



Office of the City Manager

CONSENT CALENDAR
February 25, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Jane Micallef, Director, Health, Housing & Community Services
Department

Subject: Interest Rate Adjustment for Strawberry Creek Lodge Permanent Financing,
1320 Addison Street

RECOMMENDATION

Adopt a Resolution waiving Section V.B.2 of the Housing Trust Fund Guidelines to provide a permanent loan interest rate up to the Applicable Federal Rate, current at construction loan closing, compounding annually.

SUMMARY

On January 21, 2014, for the purpose of assisting the pending rehabilitation of Strawberry Creek Lodge, a 150-unit affordable senior housing development located at 1320 Addison Street ("Project"), the City Council approved two actions: 1) the conversion of a \$92,000 predevelopment loan to the Project owner, the Strawberry Creek Lodge Foundation ("SCLF"), to permanent financing; and 2) a waiver of Section V.B.2 of the Housing Trust Fund Guidelines to provide a 0% interest rate for the permanent loan (Resolution No. 66,454-N.S.). The rationale for approving a 0% interest rate was to limit accrued interest that could, potentially, create a tax liability for the Project in Year 15, when the tax credit limited partner exited the partnership created to acquire and rehabilitate the Project.

Subsequent to staff's submission of the Council Report for the actions described above, the Project's developer, Satellite Affordable Housing Associates ("SAHA"), engaged the Project's tax credit investor. The investor's tax counsel determined that the City's predevelopment loan must be characterized as existing debt, rather than new predevelopment funding, for tax purposes. In order to maintain the value of existing debt in the Project's eligible basis, by which acquisition tax credits are calculated, the City's loan must carry interest at the Applicable Federal Rate ("AFR"), compounding annually. AFR for February 2014 is 3.56%. For that reason, it is to the Project's financial benefit to set the rate at AFR and keep acquisition basis as high as possible. Further, the tax credit investor has agreed to cover any Year 15 exit tax liability that the higher interest rate creates.

The Housing Trust Fund Guidelines do not give the City Manager discretion to set HTF loan interest rates at the levels appropriate to the specific project's tax projections and financing needs. Since the investor negotiations for the Project are still in progress, the best way to both maximize tax credit equity and protect the City's interests is to allow the City Manager the authority to approve an interest rate in an amount not to exceed AFR, current at the construction loan closing, compounding annually.

FISCAL IMPACTS OF RECOMMENDATION

A rate set at AFR will generate additional potential interest revenue for the City. Though many of the City's HTF loans do not generate sufficient residual receipts to provide regular loan payments, the inclusion of operating subsidies in the Project's financing are expected to produce small annual loan repayments.

CURRENT SITUATION AND ITS EFFECTS

Since January 21, 2014, the time of Council's last actions regarding Strawberry Creek Lodge, SAHA has engaged a tax credit investor and a lender, progressed in finalizing the Project's construction scope, and worked with City staff on drafting permanent loan documents. The development team continues to work diligently to finalize all these actions, and expects to close construction within 60 days of this action.

Approximate sources of Project funds are listed below:

Source of Funds	Value
Tax-Exempt Bonds, Tranche A, underwritten with Tenant Rents	3,615,000
Tax-Exempt Bonds, Tranche B, underwritten with Project-Based Vouchers (23 from BHA + 53 from HUD)	2,340,000
Seller Note	8,160,000
Existing Reserves	700,000
Deferred Developer Fee	1,125,000
Tax Credit Equity	5,215,000
Total	21,155,000

BACKGROUND

Located on a bucolic, 2-acre site in South Berkeley, Strawberry Creek Lodge has effectively served low-income seniors for 50 years. The building's original owner, the Strawberry Creek Lodge Foundation, organized as a community-based nonprofit intent on providing quality housing and services for low-income seniors, and in 1962, secured HUD 202 funds to develop 150-units in uniquely designed buildings. Additional resident amenities on the site include five laundry rooms, a commercial kitchen, a community room, four community lounge areas, and an art room. Today, with SCLF still well-invested in the Project, a strong, vibrant community remains in residence.

RATIONALE FOR RECOMMENDATION

Providing an interest rate on the City's permanent loan that does not exceed AFR, current for the construction loan closing date, will allow SAHA to maximize tax credit

resources while still protecting the City's interests and implementing the intent of the Housing Trust Fund Guidelines.

ALTERNATIVE ACTIONS CONSIDERED

Council could require the City loan to carry either a 0% interest rate, which it previously approved, or a 3% simple interest rate, which the HTF Guidelines specifically authorize. The HTF Guidelines do not currently allow for any variation from the 3% rate without Council approval.

HOUSING ADVISORY COMMISSION ACTION

At its regularly scheduled meeting of November 7, 2013, the HAC passed a motion recommending Council's approval of the conversion of SCL's predevelopment loan to permanent financing; M/S/C: Soto-Vigil/Darrow. Ayes: Darrow, Droste, Feller, Skjerping, Soto-Vigil, Tregub, and Wolfe. Noes: Casalaina. Abstentions: None.

CONTACT PERSON

Kate Hartley, Sr. Community Development Project Coordinator, HH&CS (510) 981-5411

Attachments:

1: Resolution

Exhibit A: Legal Description of Property

Exhibit B: Development Loan Agreement

RESOLUTION NO. ##,###-N.S.

APPROVAL OF A WAIVER OF HOUSING TRUST FUND GUIDELINES SECTION V.B.2 REQUIREMENT OF 3% INTEREST RATE AND AUTHORITY TO THE CITY MANAGER TO APPROVE AN INTEREST RATE FOR THE STRAWBERRY CREEK LODGE'S PERMANENT LOAN NOT TO EXCEED THE APPLICABLE FEDERAL RATE, CURRENT AT THE TIME OF CONSTRUCTION, COMPOUNDING ANNUALLY

WHEREAS, the City Council established a Housing Trust Fund (HTF) Program to assist in the development and preservation of affordable housing for low- and moderate-income households in order to maintain and enhance the ethnic and economic diversity of the City; and

WHEREAS, the HTF Program addresses the substantial need for affordable and special needs housing documented in the City's General Plan, Housing Element, and Consolidated Plan; and

WHEREAS, Strawberry Creek Lodge is a 150-unit development located at 1320 Addison Street, Berkeley, built in 1962 to serve low- and moderate-income seniors, as further described in Exhibit A, attached hereto ("Site"); and

WHEREAS, the Site's owner, Strawberry Creek Lodge Foundation ("SCLF"), a California nonprofit benefit corporation, entered into a Purchase and Sale Agreement on July 1, 2013 with Strawberry Creek Lodge, LP, a California limited partnership, in which the general partner is an affiliate of Satellite Affordable Housing Associates ("SAHA"), SCLF's selected developer partner; and

WHEREAS, SCLF and SAHA intend to rehabilitate and update the property, including installation of extensive seismic safety improvements, a new solar thermal energy system, common area repairs and improvements, new landscaping, and other building system upgrades ("Project"); and

WHEREAS, SAHA has secured low-income housing tax credits and tax-exempt bond financing for the Project, leveraged by a seller carry-back loan, existing reserves, deferred developer fee, and project-based Section 8 rental subsidies; and

WHEREAS, on January 21, 2014, (Resolution No. 66,454-N.S.), the City approved two actions for the Project: 1) the conversion of the City's \$92,000 predevelopment loan to SCLF (originally authorized on May 18, 2010, Resolution No. 64,893-N.S) to permanent financing; and 2) a waiver of Section V.B.2 of the Housing Trust Fund Guidelines to provide a 0% interest rate for the permanent loan; and

WHEREAS, pursuant to the opinion of the Project's tax credit investor (engaged after January 21, 2014), maximum tax credit benefits for the Project will accrue with a slight adjustment to the City's loan's interest rate, to the Applicable Federal Rate current for the time of the construction loan closing, compounding annually; and

WHEREAS, both the City's and the Project's interests will be best served by authorizing the City Manager to approve a final interest rate for the City's loan that does not exceed the Applicable Federal Rate, current at the time of the construction loan closing, compounding annually. This rate, for February 2014, is 3.56%.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council waives the requirement of Section V.B.2 of the Housing Trust Fund Guidelines and approves an interest rate for the Project's permanent loan not to exceed the Applicable Federal Rate, current at the time of construction, compounding annually.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements and any amendments will be kept on file in the Office of City Clerk.

