

**SUBMITTAL TO THE RIVERSIDE COMMUNITY  
HOUSING CORP. BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM: 14.1**  
(ID # 19001)

**MEETING DATE:**

Tuesday, June 07, 2022

**FROM :** RIVERSIDE COMMUNITY HOUSING CORP.:

**SUBJECT:** RIVERSIDE COMMUNITY HOUSING CORP.: Adopt Resolution No. 2022-001, Approving and Authorizing the Refinancing of Acquisition Loan No. 1403958 from the amount of \$2,100,000 up to \$7,000,000 for a ten year term amortized over 30 years from Banner Bank to Perris Park Housing LLC for Capital Improvements to Perris Park Apartments located at 1450 South Perris Boulevard in the City of Perris, CA. [APN 313-290-020-2], District 5. [\$7,000,000; Project Cash Flow 100%]; CEQA Exempt (Companion Item to MT 19002)

**RECOMMENDED MOTION:** That the Board of Directors:

1. Find that the project is exempt from California Environmental Quality Act (CEQA) pursuant to state CEQA Guidelines Section 15301 and Section 15061 (b)(3);

Continued on page 2.

**ACTION:** Policy

  
Heidi Marshall, Director of Housing, Homelessness Prevention

  
Kristine Bell-Valdez, Supervising Deputy County Counsel

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**MINUTES OF THE BOARD OF DIRECTORS**

On motion of Director Spiegel seconded by Director Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

**Ayes:** Jeffries, Spiegel, Washington, Perez and Hewitt  
**Nays:** None  
**Absent:** None  
**Date:** June 7, 2022  
**xc:** Housing Corp, Housing Auth.

Kecia R. Harper  
Clerk of the Board

By:   
Deputy

(Companion Item 10.1)

**SUBMITTAL TO THE RIVERSIDE COMMUNITY  
HOUSING CORP. BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**RECOMMENDED MOTION:** That the Board of Directors:

2. Adopt Resolution No. 2022-001, Approving and Authorizing the Chief Executive Officer or Chief Operating Officer of Riverside Community Housing Corp. (RCHC) to act in its capacity as Manager of Perris Park Housing LLC (Perris Park Housing) to obtain a ten year loan in an amount not to exceed \$7,000,000 from Banner Bank to refinance the \$2,100,000 Acquisition Loan No. 1403958 maturing July 1, 2022, and use the remaining funds for capital improvements to the Perris Park Apartments located at 1450 South Perris Boulevard, in the City of Perris, CA. [APN 313-290-020-2] (“Property” or “Perris Park Apartments”), including its community center, playground and to replace the heating, ventilation, and air conditioning;
3. Approve the form of the following attached documents: (i) Term Loan Agreement, including all exhibits (Refinance Loan Agreement) to be entered into between Banner Bank, as lender, and Perris Park Housing, as borrower, providing for, among other things, a 5% loan with a 10 year term in the amount not to exceed \$7,000,000 (Refinance Loan) to pay off Banner Bank Acquisition Loan No. 1403958 in the amount of \$2,100,000, and make capital improvements to the Property, (ii) Promissory Note to be executed by Perris Park Housing in favor of Banner Bank evidencing the Loan, which matures on July 1, 2032 (Promissory Note), (iii) Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, to be executed by Perris Park Housing, as borrower, for the benefit of Banner Bank, as beneficiary, securing the Promissory Note and performance under the Refinance Loan Agreement and related documents (Deed of Trust), (iv) Indemnity Agreement (Environmental and Building Laws), including all exhibits, to be entered into by Perris Park Housing, as borrower, and the Housing Authority of the County of Riverside, as guarantor, for the benefit of Banner Bank (Indemnity), (v) Replacement Reserve and Security Agreement, including all exhibits, to be entered into by Perris Park Housing, as borrower, and Banner Bank, as lender, requiring, among other things, Perris Park Housing to make certain deposits with Banner Bank as provided therein as additional security for all borrower obligations under the Refinance Loan Agreement, Promissory Note and Deed of Trust (replacement reserve account to be funded out of operations at \$2,000 a month) (Replacement Reserve Agreement), and (vi) Assignment and Subordination of Property Management Agreement, including all exhibits, to be entered into between Perris Park Housing, as borrower, Banner Bank, as lender, and Hyder & Company, as manager;
4. Authorize the Chief Executive Officer or Chief Operating Officer of RCHC, in its capacity as the sole member and manager of Perris Park Housing, to execute the following documents and agreements, substantially conforming in form and substance to the forms attached hereto, subject to availability of fiscal funding and as approved as to form by RCHC’s General Counsel: (i) a Refinance Loan Agreement, (ii) Promissory Note, (iii) Deed of Trust, (iv) Indemnity, (v) Replacement Reserve Agreement, and (vi) Assignment and Subordination of Property Management Agreement (collectively, the “Refinance Loan Documents”); and

**SUBMITTAL TO THE RIVERSIDE COMMUNITY  
HOUSING CORP. BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

5. Approve and Authorize the Chief Executive Officer and Chief Operating Officer of RCHC, acting alone, on behalf of RCHC in its sole capacity and on behalf of RCHC in its capacity as the sole member and manager of Perris Park Housing, to execute any documents and administer all actions necessary to implement Resolution No. 2022-001, subject to approval as to form by RCHC’s General Counsel.

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$225,456	\$225,456	\$7,000,000	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> 100% Project Cash Flow			<b>Budget Adjustment:</b>	No
			<b>For Fiscal Year:</b> 22/23 – 32/33	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

On June 18, 2019, the Board of Directors of Riverside Community Housing Corp. (RCHC) authorized the formation of Perris Park Housing LLC, a California limited liability company (Perris Park Housing) with RCHC as the sole member and manager, for the purpose of acquiring the Perris Park Apartments, an 80-unit apartment community located in the City of Perris at 1450 South Perris Boulevard, Perris, CA 92570, and the real property thereunder identified as Assessor’s Parcel No. 313-290-020-2 (Property).

RCHC, acting in its capacity as manager of Perris Park Housing, obtained a loan from Banner Bank in the amount of \$2,100,000 (Acquisition Loan) to acquire the Property on October 2, 2019. When the Property was acquired, it was in need of repairs and in financial distress, but as part of the acquisition of the Property, the Housing Authority of the County of Riverside (Housing Authority) placed seventy (70) Section 8 project-based vouchers on the Property which have helped the Property’s cash flow and allowed for much needed improvements to the Property since it was acquired. Acquiring the Property allowed the County to preserve eighty (80) affordable housing rental units for low-income households.

The term of the Acquisition Loan expires July 1, 2022, when the loan is due. RCHC has been in negotiations with Banner Bank to refinance the Acquisition Loan and borrow an additional \$1,400,000 to make capital improvements to the Property. Staff explored different funding opportunities including applying for Low-Income Housing Tax Credits and other State and Federal funding, but this Property does not compete well for that type of competitive funding. The Property generates sufficient funds from rents to support the proposed loan in the amount of \$3,500,000; and the seventy (70) Section 8 project-based vouchers will ensure the continuous cash flow for the Property and further supports the feasibility of the proposed Refinance Loan.

**SUBMITTAL TO THE RIVERSIDE COMMUNITY  
HOUSING CORP. BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

Staff recommends using Banner Bank to refinance the Acquisition Loan as the refinance lender and is proposing to close escrow no later than July 1, 2022. Banner Bank offered to refinance the Acquisition Loan in the amount of \$3,500,000 (Refinance Loan) with a 5% interest rate and 10-year term amortized over 30 years; total interest expected to pay over the term is \$3,300,000. In order for the proposed Refinance Loan from Banner Bank to move forward, staff recommends the Board of Directors adopt the attached Resolution No. 2022-001 Approving and Authorizing the Refinancing of Acquisition Loan from the amount of \$1,200,000 up to \$7,000,000 from Banner Bank to Perris Park Housing LLC for Capital Improvements to Perris Park Apartments located at 1450 South Perris Boulevard in the City of Perris, CA. [APN 313-290-020-2], and delegation of authority to execute all documents related to such loan (Resolution No. 2022-001).

The terms of the Refinance Loan will be set forth in a Refinance Loan Agreement, and will be evidenced by a Promissory Note and secured by a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, the forms of which are each attached. Additional documents required by Banner Bank as a condition precedent to issuance of the Refinance Loan include the following: Indemnity Agreement (Environmental and Building Laws), Replacement Reserve and Security Agreement, and Assignment and Subordination of Property Management Agreement, forms of which are attached. Subordination of regulatory agreements currently on title to the Property will also need to be subordinated to the lien of the Refinance. The terms of the aforementioned documents are set forth in the recommended motions to this action. Banner Bank is also requiring the Housing Authority provide a guaranty payment of the Refinance Loan by Perris Park Housing and indemnify Banner Bank against any third-party claims relating to environmental and fair housing violations concerning the Property. Both the proposed form of Indemnity Agreement (Environmental and Building Laws) and Unconditional Guaranty of Payment are being brought before the Housing Authority Board of Commissioners for approval via a separate action.

Subject to the close of escrow for the Property under the Refinance Loan, staff is proposing to rehabilitate the Property. The scope of rehabilitation has not yet been determined and any future actions will be brought before this Board for separate approval.

Pursuant to the California Environmental Quality Act (CEQA), Resolution No. 2022-001, Banner Bank Refinance Loan Documents, (collectively the "Project") were reviewed and determined to be categorically exempt from CEQA under State CEQA Guidelines 15301, Class 1-Existing Facilities and State CEQA Guidelines 15061 (b)(3), General Rule or "Common Sense" exemption. The Project consists of the refinancing of the acquisition loan for existing Property and no expansion of an existing use will occur. In addition, it can be seen with certainty that there is no possibility that the proposed Project may have a significant effect on the environment since it is merely a continuation of existing use, and the provision of a refinance loan. Any scope of rehabilitation for the Property will be subject to a separate CEQA action and will be brought

**SUBMITTAL TO THE RIVERSIDE COMMUNITY  
HOUSING CORP. BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

before this Board for approval. Staff will file a Notice of Exemption with the County Clerk upon approval of Resolution No. 2022-001 and Banner Bank Refinance Loan Documents.

