooper  
Its: Assistant Director of Finance

[Signature Page for Loan Agreement]

**BONDOWNER REPRESENTATIVE:**

**U.S. BANK NATIONAL ASSOCIATION,**  
a national banking association,  
as Bondowner Representative and Bondholder

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

Name: Josh Evju

Title: Assistant Vice President

[Signature Page for Loan Agreement]

**EXHIBIT A**  
**LEGAL DESCRIPTION**

## EXHIBIT "B"

### DEFINITIONS AND INTERPRETATION

1. Definitions. As used in this Agreement (and in all other Loan Documents, unless otherwise defined), the following capitalized terms shall have the following meanings:

"Affiliate" means, with respect to any Person, (a) any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, (i) such Person or (ii) any general partner of such Person; (b) any other Person 50% or more of the equity interest of which is held beneficially or of record by (i) such Person or (ii) any general partner of such Person, and (c) any general or limited partner of (i) such Person or (ii) any general partner of such Person. As used in the previous sentence, "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise.

"Approved Budget" means the line item budget for the Loans as reviewed and approved by Bondowner Representative and set forth in Exhibit "H" attached hereto, and as modified from time to time in accordance with the Agreement.

"Architect" means Fisher Friedman Associates, a California corporation.

"Assignment of Leases" means the Assignment of Unrecorded Leases and Rents dated as of May \_\_, 2010, given by Borrower in favor of Trustee.

"Assignment of Deeds of Trust" means the Assignment of Deeds of Trust and Other Loan Documents dated as of May \_\_, 2010, given by Issuer in favor of Trustee.

"Authority" means the California Pollution Control Financing Authority, a public instrumentality of the State of California.

"Banking Day" means any Monday, Tuesday, Wednesday, Thursday or Friday on which Bondowner Representative is open and conducting customary banking transactions in the State of California.

"Bond Documents" means, collectively, the Bonds, the Indenture, Regulatory Agreement, the Assignment of Deeds of Trust and any other document (other than the Loan Documents) now or hereafter executed by Borrower, Issuer, Lender, and/or Bondowner Representative in connection with the Bonds.

"Bond Purchase Agreement" means the Bond Purchase Agreement, dated as of the Issuance Date, among the Issuer, the Bondowner Representative, CCRC and the Borrower.

"Bondowner Representative" means, collectively, U.S. Bank National Association, as the initial purchaser and holder of the Bonds, and its successors and assigns.

"Bonds" has the meaning given that term in Recital C.

“Cal Reuse Grant” means the \$175,376 grant to be made by the Authority to First Community Housing, a California nonprofit public benefit corporation, the Sole Member of the General Partner pursuant to the Cal ReUse Grant Documents.

“Cal Reuse Grant Documents” means that certain Commitment Letter dated December 12, 2008, and any other documents, instruments and agreements relating to the Cal ReUse Grant.

“Change Orders” means changes in the Plans pursuant to the Agreement.

“City” means the City of San José.

“City Loan” means the loan of up to \$12,708,456 made by the City to Borrower, pursuant to the City Note and the City Loan Agreement.

“City Loan Agreement” means the Construction and Permanent Loan Agreement and Addendum, dated as of \_\_\_\_\_, 2010, between Borrower and the City.

“City Loan Documents” means, collectively, the City Note, City Loan Agreement, City Trust Deed, City Regulatory Agreement, and the other operative documents relating to the City Loan.

“City Note” means the Promissory Note dated as of \_\_\_\_\_, 2010, made by the Borrower in favor of the City to evidence its repayment obligations under the City Loan.

“City Regulatory Agreement” means the Amended and Restated 55-Year Affordability Restrictions, dated as of \_\_\_\_\_, 2010, between Borrower and the City in connection with the City Loan.

“City Subordination Agreement” means the Subordination Agreement dated as of May \_\_, 2010, among Borrower, City and Bondowner Representative with respect to the City Loan.

“City Tri-Party Agreement” means the Tri-Party Agreement dated as of May \_\_, 2010, among Borrower, City and Bondowner Representative with respect to the City Loan.

“City Trust Deed” means the Construction and Permanent Leasehold Deed of Trust, Assignment of Rents, Fixture Filing and Rider dated as of \_\_\_\_\_, 2010, given by the Borrower with the Title Company as trustee for the benefit of the City to secure Borrower’s obligations in respect of the City Loan Documents.