Exhibits

- A: Legal Description of Property
- B: Development Loan Agreement

Exhibit A

Property Description

The land referred to in this Report is situated in the County of Alameda, City of Berkeley, State of California, and is described as follows:

PARCEL ONE:

Portion of Lot 2 in Block 2, as said lot and block are shown on the Map of "Plan of the State University Homestead Association", filed May 5, 1873, in Book 2 of Maps, at Page 57, in the Office of the County Recorder of Alameda County, described as follows:

Beginning at a point on the Southern line of Addison, formerly Third Street, as said street is shown on said Map, distant thereon Easterly 36.50 feet from the Western line of said Lot 2; running thence parallel with said Western line of said Lot 2, Southerly 125 feet, more or less, to a line drawn parallel with said line of Addison Street and distant at right angles Southerly 125 feet therefrom; thence along said last named parallel line Easterly 84 feet to the Eastern line of said Lot 2; thence along the last named line Northerly 125 feet, more or less, to the Southern line of said Addition Street; and thence along the last named line Westerly 84 feet to the point of beginning.

PARCEL TWO:

An easement created in reference to Parcel One, above, in the deed from Nels Arvid Hamberg, et al, recorded January 12, 1955, Book 7535, Page 247, Official Records, for driveway purposes, over and along a strip of land described as follows:

Portion of Lot 2, in Block 2, as said lot and block are shown on the Map of "Plan of the State University Homestead Association", filed May 5, 1873, in Book 2 of Maps, at Page 57, in the Office of the County Recorder of Alameda County, described as follows:

Beginning at a point on the Southern line of Addison, formerly Third Street, as shown on said Map, distant thereon Easterly 36.50 feet from the Western line of said Lot 2; and running thence along said line of Addison Street, Westerly 3.75 feet; thence parallel with said Western line of said Lot 2, Southerly 96 feet; thence parallel with said line of Addison Street, Easterly 3.75 feet; and thence parallel with said Western line of said Lot 2, Northerly 96 feet to the point of beginning.

PARCEL THREE:

A portion of Block 2, as said block is shown on the Map of "Plan of the State University Homestead Association", filed May 5, 1873, in Book 2 of Maps, Page 57, in the Office of the County Recorder of Alameda County, described as follows:

Commencing at a point on the Western line of North Valley Street, as said street is described in the Deed to the City of Berkeley, dated August 30, 1927, recorded September 17, 1927, in Book 1643 of Official Records of Alameda County, Page 468, distant thereon 310.48 feet Northerly from the Northern line of Allston Way; running thence along said line of Northern valley Street Northerly 0.02 feet; thence parallel with said line of Allston Way along the Northern terminus of said North Valley Street, Easterly 25 feet; thence North 04° 56' West, 38 feet to the center line of Strawberry Creek, and the actual point of beginning of the parcel of land to be described; thence along the last mentioned line Southeasterly to the Southern line of Lot 5 in said Block 2; thence along the last mentioned line Easterly to a point distant thereon 100 feet Westerly from the Western line of Acton Street, formerly Second Avenue; thence parallel with said line of Acton Street, Northerly 115.50 feet to the Southern line of Lot 4 in said Block 2; thence in a direct line Northerly 115.19 feet to a point on the Northern line of said Lot 4, distant thereon 108 feet Westerly from said Western line of Acton Street; thence along said Northern line of Lot 4 Westerly 209.50 feet to the Eastern line of Lot 2 in said Block 2; thence along the last mentioned line Southerly 9.84 feet to a line drawn parallel with the Southern line of Addison Street, formerly Third Street, and distant at right angles 125 feet Southerly therefrom; thence along last said parallel line Westerly 120.50 feet to the Western line of said Lot 2; thence along the last mentioned line and its direct production Southerly to the center line of Strawberry Creek; thence along the last mentioned line Easterly to the direct production Northerly of the Western line of Lot 9 in said Block 2; thence along last said produced line Southerly to the Northwest corner of that certain parcel of land conveyed to Odean J. Scheiber, et ux., by Deed recorded January 8, 1957, in Book 8252 of Official Records, at Page 219; thence along the Northerly and Easterly line of said Scheiber parcel of land the following courses and distances: North 80° 30' East, 19 feet and North 86° 31' East, 102.97 feet to the point of beginning.

PARCEL FOUR:

An easement, created in reference to Parcel Three above, in the deed from Finnish Evangelical Lutheran Church of Berkeley, California, recorded January 8, 1957, Book 8252, Page 219, Official Records, for ingress and egress and public utilities, over that parcel of land described as follows:

Beginning at a point on the Western line of North Valley Street, as said street is described in the Deed to City of Berkeley, dated August 30, 1927, recorded September 17, 1927, in Book 1643 of Official Records, at Page 468, distant thereon 310.48 feet (more or less) Northerly from the Northern line of Allston Way; thence North 80° 36' East 25 feet to the center line of said North Valley Street; thence along said center line North 04° 56' West 38 feet; thence North 86° 31' West to a point intersected by a line drawn North 04° 56' West from the point of beginning; thence North 04° 56' East to the point of beginning.

PARCEL FIVE:

A non-exclusive easement granted in the deed to Strawberry Creek Lodge Foundation, recorded July 3, 1962, Book 621, Page 888, Official Records, for underground utilities, over and through the westerly 25 feet of the parcel of land described in the deed to John H. Olson, et ux, recorded August 21, 1961, Book 391, Page 666, Official Records.

PARCEL SIX:

The Western 40 feet front and rear, of Lot 1, in Block 2 of "Plan of the State University Homestead Association, adopted March 6, 1873", filed March 5, 1873, in Book 2 of Maps, Page 59, records of said County, described as follows:

Beginning at a point on the Southern line of Addison Street, distant thereon 277 feet, 6 inches Westerly from the Western line of Acton Street, formerly 2nd Avenue, as shown on said Map; thence Westerly along said line of Addison Street, 40 feet; thence Southerly parallel with said line of Acton Street, 115 feet, 6 inches; thence Easterly parallel with said line of Addison Street, 40 feet; thence Northerly parallel with said line of Acton Street, 115 feet, 6 inches to the point of beginning.

APN: 056-1994-005-03

DEVELOPMENT LOAN AGREEMENT
BETWEEN
THE CITY OF BERKELEY
AND
STRAWBERRY CREEK LODGE, L.P.

FOR
STRAWBERRY CREEK LODGE

THIS DEVELOPMENT LOAN AGREEMENT (the "Loan Agreement") is made and entered into as of _____, 2014, (the "Effective Date") by and between the City of Berkeley, a municipal corporation (the "City"), and Strawberry Creek Lodge Foundation, a California nonprofit public benefit corporation (the "Borrower").