County Counsel, as General Counsel for RCHC, approved the following attached documents as to form, Resolution 2022-001, including all exhibits, Form of Term Loan Agreement, Form of Promissory Note, Form of Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, Form of Indemnity Agreement (Environmental and Building Laws), Form of Replacement Reserve and Security Agreement, Form of Assignment and Subordination of Property Management Agreement.

**Impact on Citizens and Businesses**

Refinancing the Acquisition Loan for the Perris Park Apartments will have a positive impact on citizens and businesses as it will result in the preservation of much needed affordable housing with supportive services to residents.

**Additional Fiscal Information**

The proposed plan is to use loan proceeds from the Refinance Loan to pay back the Acquisition Loan for the Perris Park Apartments this current fiscal year and the following fiscal year to use the remaining funds for improvements to the Perris Park Apartments. The Property generates sufficient funds from rents to make the necessary monthly payments on the Refinance Loan and cover all operations of the Property. The loan is amortized over 30 years at a 5% interest rate, monthly payments are expected to be \$18,788.

**Attachments:**

- RCHC Resolution No. 2022-001
- Form of Term Loan Agreement, including all exhibits
- Form of Promissory Note
- Form of Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing
- Form of Indemnity Agreement (Environmental and Building Laws), including all exhibits
- Form of Replacement Reserve and Security Agreement, including all exhibits
- Form of Assignment and Subordination of Property Management Agreement

  
Brian Lontajo, Principal Management Analyst 6/2/2022

1 Board of Directors

Riverside Community Housing Corp.

2  
3 RESOLUTION NO. 2022-001

4  
5 **A RESOLUTION OF THE BOARD OF DIRECTORS OF RIVERSIDE COMMUNITY HOUSING**  
6 **CORP. APPROVING AND AUTHORIZING THE CHIEF EXECUTIVE OFFICER OR CHIEF**  
7 **OPERATING OFFICER OF RCHC TO ACT IN ITS CAPACITY AS MANAGER OF PERRIS**  
8 **PARK HOUSING LLC TO OBTAIN A TEN YEAR \$3,500,000 LOAN AT AN INTEREST RATE OF**  
9 **5% PER ANNUM, FOR A TOTAL AMOUNT NOT TO EXCEED \$7,000,000, FROM BANNER**  
10 **BANK TO REFINANCE THE \$2,100,000 ACQUISITION LOAN FOR THE PERRIS PARK**  
11 **APARTMENTS AND REAL PROPERTY IDENTIFIED AS ASSESSOR'S PARCEL NO. 313-290-**  
12 **020-2 IN THE CITY OF PERRIS, CA., AND FOR CAPITAL IMPROVEMENTS THERETO; AND**  
13 **DELEGATION OF AUTHORITY TO EXECUTE ALL NECESSARY LOAN DOCUMENTS**

14  
15 **WHEREAS**, the Riverside Community Housing Corp. (RCHC), a California nonprofit public benefit  
16 corporation, is governed by a Board of Directors as provided in the Second Amended and Restated Bylaws of RCHC;

17 **WHEREAS**, RCHC is the sole member and manager of Perris Park Housing LLC, a California limited liability  
18 company (Perris Park Housing);

19 **WHEREAS**, pursuant to Section 10 of the Operating Agreement for Perris Park Housing, all powers of Perris  
20 Park Housing shall be exercised under direction of the Board of Directors of RCHC, in its capacity as manager;

21 **WHEREAS**, Perris Park Housing is the fee owner of certain real property and improvements located at 1450  
22 South Perris Boulevard, Perris, California, identified as Assessor's Parcel No. 313-290-020-2 ("Property");

23 **WHEREAS**, on June 18, 2019, the Board of Directors authorized RCHC to act on behalf of Perris Park Housing  
24 to obtain a \$2,100,000 loan (Loan No. 1403958) from Banner Bank, a Washington State commercial charter bank, to  
25 acquire the Property ("Acquisition Loan");

26 **WHEREAS**, the Acquisition Loan has an interest rate of 4.38% per annum and a maturity date of July 1, 2022;

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JUN 07 2022 14.1

FORM APPROVED COUNTY COUNSEL  
BY: LISA SANCHEZ 6/02/2022 DATE

1           **WHEREAS**, the Property is in need of capital improvements, including to the community center, playground,  
2 and to replace the heating, ventilation, and air conditioning for the approximately eighty (80) unit multi-family  
3 affordable housing project known as Perris Park Apartments located thereon; and

4           **WHEREAS**, the Board of Directors of RCHC deems it to be in the best interest of Perris Park Housing to  
5 borrow an amount not to exceed \$3,500,000 at an interest rate of 5% per annum, for a ten (10) year term and a total  
6 amount not to exceed \$7,000,000, from Banner Bank, or its successors or assigns, to refinance the Acquisition Loan  
7 and for necessary repairs to the Property and related costs (“Refinance Loan”).

8           **NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED** by the Board of  
9 Directors of the Riverside Community Housing Corp., in regular session assembled on or about June 7, 2022, in  
10 the meeting room of the Board located on the 1<sup>st</sup> floor of the County Administrative Center, 4080 Lemon Street,  
11 Riverside, California, based upon the information presented on the matter, both written and oral, as follows:

- 12           1. That the Board of Directors hereby finds and declares that the above Recitals are true, correct and incorporated  
13           herein.
- 14           2. That the Board of Directors hereby approves and authorizes RCHC, in its capacity as the sole member and  
15           manager of Perris Park Housing, to act on behalf of Perris Park Housing to borrow the Refinance Loan in an  
16           amount not to exceed three million, five hundred thousand dollars (\$3,500,000) from Banner Bank, at an interest  
17           rate of 5% per annum and a total amount not to exceed seven million dollars (\$7,000,000), with a maturity date  
18           of June 1, 2032, to make capital improvements to Perris Park Apartments located at 1450 South Perris  
19           Boulevard in the City of Perris, CA. [APN 313-290-020-2].
- 20           3. That the Board of Directors hereby authorizes the Chief Executive Officer or Chief Operating Officer of RCHC,  
21           acting alone, on behalf of RCHC in its sole capacity and on behalf of RCHC in its capacity as the sole member  
22           and manager of Perris Park Housing, to enter into any and all documents required in connection with the  
23           Refinance Loan, including but not limited to loan agreements, promissory notes, deeds of trust, subordination  
24           agreements, escrow instructions, and any other documents necessary to consummate the activities contemplated  
25           in this Resolution, subject to approval as to form by RCHC’s General Counsel.
- 26           4. That actions taken in connection with the transactions contemplated herein by any officer of RCHC, acting  
27           alone, or acting in its capacity as the sole member and manager of Perris Park Housing, prior to the date of this  
28           Resolution are hereby approved and ratified.

1 5. That the Board of Directors hereby authorizes the Secretary or any assistant or any other officer of RCHC to  
2 execute and certify any form of resolution required by any lender, regulatory or other third party involved in  
3 the transaction, so long as the Chief Executive Officer and General Counsel to RCHC determine that the  
4 substance of such resolution does not materially conflict with the substance of this Resolution.

5  
6 **CERTIFICATION**

7  
8 I, Michael Walsh, Secretary of Riverside Community Housing Corp. (RCHC), a California nonprofit public benefit  
9 corporation, do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution duly  
10 passed and adopted by the Board of Directors of RCHC (Board), by written consent of the Board, or at a meeting of  
11 the Board, duly and regularly called, noticed and held on \_\_\_\_\_, 2022; that said resolution is  
12 now in full force and effect; that there is no provision in the Restated Articles of Incorporation or Bylaws of RCHC  
13 limiting the powers of its Board to pass the foregoing resolution and that such resolution is in conformity with the  
14 provisions of such Restated Articles of Incorporation and Bylaws of RCHC.

15  
16  
17 IN TESTIMONY WHEREOF, I have hereunto set my hand as of \_\_\_\_\_, 2022.

18  
19  
20 \_\_\_\_\_, Secretary of Riverside Community Housing Corp., a California  
nonprofit public benefit corporation



2 **RESOLUTION 2022-001**

3 **A RESOLUTION OF THE BOARD OF DIRECTORS OF RIVERSIDE COMMUNITY**  
 4 **HOUSING CORP. APPROVING AND AUTHORIZING THE CHIEF EXECUTIVE**  
 5 **OFFICER OR CHIEF OPERATING OFFICER OF RCHC TO ACT IN ITS CAPACITY**  
 6 **AS MANAGER OF PERRIS PARK HOUSING LLC TO OBTAIN A TEN YEAR**  
 7 **\$3,500,000 LOAN AT AN INTEREST RATE OF 5% PER ANNUM, FOR A TOTAL**  
 8 **AMOUNT NOT TO EXCEED \$7,000,000 FROM BANNER BANK TO REFINANCE**  
 9 **THE \$2,100,000 ACQUISITION LOAN FOR THE PERRIS PARK APARTMENTS AND**  
 10 **REAL PROPERTY IDENTIFIED AS ASSESSOR'S PARCEL NO. 313-290-020-2 IN**  
 11 **THE CITY OF PERRIS, CA., AND FOR CAPITAL IMPROVEMENTS THERETO; AND**  
 12 **DELEGATION OF AUTHORITY TO EXECUTE ALL NECESSARY LOAN**  
 13 **DOCUMENTS**

14 ADOPTED by Riverside County Board of Supervisors on June 7, 2022.

15 ROLL CALL:

16 Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
 17 Nays: None  
 18 Absent: None

19 The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors on the date therein set forth.

20 KECIA R. HARPER, Clerk of said Board

21 By: *Julie Martine*  
Deputy



**TERM LOAN AGREEMENT**

PROJECT NAME: Perris Park Apartments  
BANNER LOAN NO: 14014074

THIS TERM LOAN AGREEMENT ("**Agreement**"), dated \_\_\_\_\_, 2022, is made by and between PERRIS PARK HOUSING LLC, a California limited liability company ("**Borrower**"), whose address is:

PERRIS PARK HOUSING LLC  
5555 Arlington Avenue  
Riverside, CA 92504  
Attn: Michael Walsh

and BANNER BANK, a Washington state chartered commercial bank, and its successors, participants and assigns ("**Lender**"), whose address is:

BANNER BANK  
5930 Granite Lake Drive, Suite 170  
Granite Bay, CA 95746

**RECITALS**

A. Borrower has applied to Lender for a term loan in the maximum principal loan amount of THREE MILLION FIVE HUNDRED THOUSAND AND NO/100THS U.S. DOLLARS (\$3,500,000.00) (the "**Loan**") in connection with (1) refinancing an existing term loan from Lender which financed the acquisition of the real property located at 1450 South Perris Boulevard, Perris, California and legally described on EXHIBIT A attached hereto, and the approximately eighty (80) unit multi-family affordable housing project located thereon (the "**Property**"), and (2) financing costs of rehabilitation at the Property.