“Construction Note” means the Promissory Note (Construction) made by Borrower in favor of Lender in the aggregate principal amount of [\$17,316,000] executed by Borrower to evidence the obligation of Borrower to repay the Construction Loan.

“Contractor” means Branagh, Inc., or any general contractor for the Project approved by Bondowner Representative from time to time.

“Convertible Note” means the Promissory Note (Convertible) made by Borrower in favor of Lender in the aggregate principal amount of [\$5,684,000] executed by Borrower to evidence the obligation of Borrower to repay the Convertible Loan.

“County” means the County of Santa Clara, California.

“Deeds of Trust” means, collectively, the Ground Leasehold Deed of Trust and the Fee Deed of Trust.

“Default Rate” means a per annum interest rate that is equal to the rate of interest then applicable under the Notes (the “Note Rate”), plus 5.00%.

“Department” means the California Department of Housing and Community Development and its successors and assigns.

“Designated Representative” means the Person authorized in writing delivered to Bondowner Representative by Borrower from time to time, who has been delegated full and proper authority to serve as such representative of Borrower for purposes of delivering certificates, Disbursement Requests and other documents on behalf of Borrower pursuant to the Loan Documents.

“Disbursement Agreement” means that Disbursement Agreement dated as of May \_\_, 2010, by and between Bondowner Representative and Borrower.

“Disbursement Requests” means requests by Borrower for Disbursements in accordance with the Agreement.

“Disbursements” means, as the case may be, disbursements by Lender and/or Bondowner Representative of (a) proceeds of the Loans, (b) Equity Construction Deposits, (c) proceeds of the Subordinate Loans to the extent available for deposit thereunder, and (d) other funds on deposit from time to time in the Project Funds Account.

“Equity Commitment” means the commitment of Investor Limited Partner under the Partnership Agreement to make capital contributions to the capital of the Partnership in the amount approved by the Bondowner Representative.

“Equity Construction Deposits” means that portion of the Equity Commitment shown in Exhibit “G” attached hereto.

“Event of Default” means any event so designated in the Agreement.

“Fee Deed of Trust” means the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated May \_\_, 2010 granted by \_\_\_\_\_, as the owner of the fee estate in the Property, in favor of the Issuer as beneficiary and recorded in the official records of the County, and whose rights, title and interest therein have been assigned to the Trustee under the Assignment of Deeds of Trust which has also been recorded in the official records of the County.

“Financing Statements” means, collectively, each UCC-1 and/or UCC-2 financing statement required pursuant to the Agreement.

“Fiscal Year” means Borrower’s fiscal year, ending on December 31 of each calendar year.

“General Partner” means, collectively, Fourth Street Apartments, LLC, a California limited liability company, and any other Person that now or hereafter owns a general partnership interest in Borrower.

“Governmental Agency” means any governmental or quasi-governmental agency, board, bureau, commission, department, court, administrative tribunal or other instrumentality or authority, and any public utility.

“Ground Lease” means that certain Ground Lease dated May \_\_, 2010, by and between Ground Lessor and Borrower.

“Ground Leasehold Deed of Trust” means the Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated May \_\_, 2010 granted by Borrower, as the ground lessee under the Ground Lease and owner of the Improvements, in favor of the Issuer as beneficiary and recorded in the official records of the County and whose right, title and interest therein have been assigned to the Trustee under the Assignment of Deeds of Trust which has also been recorded in the official records of the County.

“Ground Lessor” means the City of San José Financing Authority, a joint exercise of powers authority, organized and existing under and pursuant to that certain Joint Exercise of Powers Agreement dated December 8, 1992, by and between the City of San José and the Redevelopment Agency of the City of San José.

“Ground Lessor’s Consent and Estoppel” means that certain Ground Lessor’s Consent, Estoppel Certificate and Agreement dated as of May \_\_, 2010, between Borrower, Ground Lessor and Lender.

“Guaranties” means any Guaranty required pursuant to this Agreement and any guaranty pursuant to which any Person now or hereafter partially or fully guarantees the payment or performance of any indebtedness or other obligation to Lender and/or Bondowner Representative under any Loan Document and, initially, means the Completion and Repayment Guaranty Agreement, dated as of May \_\_, 2010, given by the Guarantor in favor of Issuer and Bondowner Representative.