RECITALS

- A. WHEREAS, The City Council of the City of Berkeley (the "City Council") established the Housing Trust Fund Program (the "Program") to assist in the development and expansion of housing affordable to low-income persons in the City; and
- B. WHEREAS, Strawberry Creek Lodge is a 150-unit development located at 1320 Addison Street, Berkeley, built in 1962 to serve low- and moderate-income seniors, as further described in Exhibit A, attached hereto ("Site"); and
- C. WHEREAS, Borrower, entered into a Purchase and Sale Agreement on July 1, 2013 with Strawberry Creek Lodge, LP, a California limited partnership, in which the general partner is Satellite AHA Development, Inc., a wholly controlled affiliate of Satellite Affordable Housing Associates ("SAHA"), the selected development partner of Borrower; and
- D. WHEREAS, Borrower and its assignees intend to rehabilitate and update the property, including extensive seismic safety improvements, a new solar thermal energy installation, common area repairs and improvements, new landscaping, and other building system upgrades ("Project"); and
- E. WHEREAS, Strawberry Creek Lodge, LP, secured low-income housing tax credits and tax-exempt bond financing for the Project, leveraged by a seller carry-back loan, existing reserves, deferred developer fee, and project-based Section 8 rental subsidies; and
- F. WHEREAS, on May 18, 2010 (Resolution No. 64,893-N.S.), the City provided \$86,250 in short-term predevelopment financing for the Project from the City's General Fund, and stated in the predevelopment loan agreement that if the City

so chose, in its sole discretion, the loan could convert to permanent financing.
and

- G. WHEREAS, the City determined on January 21, 2014 (Resolution No. __) that a conversion of the predevelopment loan into permanent financing would fulfill the mission of the City's Housing Trust Fund Program; enable an expanded work scope for the Project; and contribute to the extended useful life of Strawberry Creek Lodge.

NOW, THEREFORE, in consideration of, and in reliance upon the foregoing and upon the covenants, loan agreements, representations and warranties herein contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City and the Borrower agree as follows:

ARTICLE 1
DEFINITIONS; EXHIBITS

Section 1.1 Definitions.

The following capitalized terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.

- a) "Approved Project Budget" means that budget for the development of the Property approved by the City and attached to this Loan Agreement as Exhibit B which is hereby incorporated into this Loan Agreement by this reference.
- b) "Approved Financing" means all of the loans, grants, equity, and other financing acquired by the Borrower and approved by the City for the purpose of financing the Project, in addition to the Loan, as documented in the Approved Project Budget.
- c) Intentionally deleted.
- d) "City-Assisted Units" means the One Hundred Fifty (150) units in the Project to be occupied, operated, and managed pursuant to the Regulatory Agreement.
- e) Intentionally deleted.
- f) "Deed of Trust" means that certain Deed of Trust, Assignment of Rents, and Security Agreement recorded as an encumbrance on the Property, as security for the Loan by the Borrower as trustor, and with the City as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust provided for herein or otherwise in a form acceptable to the City.

- g) "Event of Default" shall have the meaning set forth in Section 6.1 below.
- h) "Guidelines" means the City of Berkeley's Housing Trust Fund Guidelines, which generally define the terms of use of Local Funds.
- i) "HUD" means the United States Department of Housing and Urban Development.
- j) Intentionally deleted.
- k) "Hazardous Materials" shall have the meaning set forth in Section 4.8 below.
- l) "Hazardous Materials Claim" shall have the meaning set forth in Section 4.8 below.
- m) "Hazardous Materials Law" shall have the meaning set forth in Section 4.8 below.
- n) "Loan" means the loan of Local Loan Funds by the City to the Borrower as provided in this Loan Agreement in the total principal amount not to exceed Ninety-Two Thousand Dollars (\$92,000).
- o) "Loan Documents" mean collectively this Loan Agreement, the Note, the Deed of Trust, the Regulatory Agreement, and related documents as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.
- p) "Local Funds" means non-federal funding provided by the City of Berkeley through its Housing Trust Fund.
- q) "Local Loan Funds" means Ninety-Two Thousand Dollars (\$92,000) in Local Funds that the City is lending to the Borrower pursuant to this Loan Agreement.
- r) "Maturity Date" means fifty-five (55) years after the City's final sign-off of the construction permit, memorializing the City's determination that the Project's rehabilitation is complete, unless sooner terminated, but in no event later than December 31, 2072.
- s) "Note" means the promissory note executed by Borrower in favor of the City in the principal amount of Ninety-Two Thousand Dollars (\$92,000) to evidence the Loan, as well as any amendments to, modifications of, or restatements of said promissory note.

t) "Plans" means all construction documentation upon which Borrower and Borrower's contractor shall rely in building all the improvements on the Property including, but not limited to, final architectural drawings, landscaping construction plans, final elevations, building plans and specifications (also known as "working drawings").

u) "Predevelopment Contract" means the agreement between the Strawberry Creek Lodge Foundation and the City dated July 22, 2011, pursuant to which the City loaned the Borrower Eighty-Six Thousand Two Hundred Fifty Dollars (\$86,250) for predevelopment activities and which the City agreed to convert to permanent financing on January 21, 2014, Resolution No. _____, through this Loan Agreement.

v) "Project" means the Property and its rehabilitation, the Property consisting of 149 units and 1 manager's units, a commercial kitchen, common areas, and site improvements, and its rehabilitation.

w) Intentionally deleted.

x) "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants regarding the use of Local Loan Funds, between the City and the Borrower associated with the Loan.

y) "Residual Receipts" shall have the meaning set forth in Section 2.9 below.

z) "Term" means the period beginning on the City's final sign-off of the construction permit, memorializing the City's determination that the rehabilitation is complete, and ending fifty-five (55) years thereafter, unless sooner terminated.

aa) "Transfer" shall have the meaning set forth in Section 4.14 below.

Section 1.2 Exhibits.

The following exhibits are attached to this Loan Agreement and incorporated into this Agreement by this reference:

- EXHIBIT A: Legal Description of the Property
- EXHIBIT B: Approved Project Budget
- EXHIBIT C: Project Conditions
- EXHIBIT D: Resolution Approving the Funding Reservation
- EXHIBIT E: Intentionally omitted
- EXHIBIT F: Intentionally omitted

ARTICLE 2
LOAN

Section 2.1 Amount of Loan.

a) On and subject to the terms and conditions of the Loan Documents, the City agrees to make and the Borrower agrees to accept the Loan in the original principal amount of Ninety-Two Thousand Dollars (\$92,000) for the purposes set forth in Section 2.3 below. The Loan shall be evidenced by the Note and secured by the Deed of Trust. The Loan consists of Ninety-Two Thousand Dollars (\$92,000) of Local Loan Funds which equals One Hundred Percent (100%) of the Loan.

b) One Hundred Percent (100%) of the Loan Amount has already been advanced by the City to the Borrower pursuant to the Predevelopment Contract. Upon execution by the Borrower of this Agreement and the Note, this Agreement shall supersede the Predevelopment Contract in its entirety.

Section 2.2 Interest.

As of the Effective Date, the unpaid principal balance on the Loan shall accrue interest at Applicable Federal Rate, (____%), compounded annually.

Section 2.3 Use of Loan Funds.

a) The Borrower shall use the Local Loan Funds for rehabilitation costs of the Project that are eligible under the Guidelines, and consistent with the Approved Project Budget: seismic safety improvements, accessibility upgrades, energy efficiency measures, common area improvements, and/or unit interior upgrades.

b) The Borrower shall not use the Loan funds for any purpose not detailed in the Approved Project Budget without prior the written consent of the City.

Section 2.4 Security.

a) Borrower shall secure its obligation to repay the Loan by executing the Deed of Trust, granting the City a lien on the Property and subsequent improvements.

b) As further security, and as the City may require, and subject to the rights of any senior lenders, the Borrower agrees to assign and transfer to the City all of (1) the Borrower's rights in and to the Plans, together with all amendments, modifications, supplements, general conditions and addenda thereto relating to the Project, and (2) the Borrower's right, title and interest in the architect agreement between the Borrower and the architect relating to the development of the Project.