B. This Agreement sets forth the terms and conditions under which Lender shall make the Loan and Borrower shall be obligated thereunder.

**AGREEMENT**

Lender agrees to make the Loan to Borrower on the terms and conditions set forth below, and Lender and Borrower agree as follows:

**1. DEFINITIONS**

1.1 **General.** Any accounting term used but not specifically defined herein shall be construed in accordance with GAAP (as defined below). The definition of each agreement, document, and instrument set forth in Section 1.2 hereof shall be deemed to mean and include such agreement, document, or instrument as amended, restated, or modified from time to time.

1.2 **Defined Terms.** As used in this Agreement:

"**Access Laws**" means the Fair Housing Act of 1968, as amended, the Fair Housing Amendments Act of 1988, the Americans With Disabilities Act of 1990, as amended, all government and private covenants, conditions, and restrictions relating to the Property, building code requirements and laws affecting the construction of improvements on the

WHEN DOCUMENT IS FULLY EXECUTED RETURN  
CLERK'S COPY  
to Riverside County Clerk of the Board, Stop 1010  
Post Office Box 1147, Riverside, Ca 92502-1147  
Thank you.

JUN 07 2022 14.1

Property, and all other federal, state and local laws, ordinances, regulations and rules relating to the construction, operation, and maintenance of the improvements on the Property and the marketing and use of such improvements in a non-discriminatory manner.

**"Affordable Housing Requirements"** is defined on EXHIBIT C attached hereto.

**"Affiliate"** means, with respect to a specified person or entity, a person or entity that is controlled by, controls, or is under common control with, the specified person or entity.

**"Agreement"** means this Term Loan Agreement, as amended, modified, supplemented, or restated from time to time, including all the exhibits, appendices and schedules attached hereto, all of which are incorporated herein by this reference and made a part hereof.

**"Appraisal"** means an appraisal ordered by Lender or another financial institution from an independent appraiser acceptable to Lender, that complies with all applicable state and federal laws and regulations and with the Uniform Standards of Professional Appraisal Practice; *provided, however*, that the value shown in any such appraisal shall be subject, in Lender's sole discretion, to review and potential adjustment either by Lender's in-house appraisal review department or a certified appraiser of Lender's choice.

**"Approved Appraisal"** means the most current Lender-reviewed and approved Appraisal of the Property obtained by Lender.

**"Authorized Representative"** means any individual identified in Section 11.1 of this Agreement.

**"Bankruptcy Event"** means the occurrence of any one or more of the following: (i) Borrower or Guarantor files a voluntary petition or commences a proceeding under bankruptcy or insolvency laws; (ii) an involuntary petition or proceeding under bankruptcy or insolvency laws is filed or commenced against Borrower or Guarantor; (iii) Borrower or Guarantor makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of all or any part of its property; (iv) all or any part of the assets of Borrower or Guarantor, or the proceeds thereof, are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors; or (v) all or any part of the assets of Borrower or Guarantor, or the proceeds thereof, are distributed to creditors of Borrower or Guarantor or applied to any indebtedness of Borrower, or Guarantor by reason of the liquidation, dissolution or other winding up of Borrower or Guarantor.

**"Business Day"** means a day of the year on which banks are not required or authorized to close in Seattle, Washington.

**"Closing Date"** means the date the Deed of Trust is recorded.

**"Closing Deadline"** means June 30, 2022.

**"Collateral"** means the Project (as defined below), including, without limitation, all related personal property associated with Borrower's ownership of the Property and all Leases and rents associated with the Property and any other property of any kind in which Borrower has granted Lender a Security Interest pursuant to the Deed of Trust or any other Security Instrument given to Lender to secure all or any portion of the Obligations.

**"Debt Service Reserve Account"** means a controlled account established with Lender.

**"Deed of Trust"** means the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing to be executed by Borrower and recorded against the Project to secure Borrower's Obligations hereunder and under all of the Loan Documents except the Indemnity.

**"Environmental Laws"** means all federal, state and local laws, statutes, codes, ordinances, regulations, judgments, orders, injunctions, decrees, covenants, restrictions and standards presently in effect or that may be promulgated in the future applicable to Borrower or to the Property relating to industrial hygiene or to environmental or unsafe conditions or to human health including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Substances, those relating to or connected with the construction (or construction-related activities), fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property, and those relating to the atmosphere, soil, grading, excavation, surface and ground water, storm water, wetlands, stream sediments and vegetation on, under, in or about the Property and Nearby Property (including those relating to the construction of improvements on the Property and the resulting water quality, air quality, soils quality and other environmental quality of the Property and Nearby Property). "Environmental Laws" also shall include, but not be limited to, the following laws, as they have been or will be amended from time to time: (a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986; (b) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984; (c) the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977; (d) the Toxic Substances Control Act; (e) the Emergency Planning and Community Right-to-Know Act of 1986; (f) the Clean Air Act, as amended by the Clean Air Act Amendments; (g) the National Environmental Policy Act of 1969; (h) the River and Harbor Act of 1899; (i) the Endangered Species Act of 1973; (j) the Occupational Safety and Health Act of 1970; (k) the Safe Drinking Water Act; (l) the Hazardous Materials Transportation Act; (m) the Federal Resource Conservation and Recovery Act of 1976; (n) the Federal Hazardous Materials Transportation Control Act; and (o) the Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978; and all regulations from time to time adopted in respect to the foregoing laws, and all other federal, state and local laws, statutes, codes, ordinances, regulations, judgments, orders, injunctions, decrees, covenants, restrictions and standards presently in effect or that may be promulgated in the future relating to the use, release, handling, storage, transportation, clean-up, or other disposal of Hazardous Substances, or relating to the water quality, air quality, soils quality, and other environmental quality of real property and improvements located upon real property, or related to the protection of endangered species, as such laws and ordinances may be amended from time to time.

**"Environmental Reports"** means the soils, geologic, and engineering reports prepared to assess any environmental risks associated with any portion of the Property that have been provided to Lender by Borrower or otherwise obtained by Lender prior to the Closing Date.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated pursuant thereto.

**"Event of Default"** is defined in Section 7 of this Agreement.

**"Financial Contract"** means (a) an agreement (including terms and conditions incorporated by reference therein) that is a rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option, equity or equity index swap, bond option, interest rate option, foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing); (b) any combination of the foregoing; or (c) a master agreement for any of the foregoing together with all supplements, approved by Lender for execution in connection with the Loan.

**"Financial Information"** is defined in Section 3.10 of this Agreement.

**"Financing Statement"** means a UCC financing statement filed with the appropriate state agency to perfect Lender's Security Interest in the Collateral.

**"GAAP"** means the U.S. generally accepted accounting principles as in effect, which shall include the official interpretations thereof by the Financial Accounting Standards Board, consistently applied.

**"Governmental Approvals"** means, collectively, all consents, licenses, and permits and all other authorizations or approvals required from any Governmental Authority for ownership, use, or occupancy of the Project.

**"Governmental Authority"** means any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court, administrative tribunal, public utility, or other governmental authority having jurisdiction over the Property.

**"Guarantor"** means HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE, a California public entity, corporate and politic, and/or any other person or entity which may hereafter become a guarantor of any of Borrower's obligations under the Loan.

**"Guaranty"** means the Repayment Guaranty of even date herewith executed by Guarantor relating to the Loan. The obligations of Guarantor under the Guaranty are separate, independent and distinct from the obligations secured by the Deed of Trust, and shall survive any judicial or non-judicial foreclosure of the Deed of Trust.

**"Hazardous Substances"** means any waste, pollutants, contaminants, petroleum or petroleum product, asbestos, tremolite, anthophyllite or actinolite, polychlorinated biphenyls, or other chemical, substance, or material that: (i) after release into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer and/or genetic abnormalities; or (ii) is now or at any time in the future becomes regulated under, or is defined, classified or designated as hazardous, toxic, radioactive or dangerous, or other similar term or category under any Environmental Laws.

**"Indebtedness"** means, for any Person, (a) all obligations to repay borrowed money, direct or indirect, incurred, assumed, or guaranteed; (b) all obligations for the deferred purchase price of capital assets; (c) all obligations under conditional sales or other title retention agreements; (d) all obligations (contingent or otherwise) under any letter of credit, banker's acceptance, currency swap agreement, or Financial Contract; (e) all synthetic leases; (f) all lease obligations that have been or should be capitalized on the books of such Person a manner acceptable to Lender; (g) all obligations of such Person with respect to asset securitization financing programs to the extent that there is recourse against such Person or such Person is liable (contingent or otherwise) under any such program; (h) all obligations to advance funds to, or to purchase assets, property or services from, any other Person in order to maintain the financial condition of such Person; (i) all debt, liabilities, or obligations, now existing or hereafter arising, due or to become due, absolute or contingent, arising under any Financial Contract; and (j) any other transaction (including forward sale or purchase agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements.

**"Indemnified Party"** is defined in Section 5.25 of this Agreement.

**"Indemnity"** means the Indemnity Agreement of even date herewith pursuant to which Borrower and each Guarantor make certain representations, warranties, and indemnities to Lender regarding Hazardous Substances, Environmental Laws, and Access Laws.

**"Internal Revenue Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

**"Laws"** means, collectively, all federal, state and local laws, statutes, codes, ordinances, orders, rules, and regulations, including judicial opinions or precedential authority in the applicable jurisdiction, governing Borrower or the Project.

**"Lease"** and, collectively, **"Leases"** means each lease, sublease, and occupancy agreement affecting the Project or any part thereof now existing or hereafter executed, and all amendments modifications, renewals or supplements thereto.