“Guarantor” means, jointly and severally, First Community Housing, a California nonprofit public benefit corporation, and any Person who now or hereafter partially or fully guarantees the payment or performance of any indebtedness or other obligation to Lender under any Loan Document. The obligations of Guarantor set forth in this Agreement and the Loan Documents shall apply for so long as any Guaranty affecting such Guarantor is in effect.

“Hazardous Materials” means flammable materials, explosives, radioactive materials, hazardous wastes, toxic substances and similar substances and materials, including all



substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable Law, including without limitation the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended.

“Hazardous Materials Agreement” means that certain Unsecured Environmental Indemnity dated as of May \_\_, 2010, executed by and between Borrower and Issuer.

“Improvements” means all improvements and fixtures now or hereafter comprising any portion of the Property.

“Investor Limited Partner” means Red Stone-Fund 9 Limited Partnership, a Delaware limited partnership, and any successor limited partner of the Borrower admitted under the terms of the Partnership Agreement and constituting a Permitted Transfer.

“Issuance Date” means the date upon which the Bonds are issued.

“Judicial Reference Agreement” means that Judicial Reference Agreement dated as of May \_\_, 2010, among Bondowner Representative, Borrower and Guarantor.

“Laws” means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or other Governmental Agency.

“Limited Partners” means, collectively, Investor Limited Partner, Red Stone Equity Manager, LLC, a Delaware limited liability company as “Special Limited Partner” and any other Person that now or hereafter owns a limited partnership interest in Borrower.

“Loans” means the Loans made to Borrower pursuant to the Agreement.

“Loan Documents” means, collectively, subject to the provisions of this Agreement, this Agreement, the Notes, [the Swap Agreement,] the documents (other than Bond Documents) set forth in Exhibit “F” and any other agreement, document or instrument that Lender and/or Bondowner Representative requires in connection with the execution of this Agreement or from time to time to effectuate the purposes of this Agreement.

“Manager” means any property manager for the Project approved by Bondowner Representative from time to time.

“Partner” means any General Partner or Limited Partner.

“Partnership Agreement” means that certain Amended and Restated Agreement of Limited Partnership of Borrower by and between the General Partner and Limited Partners, dated as of May \_\_, 2010, in the form executed and delivered as of the Issuance Date.

“Party” means any Person (other than Lender or Bondowner Representative) who is a party or signatory to any Loan Document.

“Permitted Encumbrances” means, collectively, all matters listed on Exhibit ”D” to this Agreement as permitted title insurance exceptions.

“Permitted Liens” means, collectively, all liens on the Personal Property approved by Bondowner Representative in writing.

“Permitted Transfer” means any transfer of interests expressly permitted pursuant to Section 1.19 of the Ground Leasehold Deed of Trust.

“Person” means any entity, whether an individual, trustee, corporation, partnership, limited liability company, trust, unincorporated organization, Governmental Agency or otherwise.

“Personal Property” means all of Borrower’s right, title and interest, whether now existing or hereafter acquired, in and to all furniture, furnishings, fixtures, machinery, equipment, inventory and other personal property of every kind, tangible and intangible, now or hereafter (i) located on or about the Property, (ii) used or to be used in connection with the Property, or (iii) relating or arising with respect to the Property.

“Plans” and “Plans and Specifications” each mean the plans and specifications for the Project received by Bondowner Representative pursuant to the conditions of the Agreement, as modified in accordance with this Agreement.

“Preliminary Reservation” means that certain initial preliminary reservation letter issued by the California Tax Credit Allocation Committee (“CTCAC”) with respect to the Project.

“Project” means the construction of the Improvements on the Property in substantial accordance with the Plans and all applicable Laws.

“Project Agreements” means, collectively, all agreements entered into by Borrower with Persons other than Lender or Bondowner Representative in connection with the Project.

“Project Costs” means all costs of any nature incurred in connection with the Project.

“Project Financing Statements” means the Financing Statements described in Exhibit ”E.”

“Project Funds Account” means the Project Funds Account created and maintained under the Disbursement Agreement.

“Prop 1C Infill Grant” means the \$1,513,561 grant to be made by the Department to First Community Housing pursuant to the Prop 1C Infill Grant Documents.

“Prop 1C Infill Grant Agreement” means the Standard Agreement between the Department and Borrower.

“Prop 1C Infill Grant Documents” means, collectively, any Prop 1C Infill Grant Agreement, and any other document, instrument, or agreement entered into in connection with the Prop 1C Infill Grant.