Section 2.5 Subordination

The Deed of Trust and/or Regulatory Agreement may be subordinated to other Approved Financing (in each case, a "Senior Lien"), but only on condition that all of the following conditions are satisfied:

a) All of the proceeds of the proposed Senior Lien, less any transaction costs, must be used to provide acquisition, construction and/or permanent financing for the Project.

b) The proposed lender (each, a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

c) Borrower must demonstrate to the City's reasonable satisfaction that subordination of the Deed of Trust and/or Regulatory Agreement is necessary to secure adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Project, including the operation of the Project as affordable housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Project, and adequate financing for the Project would not be available without the proposed subordination.

d) The subordination agreement(s) must be structured to minimize the risk that the Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement must provide the City with adequate rights to cure any defaults by Borrower, including: (i) providing the City or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (ii) providing the City with a cure period of at least sixty (60) days to cure any default.

e) The subordination(s) described in this section may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the City.

f) No subordination may limit the effect of the Deed of Trust and/or Regulatory Agreement before a foreclosure, nor require consent of the holder of the Senior Loan to exercise of any remedies by the City under the Loan Documents.

g) Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be

authorized to execute the approved subordination agreement without the necessity of any further action or approval.

h) Intentionally deleted.

i) Intentionally deleted.

Section 2.6 Intentionally deleted.

Section 2.7 Intentionally Deleted.

Section 2.8 Intentionally deleted.

Section 2.9 Repayment Schedule.

The Loan shall be repaid as follows:

a) Special Definitions. The following definitions shall apply for the purposes of this Section:

i. "Annual Operating Expenses" with respect to a particular calendar year shall mean the following costs reasonably and actually incurred for operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and assessments imposed on the Project; debt service currently due on a non-optional basis on loans associated with development of the Project and approved by the City, including up to \$25,000 annually, inflating at 3% per annum, for repayment of the loan from SAHA to the Project, and excluding debt service due from residual receipts or surplus cash of the Project; on-site service provider fees for tenant social services, provided the City has approved, in writing, the plan and budget for such services before such services begin; property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the City; asset management fees payable to the limited partner or affiliate of the limited partner of the Borrower, if any, not to exceed a total of Five Thousand Dollars (\$5,000) per year, all as specifically approved in advance and in writing by the City at the time that a tax credit syndication occurs (and only for the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended), inflating at 3% annually; premiums for property damage and liability insurance; utility services not paid for directly by tenants, including water, sewer, and trash collection; maintenance and repair; any annual license or certificate of occupancy fees required for operation of the Project; security services; advertising and marketing; cash deposited into reserves for capital replacements of the Project in an amount not to exceed six tenths of one percent (.6%) of the total development cost of the Project or \$_____, as required by the Approved Financing; cash deposited into an operating reserve in an amount not to exceed 3% of Annual Operating Expenses or the amount required in connection with the Approved Financing, whichever is greater (or any greater amount

approved in writing by the City); payment of any previously unpaid portion of the Developer Fee (without interest) not exceeding the cumulative Developer Fee set forth in Section 3.19; extraordinary operating costs specifically approved in writing by the City; payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved in writing by the City and not listed above. Annual Operating Expenses shall not include the following: depreciation, amortization, depletion or other non-cash expenses; any amount expended from a reserve account; and any capital cost with respect to the Project, as determined by the accountant for the Project.

ii. "Gross Revenue" with respect to a particular calendar year shall mean all revenue, income, receipts, and other consideration actually received from operation and leasing of the Project. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; net proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance and not paid to senior lenders; the proceeds of casualty insurance not used to rebuild the Project and not paid to senior lenders; and condemnation awards for a taking of part or all of the Project for a temporary period. Gross Revenue shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

iii. "City's Share of Residual Receipts" shall mean a distribution that is proportional to the value of the City's Loan relative to the total value of Residual Receipts loans in the Approved Financing, or ____ %.

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

b) "Residual Receipts" in a particular calendar year shall mean the amount by which Gross Revenue (as defined above) exceeds Annual Operating Expenses (as defined above).

c) Annual Payments. Commencing on May 1st following completion of the Project, and on May 1st of each year thereafter for the Term of the Loan, Borrower shall make repayments of the outstanding principal and accrued interest on the Loan equal to the City's Share of Residual Receipts. Payments made shall be credited first against accrued interest and then against outstanding principal. Such annual payments shall be accompanied by the Borrower's report of Residual Receipts (including an independent auditor's report regarding the auditor's review of Annual Operating Expenses). The Borrower shall provide the City with any documentation reasonably

requested by the City to substantiate the Borrower's determination of Residual Receipts.

d) Special Repayments from Net Proceeds of Permanent Financing.

A proportional share of the Net Proceeds of Permanent Financing, if any, shall be paid to the City as a special repayment of the Loan, and such proportional calculation shall include deferred Developer Fee, if any. The amount of the Net Proceeds of Permanent Financing shall be determined by the Borrower and submitted to the City for approval on the date the Borrower submits the final cost certification and Form 8609 to the California Tax Credit Compliance Committee. The amount of the Net Proceeds of Financing shall be calculated using the actual principal amount of the permanent loan made to Borrower, provided that Borrower provides sufficient evidence that the permanent loan is the maximum principal amount that Borrower could secure for the Project applying reasonable underwriting standards. The Borrower shall also submit to the City any additional documentation sufficient to verify the amount of the Net Proceeds of Permanent Financing. The City shall approve or disapprove Borrower's determination of the amount of the Net Proceeds of Permanent Financing in writing within thirty (30) days of the receipt of Borrower's cost audit and supplemental documentation. If Borrower's determination is disapproved by the City, Borrower shall re-submit documentation to the City until the City approval is obtained. The City's share of the Net Proceeds of Permanent Financing shall be due the City from the Borrower no later than five (5) days following the date Borrower receives its final capital contribution from the Borrower's investor limited partner.

e) Payment in Full. All principal and accrued interest on the Loan shall be due in full on the earlier to occur of (i) the date of any Transfer not authorized by the City, (ii) the date of any Event of Default, or (iii) the expiration of the Maturity Date.

f) Prepayment. The Borrower shall have the right to prepay the Loan at any time without penalty. However, the Regulatory Agreement shall remain in effect for the entire Term, regardless of any prepayment.

Section 2.10 Special Reports and Accounting of Residual Receipts.

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

b) Books and Records. In addition to the records required to be maintained pursuant to Section 4.4 below, the Borrower shall keep and maintain on the Property or at Borrower's principal place of business, or elsewhere with the City's written consent, full, complete and appropriate books, record and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts. Such books, records and accounts shall be kept and maintained in

accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement which provide for the calculation of Residual Receipts on a cash basis. All such books, records, and accounts shall be open to and available for inspection by the City, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Borrower may be required to furnish any governmental agency shall at all reasonable times be open for inspection by the City at the place that the books, records and accounts of the Borrower are kept. The Borrower shall preserve records on which any statement of Residual Receipts is based for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (c) below then pending.

c) City Audits. The receipt by the City of any statement pursuant to subsection (a) above or any payment by Borrower or acceptance by the City of any loan repayment for any period shall not bind the City as to the correctness of such statement or such payment. Within three (3) years after the receipt of any such statement, the City or any designated agent or employee of the City at any time shall be entitled to audit the Residual Receipts and all books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of an audit, the City shall deliver a copy of the results of such audit to Borrower. If it shall be determined as a result of such audit that there has been a deficiency in a loan repayment to the City, then such deficiency shall become immediately due and payable with interest at the rate set forth in section 2.2(b) above, determined as of and accruing from the date that said payment should have been made. In addition, if Borrower's auditor's statement for any calendar year shall be found to have understated Residual Receipts by more than five percent (5%) and the City is entitled to any additional Loan repayment as a result of said understatement, then Borrower shall pay, in addition to the interest charges referenced hereinabove, all of the City's reasonable costs and expenses connected with any audit or review of Borrower's accounts and records.