**"Lender Affiliate"** means any one or more bank or non-bank Affiliates of Banner Bank and its successors.

**"Lien"** means any mortgage, security interest, lien, charge, encumbrance on, pledge or deposit of, or conditional sale or other title retention agreement with respect to any property or asset, including, without limitation, the Collateral.

**"Loan"** is defined in Recital A.

**"Loan Amount"** means \$3,500,000.00.

**"Loan Documents"** means the collective reference to this Agreement, the Note, the Security Instruments, and all other instruments, agreements and documents entered into from time to time, that evidence, govern, or secure the Loan or any obligation of payment thereof or performance of Borrower's obligations in connection with the financing transaction contemplated hereunder, each as amended from time to time.

**"Loan Fee"** is defined in Section 2.4.1 of this Agreement.

**"Material Adverse Change"** means a change in business prospects, operations, or financial condition of Borrower, any Guarantor, the Project, or any other Collateral that will, in Lender's reasonable judgement, prevent timely repayment of the Loan, otherwise prevent Borrower or any Guarantor from timely performing any of its material obligations under the Loan Documents, or that will, in Lender's reasonable judgement, impair the value of Lender's security for the Loan, all as determined by Lender in its reasonable discretion.

**"Maturity Date"** is defined in the Note.

**"Nearby Property"** means real property that is adjacent to or in the immediate vicinity of the Property that could reasonably cause contamination of the Property or could become contaminated with Hazardous Substances as a result of construction, operations, or other activities involving Hazardous Substances on, over, or under the Property or on, over, or under such adjacent or nearby property.

**"Note"** means the promissory note signed and delivered by Borrower to evidence the Loan.

**"Note Rate"** is defined in the Note.

**"Obligation"** or **"Obligations"** means, collectively, (a) all Indebtedness and other obligations incurred by Borrower to Lender pursuant to this Agreement, the Note, the Security Instruments, or any of the other Loan Documents and includes the principal of and interest on the Note; (b) each extension, renewal or refinancing thereof in whole or in part; (c) the Loan Fee and all other fees payable under the Loan Documents; and (d) every other liability, now or hereafter owing to Lender by Borrower under the Loan Documents, and every other liability of Borrower to Lender, whether owing absolutely or contingently, whether created by note or other contract, or by tort, statute, or other operation of law, whether incurred directly to Lender or any Lender Affiliate, including obligations arising under any Financial Contacts between Borrower and Lender or any Lender Affiliate.

**"OFAC"** means the Office of Foreign Asset Control of the Treasury.

**"Operating Account"** means a commercial checking account maintained by Borrower with Lender to be used in connection with Borrower's ownership and operation of the Project.

**"Organization"** means a corporation, government or government subdivision or agency, business trust, estate, trust, partnership, association, and any other legal or commercial entity.

**"Permitted Encumbrances"** means (a) liens for real estate taxes and special assessments against the Collateral not then delinquent; (b) the Deed of Trust and other Security Instruments, if any; (c) any Permitted Encumbrances defined in any of the Loan Documents, including, without limitation, as defined in any Security Instrument; and (d) any other encumbrances approved by Lender in writing.

**"Person"** means an individual or an Organization.

**"Potential Default"** is defined in Section 7 of this Agreement.

**"Project"** means the Property, all improvements located thereon, and any other real or personal property located on or relating to the ownership of the Property in which Borrower has provided Lender a Security Interest pursuant to the Deed of Trust or other Security Instrument.

**"Property"** is defined in Recital A.

**"Property Manager"** means Hyder & Company, a California corporation, or any replacement property manager for the Project approved by Lender.

**"Property Management Agreement"** means that certain Property Management Agreement dated July 2, 2019, between Borrower and Property Manager, or any other property management agreement for the Project approved by Lender.

**"Regulatory Agreement"** is defined on EXHIBIT C attached hereto.

**"Replacement Reserve Agreement"** means the Replacement Reserve and Security Agreement, of even date herewith, between Borrower and Lender.

**"Required Deposit Accounts"** is defined in Section 4.19.

**"Security Instruments"** means all written documents signed and delivered from time to time to Lender to secure all or any portion of the Indebtedness owed by Borrower to Lender, including, without limitation, the Deed of Trust and the Replacement Reserve Agreement.

**"Security Interest"** means, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, deed of trust, mortgage, assignment, pledge, lease, or any other undertaking intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

**"SNDAs"** means any subordination, non-disturbance and attornment agreement, in form and substance acceptable to Lender, executed regarding a Lease.

**"SPE Covenants"** is defined in Section 5.20 of this Agreement.

**“Tenant Security Deposit Account”** means a deposit account into which all security deposits and other deposits collected from Tenants are deposited in accordance with applicable law.

**“Tenants”** and individually a **“Tenant”** means the tenant under a Lease.

**“Title Company”** means Commonwealth Land Title Company.

**“Title Policy”** means an ALTA lender's title insurance policy or policies with extended coverage, acceptable to Lender in its sole discretion, issued by the Title Company in the amount of the Loan, insuring the lien of the Deed of Trust as a valid first, prior, and paramount lien upon the Property, and all appurtenant easements, and subject to no other exceptions other than the Permitted Encumbrances, and including all endorsements requested by Lender.

**“Treasury”** means the Department of the Treasury of the United States of America.

**“Transfer”** means (i) the sale, conveyance, assignment, encumbrance, or other transfer of any right, title, or interest in and to the Project or any other property comprising the Collateral (except for Leases entered into by Borrower in compliance with the terms of this Agreement), whether such sale, conveyance, assignment, encumbrance, or other transfer is voluntary or by operation of law, other than as specifically permitted under the Loan Documents; (ii) the sale, assignment, or transfer of Borrower's interest under the Loan; (iii) the transfer, encumbrance or issuance of any stock, membership, partnership or other direct or indirect ownership interest in Borrower, whether such transfer, issuance or encumbrance is voluntary or by operation of law; or (iv) any other action which results or could result in the Property no longer being in control of Borrower.

**“Transition Date”** means the date on which the Deed of Trust is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective and possession of the Transferred Property has been given to and accepted by Lender or any other purchaser or grantee.

**“Value”** means the “as-is” value of the Project as established by Lender's most current Approved Appraisal.

The foregoing definitions shall be applicable to the singulars and plurals of the related defined terms.

## 2. LOAN TERMS.

**2.1 Term Loan Facility.** Lender hereby agrees to extend a term loan to Borrower in the principal amount of Three Million Five Hundred Thousand and 00/100ths Dollars (US \$3,500,000.00), subject to the terms and conditions of this Agreement and the Loan Documents.

**2.2 Term of the Loan.** The Maturity Date and any extensions thereof applicable to the Loan are set forth in the Note.

**2.3 Interest Rate and Repayment Obligations.** The interest rate and payment provisions applicable to the Loan are set forth in the Note.

### 2.4 Fees and Expenses.

**2.4.1 Loan Fee.** A non-refundable **“Loan Fee”** in an amount equal to \$35,000.00 shall be due and payable by Borrower to Lender at the earlier to occur of: (a) the Closing Date; or (b) the Closing Deadline. The Loan Fee shall be fully earned by Lender on the date it is due and shall be non-refundable to Borrower under any and all circumstances.



**2.4.2 Expenses.** Borrower shall reimburse Lender for all costs associated with the Loan, whether occurring prior to or contemporaneously with closing of the Loan, or at any time during the term of the Loan, as such costs are deemed necessary in Lender's reasonable determination, including, but not limited to, reasonable attorneys' fees; fees for appraisals, appraisal updates and appraisal reviews; fees for credit reports; premiums for title insurance commitments, policies, and endorsements; escrow and recording fees; fees for credit and background checks; the cost of any inspections, environmental assessments, certifications or surveys required by Lender; and all costs and fees customarily involved in closing, administering, collecting or foreclosing on, or otherwise enforcing the Loan. Borrower shall indemnify, defend and hold Lender harmless against and from any and all claims for such fees, charges, commissions, taxes, or other expenses of any kind in any way connected with the Loan, as more fully set forth in Section 5.25 below.

**2.5 Disbursement of Loan Proceeds.** Proceeds of the Loan will be fully disbursed at closing to (i) refinance certain existing financing secured by the Property; and (ii) pay certain fees and closing costs associated with the Loan, as approved by Lender.

**3. REPRESENTATIONS AND WARRANTIES.** Borrower hereby makes the representations and warranties set forth below that shall be true and correct, in all material respects, as of the date of this Agreement and at all times any Obligations remain outstanding.

**3.1 Borrower Existence and Legal Authority.** Borrower is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of California and has all requisite power and authority to own the Project and to carry on its business as now being conducted, to enter into the Loan Documents to which it is a party and the other agreements referred to herein and transactions contemplated thereby, and to carry out the provisions and conditions of such Loan Documents to which it is a party.

**3.2 Borrower Due Execution and Delivery.** Borrower has full power, authority, and legal right to incur the Obligations provided for in, and to execute and deliver and to perform and observe the terms and provisions of, the Loan Documents to which it is a party, and each such Loan Document has been duly executed and delivered by Borrower and has been authorized by all required action. Borrower has obtained all requisite consents to the transactions contemplated under any instrument to which Borrower is a party, and the Loan Documents constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, or other similar laws affecting creditors' rights generally.

**3.3 Guarantor Due Execution and Delivery.** Guarantor has full power, authority, and legal right to guarantee Borrower's Obligations.

**3.4 No Breach of Other Instruments.** Neither the execution and delivery of the Loan Documents, nor the compliance by Borrower with the terms and conditions of the Loan Documents, nor the consummation of the transactions contemplated thereby, will conflict with or result in a breach of the articles of incorporation, by-laws, operating agreements, trust agreements, articles of organization, or other governing documents of Borrower, or any of the terms, conditions or provisions of any agreement or instrument or any charter or other corporate restriction or law, regulation, rule or order of any governmental body or agency to which Borrower or any member or partner of Borrower is now a party or is subject, or impose any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Borrower pursuant to the terms of any such agreement or instrument.

**3.5 Government Authorization.** As of the date of this Agreement, no consent, approval, authorization, or order of any court or Governmental Authority is required for Borrower or Guarantor to enter into the Loan transaction, except for the written approvals of Guarantor's Board of Commissioners and the Board of Directors of Borrower's sole member that have been delivered to Lender.