“Property” means all of Borrower’s right, title and interest, whether now existing or hereafter acquired, in and to the real property described in Exhibit “A” to the Agreement together with all easements and other rights now or hereafter made appurtenant thereto, all improvements and fixtures now or hereafter located thereon, and all additions and accretions thereto.

“Regulatory Agreement” means that certain Regulatory Agreement and Declaration of Restrictive Covenants dated as of May \_\_, 2010, among Issuer, Borrower and Trustee.

“Reserved Rights” has the meaning given such defined term in the Indenture.

“Secretary of State” means the Secretary of State of the State of California.

“Security Documents” means, collectively, the Deeds of Trust, the Disbursement Agreement, the Project Financing Statements, the Assignment of Leases, the Operating Reserve Agreement, the Replacement Reserve Agreement and any other mortgage, deed of trust, security agreement or assignment now, heretofore or hereafter executed to secure the obligations of Borrower or any Guarantor to Lender and/or Bondowner Representative under any Loan Document.

“Special Limited Partner” means Red Stone Equity Manager, LLC, a Delaware limited liability company, its successors and assigns

“Subordination Agreements” means, collectively, the City Subordination Agreement, the Prop 1C Infill Subordination Agreement, the TCAP/MHP Backfill Subordination Agreement, and any other subordination agreement executed by another lender of a subordinate loan, in each instance in form and substance satisfactory to Bondowner Representative and its counsel.

“Subordinate Lenders” means, collectively, the City, CTCAC, the Department and the Authority. Each of the foregoing is a “Subordinate Lender.”

“Subordinate Loan Documents” means, collectively, the City Loan Documents, the Prop 1C Infill Grant Documents, the TCAP/MHP Backfill Loan Documents, and the CalReuse Grant Documents.

“Subordinate Loans” means, collectively, the City Loan, Prop 1C Infill Grant, the TCAP/MHP Backfill Loan, and the CalReuse Grant. Each of the foregoing is a “Subordinate Loan.”

“Subordinate Recorded Documents” means, collectively, the City regulatory Agreement, City Trust Deed, [Prop 1C Infill Grant Regulatory Agreement,] TCAP Regulatory

Agreement, and any other documents to be recorded on or prior to the Issuance Date with respect to any of the Subordinate Loans.

“Supplemental Agreement” means the Supplemental Agreement dated as of May \_\_\_, 2010, among Lender, Borrower and CCRC.

[“Swap Agreement” means, collectively, any ISDA Master Form Swap Agreement (including without limitation the one dated as of \_\_\_\_\_, 2010) and all annexes and trade confirmations relating thereto entered into by the Borrower and U.S. Bank National Association, as counterparties, relating to the Construction Loan and the Construction Note.]

“Tax Certificate” means collectively, that certain Certificate as to Arbitrage and the Certificate Regarding Use of Proceeds, both dated as of the Issuance Date, relating to the Bonds.

“TCAC” means the California Tax Credit Allocation Committee.

“TCAP/MHP Backfill Loan” means the \$8,789,846 (aggregate principal amount) loan made to the Borrower to backfill a permanent loan expected to be made to the Borrower by the Department under the California Housing and Community Development Department Multifamily Housing Program.

“TCAP/MHP Backfill Loan Documents” means any and all documents executed in connection with the TCAP/MHP Backfill Loan, including without limitation that certain HCD Backfill Loan Agreement dated March 9, 2010, between the Borrower and CTCAC supplementing that certain Grant Agreement (Agreement No. CA-2009-532) between Borrower and CTCAC.

“TCAP/MHP Backfill Subordination Agreement” means the subordination agreement among CTCAC, the Borrower, and the Lender relating to the subordination of the TCAP/MHP Backfill Loan and the TCAP/MHP Backfill Loan Documents.

“TCAP/MHP Backfill Tri-Party Agreement” means the Tri-Party Agreement by and among CTCAC, Lender and Borrower in connection with the TCAP/MHP Backfill Loan.

“TCAP Regulatory Agreement” means the Regulatory Agreement entered into by CTCAC and the Borrower in connection with the TCAP/MHP Backfill Loan.

“Termination Date” has the meaning given such term in the Convertible Note.

“Title Company” means the title company which issues the Title Policy.

“Title Policy” means the ALTA lender’s policies of title insurance required pursuant to this Agreement.