Section 2.11 Non-Recourse.

Except as provided below, neither the Borrower nor the general partner or limited partner members of the partnership created for the purpose of securing tax credit funding for the Project shall have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan or the performance of the covenants of the Borrower under the Deed of Trust or the other Loan Documents. Following recordation of the Deed of Trust, the sole recourse of the City with respect to the principal of, or interest on, the Note and defaults by Borrower in the performance of its covenants under the Deed of Trust or the other Loan Documents shall be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the City thereunder, or (b) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Note as

demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note and the performance of the Borrower's obligations under the Deed of Trust or the other Loan Documents, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the City under Sections 3.7 (d) and (e), 3.10, 4.8, 7.4 of this Agreement, or under Section 2.1 of the Regulatory Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

ARTICLE 3 DEVELOPMENT OF PROJECT

Section 3.1 Permits and Approvals.

All permits and approvals necessary for the development of the Project must be received no later than May 1, 2014, or the City, at its option, and with thirty (30) calendar days' written notice and opportunity to cure, may declare Borrower in default hereunder.

Section 3.2 Plans.

a) Simultaneously with submission to the City Building and Safety Division of the City's Planning Department (the "City Building and Safety Division"), Borrower shall submit to the City's Housing Department a copy of the Plans for the Project.

b) The Housing Department shall, if the Plans submitted conform to the provisions of this Agreement, approve in writing such Plans. Unless rejected by the Housing Department for their failure to comply with the foregoing requirements within thirty (30) calendar days of submission by Borrower, said Plans shall be deemed accepted. Such approval of the Plans by the Housing Department shall not relieve Borrower's obligation to obtain any and all approvals required by the City Building and Safety Division.

c) If rejected by the Housing Department in whole or in part, Borrower shall submit new or corrected Plans within thirty (30) calendar days of notification of the Housing Department's rejection and the reasons therefor. The Housing Department shall then have fifteen (15) calendar days to review and approve Borrower's new or corrected Plans. The provisions of this Section relating to time periods for approval,

rejection, or resubmission of new or corrected Plans shall continue to apply until the Plans have been approved by the Housing Department.

Section 3.3 Construction Contracts.

a) Borrower agrees to conform to all City contracting requirements. Unless otherwise approved by the City in writing, Borrower shall use the procurement process pursuant to HUD OMB Circular A-110 to select all general contractors and subcontractors retained directly by Borrower. Not later than thirty (30) days prior to the proposed commencement of construction work on the Project, the Borrower shall submit to the City for its approval any proposed construction contract in excess of Twenty Five Thousand Dollars (\$25,000). All construction work and professional services shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California. Each contract that the Borrower enters for construction on the Project shall provide that at least ten percent (10%) of the costs of construction shall be retained and payable only upon completion of construction, subject to early release of retention for specified subcontractors upon approval by the City. The City's approval of the construction contracts shall in no way be deemed to constitute approval of or concurrence with any term or condition of the construction contracts except as such term or condition may be required by this Loan Agreement.

b) Upon receipt by the City of the proposed construction contract in substantially final form, the City shall promptly review same and approve or disapprove it within thirty (30) calendar days. If the construction contract is not approved by the City, the City shall set forth in writing and notify the Borrower of the City's reasons for withholding such approval. The Borrower shall thereafter submit a revised construction contract for City approval, which approval shall be granted or denied in thirty (30) calendar days in accordance with the procedures set forth above. Any construction contract executed by the Borrower for the Project shall be in the form approved by the City.

Section 3.4 Construction Bonds.

Prior to commencement of construction on the Project, the Borrower shall deliver to the City copies of labor and material bonds and performance bonds for the construction in an amount equal to one hundred percent (100%) of the scheduled cost of the construction. Such bonds shall name the City as a co-obligee.

Section 3.5 Commencement of Construction.

Borrower shall cause the commencement of construction on the Project no later than May 1 2014.

Section 3.6 Completion of Construction.

Borrower shall diligently prosecute construction of the Project to completion, and shall cause the completion of the construction on the Project no later than Thirty (30) months after commencement of construction.

Section 3.7 Construction Pursuant to Plans and Laws; Prevailing Wages.

a) Changes to the Work. Borrower shall construct the Project in substantial conformance with the Plans. Borrower shall notify the City in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the plans and specifications approved by the City. A written authorization by the City Housing Department must be obtained before any of the following changes, additions, or deletions in work for the Project may be performed: (1) any change in the work the cost of which exceeds One Hundred Thousand Dollars (\$100,000); or (2) any set of changes in the work the cost of which cumulatively exceeds Two Hundred Fifty Thousand Dollars (\$250,000); or (3) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Project as provided for in the plans and specifications approved by the City. Consent to any additions, changes, or deletions to the work shall not relieve or release Borrower from any other obligations under this Loan Agreement, or relieve or release Borrower or its surety from any surety bond.

b) Compliance with Laws. Borrower shall cause all work performed in connection with the Project to be performed in compliance with (i) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, including without limitation and to the extent applicable, the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations, as further set forth in subsection (d) below; (ii) the property standards set out in 24 CFR 5.701 et seq. and 24 C.F.R. 92.251; and (iii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower shall be responsible to the City for the procurement and maintenance thereof, as may be required of Borrower and all entities engaged in work on the Project. Any rehabilitation work performed on the Project shall include activities to make the Project seismically safe and to abate lead contamination to the extent required by applicable laws.

c) Accessibility Requirements. Borrower shall construct the Project to comply with all applicable federal and state disabled persons accessibility requirements including the Federal Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title II and/or Title III of the Americans with Disabilities Act of 1990, and Title 24 of the California Code of Regulations, and shall submit to the City, information on the accessibility of the Project to disabled persons, and the construction work planned to

achieve compliance with such laws. If no City-Assisted Units are to be made accessible, Borrower shall provide evidence acceptable to the City of the market, economic, or site conditions that prevent the inclusion of accessibility units.

d) Federal Davis-Bacon Requirements. The Borrower shall cause construction on the Project to be in compliance with the prevailing wage requirements of the federal Davis-Bacon Act. The Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations in connection with the construction of the Project or any other work undertaken or in connection with the Property. The requirements in this Subsection shall survive repayment of the Loan and the reconveyance of the Deed of Trust.

e) Intentionally omitted

Section 3.8 Management and Marketing Plan.

As the City may require, no later than six (6) months prior to the projected date of the completion of the Project, Borrower shall submit to the City for approval a Property Management Plan (the "Management Plan") which shall include the Borrower's plan for marketing the Project to income-eligible households as required pursuant to the Regulatory Agreement, including information on affirmative marketing efforts, compliance with fair housing laws and procedures to address households with disabled persons.

As applicable, upon receipt of the Management Plan, the City shall promptly review the Management Plan and shall approve or disapprove it in writing within thirty (30) calendar days after submission. If the Management Plan is not approved, Borrower shall submit a revised Management Plan within thirty (30) calendar days. If the City does not approve the revised Management Plan, Borrower shall be in default hereunder. The approved Management Plan shall remain in effect for the Term and may be amended from time to time subject to the review and approval of the City.

Section 3.9 Intentionally omitted.

Section 3.10 State and Federal Relocation Requirements.

If and to the extent that construction of the Project results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then the Borrower shall comply with all applicable local, state, and federal statutes and regulations, (including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, California Government Code Section 7260 et seq., and accompanying regulations) with respect to relocation planning, advisory assistance, and payment of monetary benefits. The Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons

and any other obligations associated with complying with such relocation laws. The Borrower shall defend the City (with counsel reasonably acceptable to the City), against any claim for damages, compensation, fines, penalties, relocation payments or other amounts arising out of the failure or alleged failure of any person or entity (including the Borrower or the City) to satisfy relocation obligations related to the development of the Project. This obligation to indemnify shall survive termination of this Loan Agreement. As of the Effective Date, the City has approved the Project's relocation plan.