**3.6 Ownership of Property.** Borrower has, or shall obtain at Closing, good and marketable fee title to the Property and all other Collateral in accordance with the laws of the jurisdiction where located, and good and marketable title to all property and assets related to the Project. Except for Permitted Encumbrances, the Property and all other Collateral will be free from any liens, encumbrances, charges, or security interests of any kind at Closing.

**3.7 Leases.** Borrower and its representatives have provided Lender with copies of all existing leases, subleases, or other arrangements for occupancy of the Property, and there are no existing defaults thereunder. As of Closing, Borrower shall acquire all of the landlord's interests under all Leases then in effect.

**3.8 Absence of Defaults, etc.** Neither Borrower nor any Guarantor is (i) in material default under any indenture or contract or agreement to which it is a party or by which it is bound; (ii) in violation of its articles of organization, operating agreement, or limited partnership agreement, as applicable, or any other governing document; (iii) in default with respect to any order, writ, injunction or decree of any court; or (iv) in default under any order or license of any Governmental Authority. There exist no conditions, events, or acts that constitute a Potential Default or an Event of Default.

**3.9 Indebtedness of Borrower and Guarantor.** Neither Borrower nor any Guarantor has any material Indebtedness for borrowed money outstanding as of the date hereof, except for Indebtedness identified in the Financial Information delivered to Lender, and Borrower has not received other financing for the Collateral except as otherwise disclosed to and approved by Lender in writing.

**3.10 Financial Condition.** Borrower and each Guarantor have furnished to Lender financial statements and related financial information for Borrower and each Guarantor, and financial information relating to the ownership of the Project, including pro forma operating statements, that fairly and accurately reflect the anticipated financial circumstances for Borrower and the financial assumptions for the ownership and operation of the Project, and each Guarantor has furnished to Lender financial statements and related financial information that fairly and accurately reflect the financial condition of that Guarantor in all material respects as of the date thereof (collectively, the "**Financial Information**").

**3.11 No Adverse Change.** There has been no Material Adverse Change with respect to Borrower or the Project.

**3.12 Compliance with Laws.** To Borrower's actual knowledge, the use of the Property, and any and all contemplated accessory uses, do not violate (i) any Laws (including subdivision, zoning, building, environmental protection and wetland protection Laws); or (ii) any building permits, restrictions of record, or agreements affecting the Project, or any part thereof. Neither the zoning authorizations, approvals or variances, nor any other right to operate or to use the Project is to any extent dependent upon or related to any real estate other than the Property.

**3.13 Taxes.** Borrower and each Guarantor, to the extent required by law for a public entity, have filed all tax returns that are required to be filed and have paid, or have made adequate provision for the payment of, all taxes that have or may become due pursuant to said returns or to assessments received by them, including, without limitation, all property taxes and assessments for the Project. The provisions for taxes reflected in the proformas included in the Financial Information provided by Borrower to Lender are believed by Borrower to be adequate to cover any and all accrued and unpaid taxes for which the party providing such Financial Information is liable for the period ended on the date of such balance sheet and all prior periods. Neither Borrower nor any Guarantor is aware of any deficiency assessment or proposed deficiency assessment of taxes for which that party may be liable, except as may otherwise be disclosed in writing to Lender prior to the date hereof.

**3.14 Condemnation.** Borrower has not received notice of any eminent domain or condemnation proceeding that in any way affects the Project, and, to the best of Borrower's knowledge after diligent inquiry, no such action or proceeding is pending or threatened.

**3.15 Improvement District.** To Borrower's knowledge, except as disclosed to Lender in writing prior to the date of this Agreement, the Project is not situated within any metropolitan, local, special, or other improvement district, and Borrower has no knowledge of any proposal under which the Project is to be placed in any such improvement district. Borrower shall not consent or agree to the inclusion of the Project in an improvement district of any kind without the prior written consent of Lender so long as any portion of the Loan remains unpaid. Lender hereby acknowledges that the Property is located within Community Facilities District No. 91-1.

**3.16 Litigation.** As of the date hereof, there are no actions, suits or proceedings pending, or, to the actual knowledge of Borrower, threatened against or affecting Borrower or its property (including the Project) or Guarantor in any court, or before or by any federal, state, or municipal or other governmental department, commission, board, bureau, agency or other instrumentality, domestic or foreign.

**3.17 No Liens.** There are no claims for social security, unemployment compensation, or other obligations to or claimed by any Governmental Authority or private Person, which are or could become liens on the Collateral.

**3.18 Environmental Matters.** Except as set forth in any Environmental Report obtained by Lender in connection with the Loan or as otherwise disclosed by Borrower to Lender in writing prior to the Closing Date, to the best of Borrower's actual knowledge after due inquiry and inspection, (i) no asbestos has ever been used in the construction, repair or maintenance of any Improvements, (ii) no substance currently designated as a Hazardous Substance is currently being generated, processed, stored, transported, handled or disposed of on or under the Property, except for common maintenance and cleaning materials that are maintained and stored in accordance with all applicable Environmental Laws, (iii) neither Borrower nor any other Person has ever caused or permitted any substance currently designated as a Hazardous Substance to be generated, processed, stored, transported, handled or disposed of, on, under or in the Property, except in compliance with all applicable Environmental Laws, (iv) there is no actual or alleged violation with respect to the Property of any Environmental Laws, and (v) there is no action or proceeding pending or threatened before or appealable from any Governmental Authority relating to Hazardous Substances affecting or alleged to be affecting the Property.

**3.19 Access.** Borrower has no knowledge of any failure of the Project to comply fully with all applicable Access Laws. To Borrower's actual knowledge, Borrower's intended uses of the Project comply fully with all Access Laws.

**3.20 No Burdensome Restrictions.** Borrower is not a party to any instrument or agreement or subject to any charter or other corporate restriction that would cause a Material Adverse Change.

**3.21 ERISA Representations.** (a) Borrower is not and will not be (i) an "employee benefit plan," as defined in Section 3(3) of ERISA; (ii) a "governmental plan" within the meaning of Section 3(32) of ERISA; or (iii) a "plan" within the meaning of Section 4975(e) of the Internal Revenue Code; (b) the assets of Borrower do not and will not constitute "plan assets" within the meaning of the United States Department of Labor Regulations set forth in Section 2510.3-101 of Title 29 of the Code of Federal Regulations; (c) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of fiduciaries with respect to governmental plans; and (d) Borrower will not engage in any transaction that would cause any Obligation or any action taken or to be taken hereunder (or the exercise by Lender of any of its rights under the Deed of Trust or any of the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Internal Revenue Code. Borrower agrees to deliver to Lender such certifications or other evidence of compliance with the provisions of this Section as Lender may from time to time reasonably request

**3.22 Borrower Not a Foreign Person.** Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

**3.23 OFAC/USA PATRIOT Act Restrictions.** Neither Borrower nor any Guarantor is, or will ever be, a Person with whom Lender is restricted from doing business under regulations of OFAC or under any list of known or suspected terrorists or terrorist organizations issued by any federal government agency and designated as such by Treasury in consultation with federal regulators, or under any statute, executive order, or other governmental action, and neither Borrower nor any Guarantor is now engaged, nor will engage in the future, in any dealings or transactions or shall otherwise knowingly be associated with such Persons. In addition, Borrower hereby agrees to provide Lender with any additional information regarding Borrower and each Guarantor that Lender deems necessary from time to time to ensure compliance with all applicable Laws concerning terrorism, money-laundering, and similar activities.

**3.24 Property Management.** The Property Management Agreement is in full force and effect, and there is no default by Borrower or Property Manager thereunder.

**3.25 Commercial Purpose.** All proceeds of the Loan shall be used solely for business or commercial purposes, and not for personal, family, or household purposes, and the Loan is intended and shall be deemed to be a commercial loan for all purposes under all applicable Laws.

**3.26 Disclosure of Information.** All material information concerning Borrower or the Project known to Borrower, or which should have been known to Borrower in the exercise of reasonable care, has been disclosed to Lender. There are no facts or information known to Borrower, or which should have been known to Borrower in the exercise of reasonable care, that would make any of the information furnished to Lender by Borrower inaccurate, incomplete, or misleading in any material respect.

All of the above representations and warranties, and any additional representations and warranties set forth elsewhere in the Loan Documents, shall remain true and correct in all material respects at the Closing of the Loan, and, except for matters that have been disclosed by Borrower and approved by Lender in writing, at all times thereafter, and shall survive so long as any of Borrower's Obligations have not been satisfied or the Loan or any part thereof remains outstanding, and for any applicable statute of limitations period thereafter. Borrower shall promptly notify Lender in writing if any representations made in connection with the Loan cease to be true.

**4. CLOSING CONDITIONS.** Prior to and as conditions to closing of the Loan, each of the conditions precedent set forth below must be satisfied to Lender's satisfaction, or waived in writing by Lender. All documents and instruments required hereunder must be satisfactory to Lender in form and content and all other conditions to closing must be performed to Lender's satisfaction.

**4.1 Execution of Loan Documents.** Borrower shall have furnished or delivered to Lender the following executed Loan Documents:

- 4.1.1 This Agreement.
- 4.1.2 The Note.
- 4.1.3 The Deed of Trust
- 4.1.4 The Indemnity signed by Borrower and Guarantor.
- 4.1.5 The Guaranty signed by Guarantor.
- 4.1.6 Financing Statements.
- 4.1.7 An Assignment and Subordination of Property Management Agreement signed by Property Manager and Borrower.

4.1.8 The Replacement Reserve Agreement.

4.1.9 Borrower's Consent or Resolution to enter into the Loan.

4.1.10 Guarantor's Consent or Resolution to enter into the Guaranty and Indemnity.

4.1.11 Such other authorizing documentation from Borrower or any entity Guaranty, and any constituent members thereof, as Lender may require.

Borrower authorizes Lender to file such UCC financing statements as Lender determines are advisable or necessary to perfect or notify third parties of the security interests intended to be created by the Loan Documents, which financing statements may describe the collateral as "all assets" of Borrower.