“Tri-Party Agreements” means, collectively, the City Tri-Party Agreement, the Prop 1C Tri-Party Agreement and the TCAP/MHP Backfill Tri-Party Agreement.

2. Singular and Plural Terms. Any defined term used in the plural in any Loan Document shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

3. Accounting Principles. Any accounting term used and not specifically defined in any Loan Document shall be construed in conformity with, and all financial data required to be submitted under any Loan Document shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to Bondowner Representative.

4. References and Other Terms. Any reference to any Loan Document or other document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections and Exhibits shall be construed as references to the Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms “including” and “include” mean “including (include) without limitation.”

EXHIBIT "C"

INSURANCE REQUIREMENTS

**I. PROPERTY INSURANCE**

**A. DURING CONSTRUCTION**

An ORIGINAL (or certified copy) Builder's All-Risk, Completed Value, Non-Reporting Form Policy or ORIGINAL Acord 28 (2003/10) form of Certificate of Insurance naming the borrowing entity as an insured, reflecting coverage of 100% of the replacement cost, and written by a carrier approved by Lender with a current Best's Insurance Guide Rating of at least A- IX (which is authorized to do business in the state in which the property is located) that includes:

1. Mortgagee Clause naming U.S. Bank National Association as Mortgagee with a 30-day notice to Lender in the event of cancellation, non-renewal or material change
2. Lender's Loss Payable Endorsement (ISO 1218) with a Severability of Interest Clause with a 30-day notice to Lender in the event of cancellation, non-renewal or material change
3. Replacement Cost Endorsement
4. No Exclusion for Acts of Terrorism
5. No Coinsurance Clause
6. Flood Insurance, if applicable
7. Collapse and Earthquake Coverage, if applicable
8. Vandalism and Malicious Mischief Coverage
9. Boiler and Machinery Coverage, if applicable
10. Demolition, Increased Cost of Construction Coverage
11. In-Transit Coverage
12. Partial Occupancy Permitted
13. Borrower's coverage is primary and non-contributory with any insurance of self-insurance carried by U.S. Bank National Association
14. Waiver of Subrogation against any party whose interests are covered in the policy.
15. Coverage to become effective upon the date of the Notice to Proceed, the date of site mobilization or the start of any shipment of materials, machinery or equipment to the site, whichever is earlier, and to remain in effect until replaced by permanent All Risk Property Insurance described below, or until such other time as may be mutually agreed upon by Lender and Borrower

**B. UPON COMPLETION**

An ORIGINAL (or certified copy) All-Risk Hazard Insurance Policy or ORIGINAL Acord 28 (2003/10) form of Certificate of Insurance naming the borrowing entity as an insured, reflecting coverage of 100% of the replacement cost, and written by a carrier approved by Lender with a current Best's Insurance Guide Rating of at least A- IX (which is authorized to do business in the state in which the property is located) that includes:

1. Mortgage Clause naming U.S. Bank National Association as Mortgagee with a 30-day notice to Lender in the event of cancellation, non-renewal or material change
2. Lender's Loss Payable Endorsement (ISO 1218) with a Severability of Interest Clause with a 30-day notice to Lender in the event of cancellation, non-renewal or material change
3. Replacement Cost Endorsement.
4. No Exclusion for Acts of Terrorism.
5. No Coinsurance Clause
6. Boiler and Machinery Coverage, if applicable.
7. Sprinkler Leakage Coverage.
8. Vandalism and Malicious Mischief Coverage.
9. Flood Insurance, if applicable.
10. Loss of Rents Insurance in an amount of not less than 100% of one year's Rental Value of the Project. "Rental Value" shall include:
  - a) The total projected gross rental income from tenant occupancy of the Project as set forth in the Budget,
  - b) The amount of all charges which are the legal obligation of tenants and which would otherwise be the obligation of Borrower, and
  - c) The fair rental value of any portion of the Project which is occupied by Borrower.
11. One year's business interruption insurance in an amount acceptable to Lender
12. Collapse and Earthquake Coverage, if applicable.
13. Extra Expense Coverage.
14. Borrower's coverage is primary and con-contributory with any insurance or self-insurance carried by U.S. Bank National Association..
15. Waiver of Subrogation against any party whose interest are covered in the policy.