Section 3.11 Equal Opportunity.

During the construction of the Project there shall be no discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work. Borrower shall and shall cause all contractors and subcontractors to comply with the City Resolution No. 46,913-N.S. regarding anti-discriminatory hiring practices and applicable state and federal law anti-discrimination requirements.

Section 3.12 Minority and Women-Owned Contractors.

Consistent with state and federal laws and regulations, Borrower will use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the construction of the Project. Borrower shall, at a minimum, notify applicable minority-owned and women-owned business firms located in the City of Berkeley of bid opportunities for the construction of the Project. Documentation of such notifications shall be maintained by Borrower and available to the City as requested.

Section 3.13 Progress Reports.

Until such time as Borrower has received final construction permit sign-off from the City for the Project, Borrower shall provide the City with quarterly progress reports regarding the status of the construction of the Project, including a certification that the actual construction costs to date conform to the Approved Project Budget, as it may be amended from time to time pursuant to Section 3.17, below.

Section 3.14 Construction Responsibilities.

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

b) Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Project, including (but not limited to) the quality and suitability of the Plans, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or

inspection undertaken by the City with reference to the Project is solely for the purpose of determining whether Borrower is properly discharging its obligations to the City, and should not be relied upon by Borrower or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Project.

Section 3.15 Mechanics Liens, Stop Notices, and Notices of Completion.

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

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

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

Section 3.16 Inspections.

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

Section 3.17 Approved Project Budget; Revisions to Budget.

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

Section 3.18 Project Conditions.

In addition to the general conditions described herein, the Borrower shall comply with the further conditions described in the attached Exhibit C.

Section 3.19 Developer Fee.

The maximum cumulative developer fee that may be paid to any entity or entities providing development services to the Project, whether paid up-front or on a deferred basis, shall not exceed Two Million Three Hundred Ten Thousand Nine Hundred Twenty Dollars (\$2,310,920).

Section 3.20 NEPA Mitigation Requirements.

Borrower shall comply with the following NEPA mitigation requirements in the construction of the Project:

a) The Project was found "Exempt", per Section 58.34(a)(12), as confirmed in the "Statutory Worksheet" executed by the Responsible Entity Agency Official on December 3, 2013. Borrower shall adhere to the compliance factors identified in the Statutory Worksheet.

ARTICLE 4
LOAN REQUIREMENTS

Section 4.1 Financial Accountings and Post-Completion Audits.

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

Section 4.2 Information.

Borrower shall provide any information reasonably requested by the City in connection with the Project, including (but not limited to) any information required by HUD in connection with Borrower's use of the Loan funds.

Section 4.3 Annual Operating Budget.

At the beginning of each year of the Term, Borrower shall provide to the City an annual budget for the operation of the Project. Unless rejected by the City in writing, said budget shall be deemed accepted. If rejected by the City in whole or in part, Borrower shall submit a new or corrected budget within thirty (30) calendar days of notification of the City's rejection and the reasons therefor. The City shall then have

fifteen (15) calendar days to review and approve Borrower's new or corrected budget. The provisions of this Section relating to time periods for approval, rejection, or resubmission of new or corrected budget shall continue to apply until such budget has been approved by the City.

Section 4.4 Records.

a) The Borrower shall keep and maintain on the Property, or elsewhere with the City's written consent, full, complete and appropriate books, record and accounts relating to the Project, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's compliance with the terms and provisions of this Loan Agreement. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement. All such books, records, and accounts shall be open to and available for inspection and copying by the City, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Borrower may be required to furnish any governmental agency shall at all reasonable times be open for inspection by the City at the place that the books, records and accounts of the Borrower are kept. The Borrower shall preserve such records for a period of not less than five (5) years after the creation of such records. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Loan is pending at the end of the record retention period stated herein, then the Borrower shall retain such records until such action and all related issues are resolved.

b) The City shall notify Borrower of any records it deems insufficient. Borrower shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

Section 4.5 HUD Record Requirements. Not Applicable.

Section 4.6 City Audits.

Each year, Borrower shall provide the City with a copy of Borrower's annual audit, which shall include information on all of Borrower's activities and not just those pertaining to the Project. In addition, the City or any designated agent or employee of the City at any time shall be entitled to audit all of Borrower's books, records, and accounts pertaining thereto, pursuant to Section 61 of the Berkeley City Charter. Such audit shall be conducted during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of an audit, the City shall deliver a copy of the results of such audit to Borrower.

Section 4.7 Federal Requirements. Not Applicable.

Section 4.8 Hazardous Materials.

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

b) Borrower shall immediately advise the City in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

c) The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower. Borrower shall indemnify and hold harmless the City and its councilmembers, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the City in

connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees. This obligation to indemnify shall survive termination of this Agreement.

d) Without the City's prior written consent, which shall not be unreasonably withheld, Borrower shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the City's reasonable judgment, impair the value of the City's security hereunder; provided, however, that the City's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the City's consent before taking such action, provided that in such event Borrower shall notify the City as soon as practicable of any action so taken. The City agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the reasonable satisfaction of the City that there is no reasonable alternative to such remedial action which would result in less impairment of the City's security hereunder; or (iv) the action has been agreed to by the City.

e) Borrower hereby acknowledges and agrees that (i) this Section is intended as the City's written request for information (and Borrower's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

f) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the City's or the trustee's rights and remedies under the Deed of Trust, the City may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the City's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Borrower shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of

hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the City in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the City upon its demand made at any time following the conclusion of such action.

Section 4.9 Maintenance and Damage.

a) During the course of both construction and operation of the Project, Borrower shall maintain the Project and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) calendar days after receiving a City notice of such a condition, then in addition to any other rights available to the City, the City shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

b) Subject to the requirements of senior lenders, and if economically feasible in the City's reasonable judgment after consultation with the Borrower, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the Plans approved by the City with such changes as have been approved by the City. Such work or repair shall be commenced no later than the later of one hundred twenty (120) calendar days, or such longer period approved by the City in writing, after the damage or loss occurs or thirty (30) calendar days following receipt of the insurance proceeds, and shall be complete within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, then Borrower shall make up the deficiency. If Borrower does not make repairs, then any insurance proceeds collected for such damage or destruction shall be distributed as if such proceeds were Residual Receipts, subject to the rights of the senior lenders.

Section 4.10 Fees and Taxes.

Borrower shall be solely responsible for payment of all fees, permits (unless a waiver is approved), assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Project to the extent owned by Borrower, and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the City, Borrower deposits with the City any funds

or other forms of assurance that the City in good faith from time to time determines appropriate to protect the City from the consequences of the contest being unsuccessful.

Section 4.11 Notice of Litigation.

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

Section 4.12 Operation of Project as Affordable Housing.

a) Promptly after completion of construction, the Borrower shall operate the Project as an affordable housing development consistent with the Regulatory Agreement.

b) The maximum household income of a household occupying a City-Assisted Unit in the Project, and the total charges for rent, utilities, and related services to each household occupying a City-Assisted Unit, shall be maintained as provided in the Regulatory Agreement.

Section 4.13 Nondiscrimination.

The Borrower covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry, national origin, or pregnancy in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Borrower or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenant shall run with the land.

Section 4.14 Transfer.