**4.2 Entity Documentation.** Lender shall have received: (i) as applicable, a copy of each limited liability company agreement, limited partnership agreement, trust agreement, partnership agreement, charter documents, articles of incorporation, bylaws, shareholder agreements, certificates of formation, tenancy-in-common agreements, articles of organization and operating agreement of Borrower, each entity Guarantor, and each constituent entity thereof, together with all amendments and modifications thereto, and such other organizational documents as Lender may reasonably request; (ii) certificates by an authorized officer or representative of Borrower and each entity Guarantor upon which Lender may conclusively rely until superseded by similar certificates delivered to Lender, certifying (a) that Borrower and each entity Guarantor, as applicable, are duly organized and validly existing and all action taken or to be taken in connection with the transactions contemplated hereby has been duly authorized and (b) the names, signatures, and authority of the applicable authorized signers executing the Loan Documents on behalf of each such party; (iii) a certificate of existence or good standing certificate, as applicable, for Borrower and each entity Guarantor; and (iv) such other documents as Lender may reasonably require.

**4.3 Payment of Fees and Expenses.** Borrower shall have paid to Lender all fees and expenses then due and payable under this Agreement and the other Loan Documents, including, without limitation, the Loan Fee.

**4.4 No Material Adverse Change.** Borrower and each Guarantor shall have maintained their financial condition in a manner satisfactory to Lender, and no Material Adverse Change shall have occurred in the financial condition or prospects of Borrower, any Guarantor, or the Project.

**4.5 Title Insurance.** Lender shall have received a Title Policy in the full amount of the Loan showing Borrower in fee simple title to the Property and insuring Lender as the holder of the Deed of Trust with first lien priority on the unencumbered fee simple title to the Project. The Title Policy shall be issued by the Title Company and shall contain such endorsements as Lender may require in its sole discretion. Any title exceptions, including any and all existing declarations and covenants, will be subject to Lender's approval. Without limiting the foregoing, the Title Policy shall insure that (i) the Project is free of the possibility of any prior or potential mechanic's or materialmen's liens; and (ii) all taxes and assessments affecting the Project that were due and payable on or before the Closing Date have been paid in full. Borrower shall provide the Title Company all lien waivers, affidavits, and indemnity agreements the Title Company may require to issue the Title Policy in the form requested by Lender.

**4.6 Survey.** If required by Lender, or if required by the Title Company to issue the Title Policy in a form required by Lender, Borrower shall have furnished to Lender a current ALTA survey of the Project in a form required by the Title Company and certified to Borrower, Lender, and Title Company by a licensed surveyor or engineer.

**4.7 Property and Liability Insurance.** Lender shall have received evidence acceptable to Lender that Borrower has procured and paid for the policies of insurance set forth below or otherwise required in writing by Lender. All such policies of insurance shall be issued by companies acceptable to Lender, and shall not be subject to cancellation without thirty (30) days prior written notice to Lender. Any policy with a co-insurance clause shall include

an endorsement with a waiver of such co-insurance clause. The certificates and endorsement shall set forth the coverage, the limits of liability, the carrier, the policy number, and the expiration date and Borrower shall provide certified copies of the actual policies and endorsements to Lender, if requested. Lender shall be named as loss payee on all policies and any subsequently designated assignee of or participant in the Loan shall be named as an additional insured on the liability insurance

**4.7.1 Property Insurance.** An "All-Risk" hazard insurance policy on the Project. Such insurance shall name Lender as loss payee on a Form 438-BFU or acceptable equivalent attached to the policy, shall be in an amount not less than one hundred percent (100%) of the full replacement cost of the Improvements and any other improvements on the Property, and shall contain such endorsements and coverages as Lender may require.

**4.7.2 Flood Insurance.** If the Property is located in an area designated by the United States Federal Emergency Management Agency as a special flood hazard area, a flood insurance policy in the maximum amount available, as required by applicable law. The policy shall name Lender as loss payee on a Form 438-BFU or acceptable equivalent attached to the policy.

**4.7.3 General Liability Insurance.** A certificate evidencing a commercial general liability insurance policy with respect to the Project insuring against claims of bodily injury, death or property damage (combined single limit form), in an amount not less than \$1,000,000 per occurrence and \$2,000,000, per occurrence and in the aggregate, naming Lender as an additional insured.

**4.7.4 Other Insurance.** Such other insurance coverage as Lender may reasonably require and that is usually obtained for ownership and use of property similar to the use contemplated for the Property in the same jurisdiction as the Property.

**4.7.5 Payment; Renewals.** Borrower shall promptly furnish to Lender all renewal notices relating to insurance policies. Except as the same may otherwise be paid pursuant to the terms of the Deed of Trust, Borrower shall pay all premiums on insurance policies directly to the carrier. At least ten (10) days prior to the expiration date of each such policy, Borrower shall furnish to Lender a renewal policy in a form acceptable to Lender, together with evidence that the renewal premium has been paid.

**4.8 Appraisal.** Lender shall have received an Approved Appraisal of the Project, which Appraisal shall evidence a market value for the Property acceptable to Lender under Lender's current policies and guidelines; *provided, however*, in no event shall the Loan Amount exceed seventy-five percent (75%) of the *lesser of* (i) the purchase price of the Project paid by Borrower or (ii) the appraised stabilized value of the Project evidenced by an Approved Appraisal.

**4.9 Environmental Reports.** Lender shall have received a Phase 1 environmental site assessment for the Property prepared by a geotechnical engineer or other person acceptable to Lender certifying that, after due inspection and testing of the Property, and investigation into prior uses of the Property, the Property is not contaminated by Hazardous Substances, and Hazardous Substances have not been generated, stored, or disposed of on or under the Property in an unlawful or potentially dangerous manner. The parties acknowledge that Lender may reasonably require certain additional testing and/or Environmental Reports beyond those recommended in the Phase 1 environmental site assessment.

**4.10 Property Condition Report.** If required by Lender, Lender shall have received a property condition report from an engineer or architect approved by Lender regarding the condition and structural integrity of the Project.

**4.11 Utilities.** Borrower shall have provided Lender with evidence that all utilities, including water, sewer, and electricity, are available to the Project and are of sufficient size and capacity to serve the Project.

**4.12 Zoning.** Borrower shall have provided Lender with evidence of the Project's compliance with all applicable zoning requirements to the satisfaction of Lender.

**4.13 Parking.** Borrower shall have provided Lender with evidence that there is and will be sufficient parking available for the current and intended use of the Project or parking is not required for the Project to comply with applicable zoning requirements.

**4.14 Reserved.**

**4.15 Litigation.** There is no litigation pending or, to the actual knowledge of Borrower, threatened against Borrower or Guarantor, and Borrower is not in default with respect to any order, writ, injunction, decree, or demand of any Governmental Authority having jurisdiction over it or any of its properties or operations.

**4.16 UCC Searches.** Lender shall have received current uniform commercial code searches made in the applicable office of the State of California and such other places as Lender may reasonably require, covering Borrower and each Guarantor, and showing no filings related to or which could relate to the Project, other than those made hereunder or those to be released on the Closing Date or otherwise acceptable to Lender in its sole and absolute discretion.

**4.17 Financial Information.** Lender shall have received copies of current financial statements of Borrower and each Guarantor, certified as correct by Borrower or the applicable Guarantor, as appropriate, together with such other Financial Information as Lender may request regarding Borrower or any Guarantor.

**4.18 No Material Adverse Change.** As of the Closing Date, the financial condition and credit of Borrower and Guarantor and all information relating to the Project and the condition of the Project shall be as previously represented to Lender without any Material Adverse Change.

**4.19 Deposit Accounts.** Borrower shall retain the following "**Required Deposit Accounts**" with Lender:

Operating Account;

Tenant Security Deposit Account;

Reserve Account; and

Debt Service Reserve Account.

**4.20 Additional Closing Conditions.** Borrower has satisfied all "Additional Closing Conditions" set forth on EXHIBIT C attached hereto.

**4.21 Compliance; Representation and Warranties.** Borrower shall have complied with all of the provisions in this Agreement to be complied with prior to the Closing Date, and all of the representations and warranties in Section 3 above shall be true and correct in all material respects as of the Closing Date.

**4.22 Closing Instructions.** Borrower shall have executed a Lender-approved settlement statement for closing of the Loan.

**4.23 Additional Items/Information.** Borrower shall have provided Lender with such additional information and/or materials as Lender may have reasonably requested.

At Lender's election, all of the above conditions must be satisfied by the Closing Deadline. If such conditions have not been satisfied to Lender's satisfaction by the Closing Deadline, then Lender shall have no obligation to close the Loan

and the obligations of Lender under this Agreement shall have no further force or effect. Lender shall, in any event, have no obligation to close the Loan or disburse funds hereunder until all such conditions have been satisfied. If Lender disburses funds without requiring the satisfaction of all such conditions, Borrower's obligations to meet the unsatisfied conditions shall not be deemed waived, and Lender may require compliance with each of such conditions before further Loan proceeds are disbursed.

## 5. COVENANTS

Borrower covenants and agrees that it will comply with the following provisions:

**5.1 Financial Reporting.** Borrower shall provide to Lender, or cause to be provided to Lender, within the time periods specified for each item, the financial information for Borrower and each Guarantor described on EXHIBIT B attached hereto and made a part hereof. Each financial statement shall be certified as true, complete, and correct by its preparer and by Borrower or a Guarantor, as applicable. In addition, Borrower and each Guarantor shall provide such additional financial information as Lender may reasonably require, including such information as Lender may require to verify compliance with all applicable financial covenants set forth on EXHIBIT B. All financial information shall be in a format approved by Lender, in Lender's sole discretion, and certified as true, complete, and correct by the applicable Person. If Lender is unable to verify the data or determines the data to be inaccurate or unsupported, Lender will base financial monitoring and covenant compliance on Lender's independent financial analysis, as determined by Lender in the reasonable exercise of its discretion.

**5.2 Financial Covenants.** Borrower shall at all times remain in compliance with the financial covenants set forth on EXHIBIT B, as calculated based on information and documentation actually provided to Lender by Borrower. Although Lender will formally measure compliance with each covenant at the intervals stated on EXHIBIT B, Borrower and each Guarantor must remain in compliance with such covenants at all times they are applicable, and Lender reserves the right to declare an Event of Default under any such covenant at any time based on information otherwise available to Lender.