## **II. LIABILITY INSURANCE**

An ORIGINAL Acord 25-S Certificate of General Comprehensive Liability Insurance naming the borrowing entity as an insured, providing coverage on an “occurrence” rather than a “claims made” basis and written by a carrier approved by Lender with a current A.M. Best’s Insurance Guide Rating of at least A- IX (which is authorized to do business in the state in which the property is located) that affirmatively includes the following:

1. Combined general liability policy limit of at least \$5,000,000.00 each occurrence, applying liability for Bodily Injury, Personal Injury, Property Damage, Contractual, Products and Completed Operations which combined limit may be satisfied by the limit afforded under the Commercial General Liability Policy, or by such Policy in combination with the limits afforded by an Umbrella or Excess Liability Policy (or policies); provided the coverage afforded under any such Umbrella or Excess Liability Policy is at least as broad in all material respects as that afforded by the underlying Commercial General Liability Policy.
2. No Exclusion for Acts of Terrorism
3. Aggregate limit to apply per location
4. Borrower’s coverage is primary and non-contributory with any insurance or self-insurance carried by U.S. Bank National Association.
5. Waiver of Subrogation against any party whose interests are covered in the policy. Additional Insured Endorsement naming U.S. Bank National Association as an additional insured with a 30-day notice to Lender in the event of cancellation, nonrenewal or material change. A Severability of Interests provision should be included.

## **III. WORKER’S COMPENSATION**

An ORIGINAL Certificate of Worker’s Compensation coverage in the statutory amount, and Employer’s Liability Coverage with minimum limits of \$500,000/\$500,000/\$500,000, naming the General Contractor and written by a carrier approved by Lender.



EXHIBIT "D"

PERMITTED ENCUMBRANCES

As utilized in this Loan Agreement, the defined term "Permitted Encumbrances" shall have the same meaning ascribed thereto in the Deeds of Trust.

EXHIBIT "E"

DISBURSEMENT REQUEST

Disbursement No. \_\_\_\_\_

The undersigned, on behalf of Borrower, hereby requests a Disbursement in the amount, and on the date, set forth below, pursuant to that certain Loan Agreement ("Agreement") dated May \_\_, 2010, among the CITY OF SAN JOSÉ, a municipal corporation and chartered city, duly organized and existing under the laws of the State of California ("Issuer" and "Lender"), FOURTH STREET APARTMENTS, L.P., a California limited partnership ("Borrower"), and U.S. BANK NATIONAL ASSOCIATION ("Bondholder" and "Bondowner Representative"). Capitalized terms used and not otherwise defined herein shall have the meanings set forth for them in the Agreement.

REQUESTED AMOUNT: \_\_\_\_\_

REQUESTED DATE: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

Borrower hereby represents and warrants to Bondowner Representative that:

1. The requested Disbursement is for a portion of the proceeds of the [Construction] [Convertible] Loan (as defined in the Agreement) and shall be applied to pay Project Costs in accordance with the Approved Budget and the itemized payment request attached hereto.
2. All costs shown in all prior Disbursement Requests (and payment requests) have been paid in full, Borrower has received valid lien releases or waivers from all contractors, subcontractors and materialmen with respect to all payments made for work and materials, and Borrower has no knowledge of any mechanic's lien claims (or any basis therefor) against the Property.
3. The Project is being constructed in accordance with the Plans, all recommendations in the approved soils report, and all applicable governmental requirements, and work on the Project has progressed to the point indicated on the attached payment request.
4. The attached payment request is an accurate and complete statement of all amounts previously paid or now due and all amounts expected to be incurred in connection with the completion of the Project.
5. All changes in the Plans, if any, have been made in accordance with the Agreement and there has been no changes in the Approved Budget or the expectations of the Borrower that the Project will be timely completed and within the scope of the Approved Budget.
6. All representations and warranties in the Agreement are true and correct as of the date of this request, including without limitation, the tax covenants set forth in Section 8.17 of the

Agreement, no Event of Default remains uncured, and no event has occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Designated Representative

Contractor hereby certifies that the representations, warranties and certifications set forth in Paragraphs 1 through 6 above, are true and correct to the best of Contractor's knowledge after due investigation and verification.