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

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

c) The City approves the grant of the security interests necessary for the Approved Financing.

d) The City hereby approves (i) the assignment of this Loan Agreement and other Loan Documents to Strawberry Creek Lodge, LP, a California limited partnership ("SCL LP"); and (ii) the initial Transfer of the limited partnership interest in SCL LP, provided that: (i) the amended partnership agreement of the SCL LP provides for capital contributions of the general and limited partners of SCL LP consistent with the Approved Financing; (ii) all documents associated with the low income housing tax credit syndication of the Project are submitted to the City for approval prior to execution, which approval shall not be unreasonably withheld.

e) The City hereby approves future Transfers of the limited partner interest provided that: (i) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the amended partnership agreement approved by the City; (ii) in subsequent Transfers, the general partner or a wholly-owned affiliate of the general partner of the initial limited partner retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner; and (iii) in subsequent Transfers the initial limited partner remains liable for all unpaid capital contributions.

f) The City hereby approves a Transfer of the Property from SCL LP to Satellite AHA Development, Inc., or its wholly owned, non-profit affiliate, and an assumption of the Loan by such transferee at the end of the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, pursuant to an option agreement as described in SCL LP's partnership agreement, provided that the transferee expressly assumes the obligations of SCL LP under the Loan Documents, utilizing a form of assignment and assumption agreement to be provided by the City.

g) In the event the general partner of SCL LP is removed by the limited partner of SCL LP for cause following default under SCL LP's partnership agreement, the City hereby approves the Transfer of the general partner interest to a 501(c)(3) tax exempt nonprofit corporation selected by the limited partner and approved by the City, which approval shall not be withheld unreasonably.

Section 4.15 Insurance Requirements.

The Borrower shall maintain the following insurance coverage throughout the Term and provide evidence satisfactory to the City of such coverage:

a) Worker's Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

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

c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

d) Builders' risk insurance during the course of construction, and upon completion of construction, property insurance covering the Project, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming the City as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

e) Commercial Crime Insurance covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount not less than the amount of the Loan naming the City a Loss Payee, as its interests may appear.

f) The Borrower shall cause any general contractor, agent, or subcontractor working on the Project under direct contract with the Borrower or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (a), (b), and (c) above and shall require that such insurance shall meet all of the general requirements of subsections (g), (h), and (i) below, except that the limit of liability for comprehensive general liability insurance for subcontractors shall be One Million Dollars (\$1,000,000).

g) The insurance required by this Section shall be provided under an occurrence form, and Borrower shall maintain the coverage described in subsections (a) through (d) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

h) Comprehensive General Liability, Comprehensive Automobile Liability and Property insurance policies shall be endorsed to name as additional insureds the City and its agents, employees, and members of the City Council.

i) All policies and bonds shall contain (a) the agreement of the insurer to give the City at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (b) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the City; (c) a provision that no act or omission of the Borrower shall

affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (d) a waiver by the insurer of all rights of subrogation against the City and its authorized parties in connection with any loss or damage thereby insured against.

j) If in connection with the use of the Loan funds, death, serious personal injury, or substantial property damage occurs, Borrower shall immediately notify the City. Borrower shall promptly submit to the City a written report, in such form as may be required by the City, of all accidents which occur in connection with this Agreement. This report shall include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Borrower's contractor or subcontractor, if any; (3) name and address of Borrower's liability insurance carrier; and (4) a detailed description of the accident and whether any of the City's equipment, tools or material were involved.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 5.1 Representations and Warranties.

Borrower hereby represents and warrants to the City as follows:

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

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

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

d) Valid Binding Agreements. This Loan Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Loan Agreement constitute or, if not yet

executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.

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

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

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

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

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

j) Sufficient Funds. Borrower holds sufficient funds and/or binding commitments for sufficient funds to complete the Project in accordance with the Plans approved by the City.

ARTICLE 6
DEFAULT AND REMEDIES

Section 6.1 Events of Default.

Each of the following shall constitute an "Event of Default" by Borrower under this Loan Agreement:

a) Failure to Construct. Subject to Section 7.13, failure of Borrower to commence or diligently prosecute to completion the construction of the Project within the times set forth in Article 3 above;

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

c) Breach of Covenants. Failure by Borrower or its assignees to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) calendar days after receipt of written notice thereof from the City to the Borrower or, if the breach cannot be cured within thirty (30) calendar days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) calendar days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control. As applicable, the initial limited partner, its permitted transferee under Section 4.14 or any other limited partner approved by the City ("Permitted Limited Partner") shall have thirty (30) additional days to cure a breach beyond the cure periods for the Borrower described in this subsection. If a Permitted Limited Partner cannot cure a Default because the Borrower's general partner is in bankruptcy and/or because the cure requires removal of the general partner of the Borrower and the Permitted Limited Partner is proceeding diligently to remove the general partner of the Borrower in order to effect a cure of the Default, the cure period shall be extended for such reasonable time as is necessary for the Permitted Limited Partner to effect a cure of the Default, but in no event longer than one hundred eighty (180) days after the date of receipt by the Permitted Limited Partner of written notice of Default.

d) Default Under Other Loans. A default is declared under any other financing for the Project, after the expiration of any applicable notice and cure periods.

e) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, or seeking any arrangement for Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, under the

bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) calendar days; or (v) Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the City, the indebtedness evidenced by the Note.

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

g) Suspension; Termination. Borrower or Borrower's general partner, if Borrower is a partnership, or Borrower's managing member, if Borrower is a limited liability company, shall have voluntarily suspended its business or, if Borrower is a partnership, the partnership shall have been dissolved or terminated, other than a technical termination of the partnership for tax purposes, provided that if such event occurs with respect to Borrower's general partner, such default will be deemed cured upon the removal and replacement of the general partner pursuant to Borrower's partnership agreement and Section 4.14(b) hereof

h) Liens on Property and the Project. There shall be filed any claim of lien (other than liens approved in writing by the City) against the Project or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) calendar days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the City.

i) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Project.

j) Unauthorized Transfer. Any Transfer other than as permitted by Section 4.14.

k) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Loan Agreement, or in any application, financial statement, certificate, or report submitted to the City in connection with any of the Loan Documents, proving to have been incorrect in any material respect when made. After issuance of the certificates of occupancy for the Project, Default may be declared under this subsection only if the failure of representation or warranty also has a material adverse effect on the operation of the Project.

Section 6.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the City or automatically where so specified, relieve the City of any obligation to make or continue the Loan and shall give the City the right to proceed with any and all remedies, either successively or concurrently, set forth in this Loan Agreement, the Loan Documents, as well as any remedy accruing to the City by law including but not limited to the following:

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

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

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

i. Limited Partner Cure Rights. Upon the occurrence of an Event of Default, the City will not exercise any remedies hereunder or under applicable law unless such Event of Default is not cured by Borrower's limited partner within ninety (90) days following written notice to such limited partner of such Event of Default.

1. If the limited partner, rather than Borrower, tenders a cure pursuant to the provisions of Section 6.1, above, the City shall accept or reject such cure in the same manner and on the same terms as if tendered by Borrower.

Section 6.3 Right of Contest.

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

Section 6.4 Remedies Cumulative.

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

ARTICLE 7 GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

Nothing contained in this Loan Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and Borrower or its agents, employees or contractors, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Loan Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under this Loan Agreement. In regard to the purchase of the Property, construction and operation of the Project, Borrower shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Borrower shall be solely responsible for its own acts and those of its agents and employees.

Section 7.2 No Claims.

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

Section 7.3 Amendments.

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

Section 7.4 Indemnification.

The Borrower shall indemnify, defend and hold the City harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Loan Agreement, including but not limited to the purchase of the Property, development, construction, marketing and operation of the Project, except to the extent such claim arises from the grossly negligent or willful misconduct of the City, its agents, and its employees. The provisions of this Section shall survive the expiration of the Term and the reconveyance of the Deed of Trust.

Section 7.5 Non-Liability of City Officials, Employees and Agents.

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

Section 7.6 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Loan Agreement.