**5.3 Insurance; Maintenance of Property.** Borrower shall: (a) maintain, with financially sound and reputable insurers, insurance with coverage and limits as may be required by law and of such character and amounts as are both acceptable to Lender and usually maintained by companies engaged in like business and for property similar to the Project, including, without limitation, all insurance required to be in place at closing of the Loan pursuant to Section 4.7.

**5.4 Existence; Business.** Borrower shall cause to be done all things necessary to preserve and keep in full force and effect its existence and rights, to conduct its business in a prudent manner, to maintain in full force and effect, and renew from time to time, its franchises, permits, licenses, patents, and trademarks that are necessary to operate its business. Borrower shall at all times comply with its organizational documents.

**5.5 Borrower's Management.** Borrower shall use commercially reasonable efforts to maintain executive and management personnel with substantially the same qualifications and experience as its present executive and management personnel.

### 5.6 Leasing Restrictions.

**5.6.1** The Project shall at all times be maintained and operated as a multi-family apartment project.

**5.6.2** Without the prior written consent of Lender, neither Borrower and nor Borrower's agents shall (i) enter into any new residential Lease except as set forth in Section 5.6.3 below; (ii) enter into or agree to any amendment of a non-residential Lease; (iii) consent to the assignment of any non-residential Lease or any sublease;



(iv) accept any rental payment more than one month in advance of its due date. At Lender's request, Borrower shall cause each new Tenant under a non-residential Lease to execute an SNDA and a tenant estoppel certificate reasonably satisfactory to Lender. Lender reserves the right to subordinate the Deed of Trust to any Lease.

**5.6.3** Lender's approval shall not be required for any residential Lease that (a) is on a standard form lease approved by Lender, with no material deviations except as approved by Lender, (b) is entered into in the ordinary course of business with a bona fide unrelated third party tenant, (c) reflects an arm's length transaction, and (d) contains no right or option to purchase the unit or any portion of the Project or any present or future interest therein.

**5.6.4** Borrower shall comply with and observe Borrower's obligations as landlord under all Leases and will do all that is necessary to preserve all Leases in force and free from any right of counterclaim, defense or setoff. Borrower will not suffer or permit any material breach or default to occur in any of Borrower's obligations under any Lease at the Project nor suffer or permit the same to terminate due to any failure of Borrower to meet any requirement of any Lease.

**5.7 Management Agreements.** Borrower shall not, by its actions or omissions, permit the Property Management Agreement to expire without Lender's prior written consent. If the term of the Property Management Agreement expires prior to the Maturity Date, Borrower shall deliver a fully executed extension of the Property Management Agreement to Lender prior to its expiration. Additionally, Borrower shall not terminate or materially modify the Property Management Agreement, or enter into any new property management agreement for the Project, without Lender's prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned, or delayed, but shall be conditioned on any new Property Manager's execution of a subordination of management agreement in form and content acceptable to Lender.

**5.8 Inspection.** Borrower shall make available for inspection by duly authorized representatives of Lender, or its designated agent, when reasonably requested to do so, all books and records relating to Borrower's financial circumstances or the Project, and will furnish Lender such information within a reasonable time after written request therefor.

**5.9 Health and Safety/Inspections.** Borrower shall cause the Collateral to comply with all requirements of applicable federal, state, foreign, provincial and local environmental, health and safety Laws, regulations, ordinances or rules which would, in the aggregate, if not complied with, result in a Material Adverse Change and shall permit Lender to perform such periodic inspections or environmental examinations of the Collateral as Lender may reasonably require, at any time during normal business hours and at Borrower's sole cost and expense.

**5.10 Required Deposit Accounts.** Borrower shall maintain a depository relationship with Lender at all times during the term of the Loan, including an Operating Account for all ordinary course business purposes associated with the Project. Lender is further authorized to pay any principal, interest, late fees, and any required tax and insurance escrow payments when and as the same shall become due under the Loan Documents by automatically debiting funds on deposit in the Operating Account. Borrower shall deposit all tenant security deposits and other tenant deposits into the Tenant Security Deposit Account maintained with Lender. Borrower shall maintain all Required Deposit Accounts with Lender during the term of the Loan. Upon Borrower's request, Lender will provide Borrower an itemized statement of all amounts due under the Loan in a twelve (12) month period.

**5.11 Additional Assurance.** Borrower shall, upon request of Lender, promptly take such actions and promptly make, execute, and deliver all such additional and further items, deeds, assurances, and instruments as Lender may reasonably require, so as to completely vest in and ensure to Lender its rights hereunder and in or to the Collateral.

**5.12 Sale, Purchase of Assets.** Borrower shall not, directly or indirectly, (a) purchase, lease, or otherwise acquire any assets associated with the Project except in the ordinary course of business or as otherwise

expressly permitted under this Agreement; or (b) sell, lease, transfer, or otherwise dispose of any assets except for (i) assets sold, leased, transferred or subject to other disposition for full and adequate consideration in the reasonable judgment of Borrower that Borrower has determined to be worn out or obsolete or not useful in the ordinary course of their business; (ii) assets sold, leased, transferred, or subject to other disposition in the ordinary course of business, provided that Borrower receives full and adequate consideration in the reasonable judgment of Borrower in exchange for such assets sold, leased, transferred, or otherwise subject to disposition; and (iii) Leases permitted by the terms of this Agreement.

**5.13 Indebtedness and Liens.** Borrower shall not create, incur, or assume additional Indebtedness for borrowed money, including capital leases, without Lender's prior consent.

**5.14 Assumptions; Guaranties.** Borrower shall not assume, guarantee, endorse, or otherwise become directly or contingently liable for (including, without limitation, liable by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to, or otherwise invest in any debtor or otherwise to assure the creditor against loss) any obligation or Indebtedness of any other Person.

**5.15 Compliance with Laws.** Borrower shall comply with all applicable Laws and all other requirements of any Governmental Authority having jurisdiction over Borrower or the Project.

**5.16 Prohibited Use.** Without limiting any obligations of Borrower hereunder or any of the other provisions contained herein, Borrower shall not use, and shall prohibit use of, any portion of the Property in any way that violates federal, state, or local law, including, without limitation, the unlawful possession, storage, manufacture, advertisement, or sale of any Schedule I substance under the federal Controlled Substances Act, 21 U.S.C. Section 801 *et seq.*, including, without limitation, cannabis, even if such possession, storage, manufacture, advertisement, or sale of cannabis is for medicinal purposes or is lawful under state or local law.

**5.17 Furnishing Reports.** Upon Lender's request, Borrower shall provide Lender with copies of all inspections, reports, test results, and other information received by Borrower that in any way relate to the Collateral or any part thereof.

**5.18 Furnishing Notices.** Borrower shall provide Lender with copies of all material notices pertaining to the Collateral received by Borrower from any tenant, Governmental Authority, or insurance company within five (5) Business Days after such notice is received.

**5.19 Mergers; Consolidation; Sale or Transfers of Borrower.** Without the prior written consent of Lender, Borrower shall not merge or consolidate with any Person, dissolve, wind up its affairs, or sell, assign, lease, or otherwise dispose of (whether in one transaction or in a series of transactions), all or substantially all of its assets (whether now owned or hereafter acquired) to any Person. Borrower will not permit a transfer or sale, directly or indirectly, whether in one transaction or in a series of transactions, of any ownership interests in Borrower or Borrower's interest in the Project.

**5.20 Single Purpose Entity.** Borrower shall not: (i) engage in any business or activity other than the ownership, development and operation of the Project and activities related thereto; (ii) commingle its funds or assets with the funds or assets of any other Person; (iii) commingle its assets with the assets of any other Person; (iv) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing under the laws of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply in any material respect with the provisions of its formation documents; (v) assume, guarantee, endorse, or otherwise become directly or contingently liable for (including, without limitation, liable by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to, or otherwise invest in any debtor or otherwise to assure the creditor against loss) any obligation or Indebtedness of any other Person or hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being

available to satisfy the obligations of any other Person; or (vi) make any loans or advances to any Person (collectively, the "**SPE Covenants**").

**5.21 No Restrictive Covenants or Easements.** No restrictive covenant, easement, zoning change or other restriction affecting the Project may be entered into, requested by or consented to by Borrower without the prior written consent of Lender

**5.22 Distributions, Dividends, and Compensation.** Borrower shall not declare, pay, set aside funds for or make any distribution or dividend, in cash or assets or trust, to or for the benefit of any of Borrower's shareholders, members, equity holders, partners or other beneficial owners during the existence of a Potential Default or Event of Default, or if such distributions or dividends would cause Borrower to be unable to meet its reasonably anticipated financial obligations or to comply with any of the financial covenants applicable to Borrower hereunder. During the absence of a Potential Default or Event of Default, and subject to the immediately preceding sentence, Borrower may make distributions of excess cash flow from the Project after all operating expenses and debt service have been paid.

**5.23 Material Adverse Changes.** Borrower shall notify Lender promptly in writing (but in no event more than five (5) Business Days after Borrower becomes aware of the occurrence thereof) of (a) the occurrence of any material event that, if it had existed on the date of this Agreement, would have required qualification of the representations and warranties set forth in Section 3 hereof or EXHIBIT C attached hereto and (b) any Material Adverse Change.

**5.24 Notice of Default.** Borrower shall notify Lender promptly in writing (but in no event more than five (5) Business Days after Borrower becomes aware of the occurrence thereof) of any Event of Default hereunder and any demands made upon Borrower by any Person for the acceleration and immediate payment of any Indebtedness owed to such Person.

**5.25 Indemnification.** Borrower shall indemnify Lender, including each party owning an interest in the Loan and their respective officers, directors, employees, and consultants (each, an "**Indemnified Party**"), defend, and hold each Indemnified Party harmless from and against all claims, injuries, damages, losses, liabilities, costs, and expenses (including attorneys' fees, costs, and expenses) of any and every kind to any persons or property by reason of (i) the ownership of the Project; (ii) any breach of a representation or warranty under the Loan Documents or any Event of Default or Potential Default; or (iii) any other matter arising in connection with the Loan, Borrower, or the Collateral that is not covered by Section 9 of this Agreement or the Indemnity, except to the extent of the gross negligence or willful misconduct of an Indemnified Party. The foregoing indemnification shall survive repayment of the Loan and shall continue to benefit Lender following any assignment of the Loan with respect to matters arising or accruing prior to such prepayment or assignment.