\_\_\_\_\_  
Contractor

CONSENTED TO BY  
BONDOWNER REPRESENTATIVE:

APPROVED BY  
[ENGINEER] [ARCHITECT]:

\_\_\_\_\_

\_\_\_\_\_

[APPROVED CHANGE ORDERS:]

[Order No.    Work Item    Amount    Approved Date]

EXHIBIT "F"

LOAN DOCUMENTS

The instruments and documents required to be executed, acknowledged (if necessary for recording) and delivered to Lender and Bondowner Representative, in each case in form and content satisfactory to Lender and Bondowner Representative, are as follows:

1. Documents to be executed and delivered by Borrower:
  - (a) Bond Purchase Agreement;
  - (b) Supplemental Agreement;
  - (c) Agreement;
  - (d) Construction Note;
  - (e) Convertible Note;
  - (a) Ground Leasehold Deed of Trust;
  - (b) Assignment of Leases;
  - (c) Disbursement Agreement;
  - (d) Hazardous Materials Agreement;
  - (e) Access Laws Certificate and Indemnity;
  - (f) Judicial Reference Agreement;
  - (g) Assignment of Construction Contract;
  - (h) Assignment of Architect's Contract and Plans and Specifications;
  - (i) Assignment to Borrower of Architect's Contract;
  - (j) Assignment of Development Agreement;
  - (k) Assignment of Property Management Contract;
  - (l) Collateral Assignment of Rights to Tax Credits;
  - (m) Subordination Agreements;
  - (n) Tri-Party Agreements; and
  - (o) [Swap Agreement.]

2. Documents to be executed by Guarantor:
  - (a) Guaranty executed by Guarantor;
  - (b) Judicial Reference Agreement;
  - (c) Hazardous Materials Agreement; and
  - (d) Access Laws Certificate and Indemnity.
3. Other documents to be executed by third parties:
  - (a) Bond Purchase Agreement;
  - (b) Fee Deed of Trust;
  - (c) Assignment Deeds of Trust;
  - (d) Consent to Assignment of Contractor's Contract, executed by Contractor;
  - (e) Consent to Assignment of Architect's Contract, executed by Architect;
  - (f) Consent to Assignment of Development Agreement, executed by Developer;
  - (g) Consent to Property Management Agreement, executed by Property Manager;
  - (h) Subordination Agreements;
  - (i) Tri-Party Agreements; and
  - (j) Architect's and Surveyor's Certificates.
4. Formation and authorization-related documents:
  - (a) a partnership borrowing authorization pursuant to which all of the General Partners authorize the execution, delivery and performance of the Loan Documents;
  - (b) copies of Borrower's amended and restated limited partnership agreement, the certificate of limited partnership that has been recorded, the certificate of limited partnership that has been filed with the Secretary of State, the partnership agreement and applicable statement or certificates of partnership or articles and by-laws of any General Partner that is a partnership or corporation,

and all modifications to any of them, all certified to be true and complete by each General Partner;

- (c) a certificate of all of the partners of any partnership that is a General Partner, and a certified copy of a corporate resolution of any corporation that is a General Partner, in each case authorizing such partnership or corporation to serve as a General Partner and to sign the Loan Documents as a General Partner;
- (d) a certificate of the secretary or an assistant secretary of any corporation that is a General Partner with respect to the incumbency of the officers who sign the Loan Documents; and
- (e) copies of all organizational documents, certification, authorizations, and other evidence of similar importance as described in subparagraph (a) through (d) above with respect to the Guarantor.

5. Other documents:

- (a) all financial statements of Borrower, each General Partner and Guarantor (i) required by Lender or Bondowner Representative or (ii) necessary to provide Lender and Bondowner Representative with a true and complete knowledge of the financial condition of Borrower and Guarantor; and
- (b) all other documents, opinions, instruments, certificates and other materials reasonably required by Lender or Bondowner Representative, including without limitation, judgment and lien searches in appropriate jurisdictions for the Borrower, its Partners and the Guarantor.

EXHIBIT “G”

SCHEDULE OF REQUIRED EQUITY CONSTRUCTION DEPOSITS\*

Installment	Amount of Installment	Due Date of Contribution
1	\$	Issuance Date
2	\$	Per Section ____ of the Partnership Agreement
3	\$	Per Section ____ of the Partnership Agreement
4	\$	Per Section ____ of the Partnership Agreement
Total	\$	

\* Subject to the operative terms and conditions of the Partnership Agreement set forth in the Partnership Agreement as of the Issuance Date (as defined in this Agreement). Unless otherwise specified, terms with initial capital letters in this Exhibit “G” shall have the meanings ascribed thereto in the Partnership Agreement.

EXHIBIT "H"  
APPROVED BUDGET



EXHIBIT "I"  
SOURCES OF CONSTRUCTION FUNDS SCHEDULE