Section 7.7 Discretion Retained By City.

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

Section 7.8 Federal Conflict of Interest.

a) Except for approved eligible administrative or personnel costs, no person described in Subsection (b) below who exercises or has exercised any functions

or responsibilities with respect to the activities funded pursuant to this Loan Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Borrower shall exercise due diligence to ensure that the prohibition in this Section is followed.

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

Section 7.9 Notices, Demands and Communications.

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

City:

City of Berkeley
2180 Milvia Street
Berkeley, CA 94704
Attention: _____

Borrower:

Attention: _____

Copy to: Union Bank, N.A.
200 Pringle Avenue, Suite 355
Walnut Creek, CA 94596
Attn: CDF Division Head

Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
11000 Broken Land Parkway, Ste. 700
Columbia, MD 21044
Attn: General Counsel

Enterprise Community Investment, Inc.
10227 Wincopin Circle, Suite 800
Columbia, Maryland 21044
Attn: General Counsel

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

Section 7.10 Applicable Law.

This Loan Agreement shall be governed by California law. Venue for all litigation relative to the formation, interpretation and performance of this Loan Agreement shall be in Alameda County, California.

Section 7.11 Parties Bound.

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

Section 7.12 Severability.

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

Section 7.13 Force Majeure.

In addition to specific provisions of this Loan Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of Borrower or Borrower's inability to finance the construction of the Project) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) calendar days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) calendar days of receipt of the notice. In no event shall the City be required to agree to cumulative delays in excess of one hundred eighty (180) calendar days.

Section 7.14 Nuclear Free Berkeley.

Borrower agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

Section 7.15 Recycled Paper.

If Borrower is required by this Loan Agreement to prepare a written report or study, Borrower shall use recycled paper for said report or study when such paper is available at a cost of no more than ten percent (10%) more than the cost of virgin paper, and when such paper is available at the time it is needed. For purposes of this Loan Agreement, recycled paper is paper that contains at least fifty percent (50%) recycled product. If recycled paper is not available, Borrower shall use white paper. Written reports or studies prepared under this Loan Agreement shall be printed on both sides of the paper whenever practical.

Section 7.16 Ban on Use of Virgin Redwood and Preference for Certified Sustainable Wood.

Borrower agrees to comply with City Resolution Nos. 59,595-N.S., 58,704-N.S., and 58,291-N.S. banning the use of virgin redwood and the preference for certified sustainable wood and wood products on the Project.

Section 7.17 Intentionally omitted.

Section 7.18 Living Wage Ordinance.

a) Borrower hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Borrower is currently subject to the Berkeley Living Wage Ordinance, Borrower will be required to provide all eligible employees with City mandated minimum compensation during the term of this Contract, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein. Borrower expressly acknowledges that even if Borrower is not currently subject to the Living Wage Ordinance cumulative contracts, City may subject Borrower to the requirements under B.M.C. Chapter 13.27 in subsequent agreements.

b) If Borrower is currently subject to the Berkeley Living Wage Ordinance, Borrower shall be required to maintain monthly records of those employees providing service. These records shall include the total number of hours worked, the number of hours spent providing service in connection with this Loan Agreement, the hourly rate paid, and the amount paid by Borrower for health benefits, if any, for each of its employees providing services. Borrower agrees to supply City any records it deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 4.6 of this Loan Agreement.

c) If Borrower is currently subject to the Berkeley Living Wage Ordinance, Borrower shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all subcontracts in which Borrower engages to execute its responsibilities under this Loan Agreement. All subcontractor employees who spend twenty-five percent (25%) or more of their compensated time engaged in work directly related to this Loan Agreement shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein. If Borrower fails to comply with the requirements of this Section, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

d) Borrower's failure to comply with this Section shall constitute a material breach of the Loan Agreement, upon which City may declare an Event of Default after written notice to Borrower and termination of cure periods provided in Section 6.1(c) herein. In the event that City declares an Event of Default due to a violation of this Section, City may deem Borrower a non-responsible bidder for not more than five (5) years from the date the Event of Default is declared.

e) In addition, at City's sole discretion, Borrower may be responsible for liquidated damage in the amount of Fifty Dollars (\$50) per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Borrower's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Borrower's breach. The City may deduct any assessed liquidated damages from any payments otherwise due Borrower.

Section 7.19 Berkeley Equal Benefits Ordinance.

a) Borrower hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto. Borrower will be required to provide all eligible employees with City mandated equal benefits, as defined in B.M.C. Chapter 13.29, during the term of this Loan Agreement, as well as comply with the terms enumerated herein.

b) If Borrower is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Borrower agrees to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 4.6 of this Loan Agreement.

c) If Borrower fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

d) Borrower's failure to comply with this Section shall constitute a material breach of the Loan Agreement, upon which City may terminate this Loan Agreement. In the event the City terminates this Loan Agreement due to a default by Borrower under this provision, the City may deem Borrower a non-responsible bidder for not more than five (5) years from the date this Loan Agreement is terminated.

e) In addition, at City's sole discretion, Borrower may be responsible for liquidated damages in the amount of Fifty Dollars (\$50) per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Borrower's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Borrower's breach. City may deduct any assessed liquidated damages from any payments otherwise due Borrower.

Section 7.20 Oppressive States Contracting Prohibition.

a) In accordance with Resolution No. 59,853-N.S., Borrower certifies that it has no contractual relation with, and agrees during the term of this Loan Agreement to forego contractual relations to provide personal services to, the following entities:

- i. The governing regime in any Oppressive State.
- ii. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- iii. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b) For purposes of this Loan Agreement, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed Oppressive States.

c) Borrower's failure to comply with this Section shall constitute an Event of Default and City may terminate this Loan Agreement. In the event that the City terminates this Loan Agreement due to a default under this provision, City may deem Borrower a non-responsible bidder for not more than five (5) years from the date this Loan Agreement is terminated.

Section 7.21 City Approval.

Whenever this Loan Agreement calls for City approval, consent, or waiver, the written approval, consent, or waiver of the City Manager shall constitute the approval, consent, or waiver of the City, without further authorization required from the City Manager. The City hereby authorizes the City Manager to deliver such approvals or consents as are required by this Loan Agreement, or to waive requirements under this Loan Agreement, on behalf of the City. Any consents or approvals required under this Loan Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The City Manager is also hereby authorized to approve, on behalf of the City, requests by Borrower for reasonable extensions of time deadlines set forth in this Loan Agreement. The City shall not unreasonably delay in reviewing and approving or disapproving any proposal by Borrower made in connection with this Loan Agreement.

Section 7.22 Waivers.

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

Section 7.23 Title of Parts and Sections.

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

Section 7.24 Entire Understanding of the Parties.

This Loan Agreement constitutes the entire understanding and agreement of the Parties with respect to the Loan.

Section 7.25 Multiple Originals; Counterpart.

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

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IN WITNESS WHEREOF, City and Borrower have executed this Loan Agreement through their duly authorized representatives as of the date above first written.

APPROVED AS TO FORM:

CITY:

CITY OF BERKELEY, a California municipal corporation

By: _____

By: _____

_____,
City Attorney

_____, City Manager

BORROWER:

Strawberry Creek Lodge Foundation,
a California nonprofit public benefit corporation

By: _____

Its: _____

ATTEST:

_____, City Clerk

Registered:

_____, City

Auditor

EXHIBIT A
Legal Description of Property

EXHIBIT B
Approved Project Budget

EXHIBIT C
Project Conditions

EXHIBIT D
Resolution Approving the Funding Reservation

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EXHIBIT F	Intentionally Deleted

LOAN AGREEMENT

BETWEEN

THE CITY OF BERKELEY

AND

STRAWBERRY CREEK LODGE FOUNDATION

FOR

STRAWBERRY CREEK LODGE