**5.26 Right of First Refusal.** Borrower hereby grants Lender a right of first refusal to make or to arrange any loan secured by the Project, including, without limitation, any rehabilitation loan, any refinance loan, or any low income housing tax credit loan for the Project. If a commitment for financing acceptable to Borrower in its sole and absolute discretion and to Lender in its sole and absolute discretion is not issued by Lender by the Maturity Date, then this Section shall have no further effect with respect to the Project.

## 6. TRANSFERS

**6.1** Borrower acknowledges and agrees that the Loan made by Lender to Borrower is personal to Borrower and that the identity of Borrower and its partners, members, managers, and employees, and the relationship between Borrower and Lender, and Borrower's creditworthiness, business expertise, financial condition, and continued control of the Collateral were material inducements upon which Lender relied in making the Loan. Accordingly, Borrower shall not permit or suffer any Transfer without Lender's prior written consent.

6.2 Any attempted Transfer by Borrower without Lender's prior written consent shall be null and void, and of no effect, and shall also constitute, at Lender's option, an Event of Default under the Loan Documents.

6.3 As a condition of approving any Transfer, Lender may impose such requirements and conditions as it determines are appropriate in its reasonable discretion. In connection with Lender's approval of any Transfer, Borrower and the assuming party shall pay, in advance, any and all reasonable costs and expenses incurred by Lender, including reasonable attorneys' and accountants' fees.

6.4 No approval of any assignment of the Loan shall cause a release of Borrower from any liability under the Loan Documents without Lender's prior written consent, which consent may be freely withheld in Lender's sole discretion.

## 7. EVENTS OF DEFAULT

The occurrence of any one or more of the events listed below shall constitute an **"Event of Default"** under the Loan. For any events listed below that require the giving of notice and expiration of any applicable cure period before they constitute an Event of Default, the occurrence of such triggering event, before a cure has been made or any cure period has expired, shall constitute a **"Potential Default"**.

7.1 **Non-Payment.** Borrower fails to make any payment or to perform an obligation to pay money that arises under the Note or any of the other Loan Documents within fifteen (15) days after the date on which such payment is due, except for obligations due on the Maturity Date, for which there shall be no grace period.

7.2 **Representations and Warranties.** If any representation or warranty made by Borrower or any Guarantor to Lender in connection with the Loan proves to be false or misleading in any material respect.

7.3 **Validity of Loan Documents.** If (a) any material provision, in the sole opinion of Lender, of any Loan Document shall at any time for any reason cease to be valid, binding, and enforceable against Borrower; (b) the validity, binding effect or enforceability of any Loan Document is contested by Borrower; (c) Borrower denies that it has any or further liability or obligation under any of the Loan Documents; or (d) any Loan Document is terminated, invalidated, or set aside, or declared ineffective or inoperative or in any way ceases to give or provide to Lender the material benefits purported to be created thereby, including the failure of any Security Instrument to create a valid and perfected first priority Security Interest or first position lien at any time for any reason.

7.4 **Default under Third Party Obligations.** If Borrower defaults in the payment of principal or interest due and owing upon any other obligation for borrowed money beyond any applicable grace period or Borrower defaults in the performance or observance of any other agreement, term, or condition contained in any agreement under which such obligation is created, if the effect of such default is to allow the acceleration of the maturity of such Indebtedness or to permit the holder thereof to cause such Indebtedness to become due prior to its stated maturity.

7.5 **Liens.** If any claim or lien is filed against the Collateral or any part thereof and Borrower has not, within thirty (30) days after the filing thereof or within ten (10) days after demand by Lender, whichever is earlier, effectuated the release of such lien or made arrangements reasonably satisfactory to Lender for the full and continuous protection of Lender from the effect thereof.

7.6 **Inspection.** If Borrower does not permit Lender or a representative of Lender to enter upon the Property and inspect the same at all reasonable times requested by Lender; provided that all such inspections shall be subject to the rights of tenants under any Leases.

7.7 **Security Impaired.** If there is an uninsured casualty with respect to any material portion of the Collateral and Borrower fails to commence repairs promptly following such damage or fails to complete such repairs

within a reasonable time period, as determined by Lender, Borrower fails to satisfy the conditions set forth in the Deed of Trust for the release of insurance proceeds or any condemnation award, or, whether or not Lender has received and applied insurance proceeds or any condemnation award to the obligations arising under the Loan Documents in accordance with the Deed of Trust, Lender reasonably determines that its security is materially impaired by such casualty or condemnation, and, after written notice from Lender, Borrower fails promptly to deposit with Lender an amount determined by Lender as necessary to restore such security.

**7.8 Money Judgment.** A final judgment or order for the payment of money is rendered against Borrower or any Guarantor by a court of competent jurisdiction that is not covered in full by insurance proceeds and remains unpaid or unstayed and undischarged for a period of thirty (30) days after the date on which the right to appeal has expired, and the amount of such judgment would result in a Material Adverse Change.

**7.9 Transfers.** If any Transfer occurs that has not been approved by Lender in writing.

**7.10 Material Adverse Change.** Any Material Adverse Change has occurred with respect to Borrower, Guarantor, or any Collateral, including, without limitation, the Project, and such condition is not cured to Lender's satisfaction within thirty (30) days after written notice thereof has been given by Lender to Borrower; *provided, however*, a Material Adverse Change with respect to Guarantor shall not constitute an Event of Default if Borrower provides Lender with a replacement guarantor acceptable to Lender in its sole discretion within thirty (30) days following the occurrence of the Material Adverse Change.

**7.11 Financial Contracts.** If Borrower fails to comply with or to perform any term, obligation, covenant or condition contained in any Financial Contract applicable to the Loan or in any of the related documents or to comply with or to perform any term, obligation, covenant, or condition contained in any other agreement between Lender and Borrower (after expiration of any applicable notice and cure period).

**7.12 Reserved.**

**7.13 Solvency.** If Borrower or Guarantor, as applicable: (a) discontinues business; (b) generally does not pay its debts as such debts become due; (c) makes a general assignment for the benefit of creditors; (d) applies for or consents to the appointment of a receiver, a custodian, a trustee, an interim trustee or liquidator of all or a substantial part of its assets; (e) is adjudicated a debtor or have entered against it an order for relief under Title 11 of the United States Code, as the same may be amended from time to time; (f) files a voluntary petition in bankruptcy or files a petition or an answer seeking reorganization or an arrangement with creditors or seeking to take advantage of any other law (whether federal or state) relating to relief of debtors, or admits (by answer, by default or otherwise) the material allegations of a petition filed against it in any bankruptcy, reorganization, insolvency or other proceeding (whether federal or state) relating to relief of debtors; (g) suffers or permits to continue unstayed and in effect for thirty (30) consecutive days any judgment, decree or order entered by a court of competent jurisdiction, that approves a petition seeking its reorganization or appoints a receiver, custodian, trustee, interim trustee or liquidator of all or a substantial part of its assets; or (h) takes any action in order thereby to effect any of the foregoing, or omits to take, any action in order to prevent any of the foregoing (each an "**Insolvency Event**"); *provided, however*, an Insolvency Event of Guarantor shall not constitute an Event of Default if Borrower provides Lender with a replacement guarantor acceptable to Lender in its sole discretion within thirty (30) days following the occurrence of such Insolvency Event.

**7.14 Financial Reporting Requirements.** If Borrower or any Guarantor fails to comply with any of the financial reporting requirements set forth on EXHIBIT B attached hereto and such failure is not cured within ten (10) days after written notice thereof has been given to Lender.

**7.15 Financial Covenants.** If Borrower, any Guarantor, of the Project fails to comply with the financial covenants set forth on EXHIBIT B attached hereto and such failure is not cured within ten (10) days after written notice thereof has been given to Lender.

**7.16 SPE Covenants.** If there is a violation of any of the SPE Covenants.

**7.17 Loan Document Default.** If an "Event of Default" occurs under any other Loan Document and continues beyond expiration of applicable notice and cure periods.

**7.18 Other Obligations.** If Borrower fails to perform any other covenant, agreement, or obligation to be performed by Borrower under this Agreement or the other Loan Documents, and such failure is not cured within thirty (30) days after written notice thereof has been given by Lender (or if the failure is such that the cure cannot be completed within said thirty (30) day period due to force majeure events, failure by Borrower to commence the cure within said thirty (30) day period and thereafter continue the cure with diligence and complete the cure within ninety (90) days after such written notice).

## **8. REMEDIES UPON DEFAULT**

**8.1 Rights of Lender.** If any Event of Default occurs, and for so long as such Event of Default is continuing, Lender may, at its election, and without further demand or notice of any kind, do any one or more of the following:

**8.1.1** Lender may refuse to make further disbursements of any undisbursed proceeds of the Loan.

**8.1.2** Declare all of Borrower's Obligations to Lender to be immediately due and payable, whereupon all unpaid principal, interest, and fees in respect of such Obligations, shall be immediately due and payable;

**8.1.3** Exercise any and all rights and remedies available to Lender under any applicable Law;

**8.1.4** Exercise any and all rights and remedies granted to Lender under the terms of this Agreement or any of the other Loan Documents, including, without limitation, the Deed of Trust or any other Security Instrument;

**8.1.5** Perform, either directly or through its consultants or other agents, such reviews of the financial condition of Borrower and Guarantor, maintenance and environmental reviews of the Collateral, and such other reviews and analysis as Lender may reasonably require as a consequence of such Event of Default, and Borrower shall pay all fees and costs incurred by Lender in connection with such additional review and analysis, and all related reports; and/or

**8.1.6** Set off the unpaid balance of the Obligations of Borrower or any Guarantor against any Indebtedness owing to Borrower or any Guarantor by Lender or by any Lender Affiliate, including, without limitation, any obligation under a repurchase agreement or any funds held at any time by Lender or any Lender Affiliate, whether collected or in the process of collection, or in any time or demand deposit account maintained by Borrower or any Guarantor at, or evidenced by any certificate of deposit issued by, Lender or any Lender Affiliate. Borrower agrees, to the fullest extent it may effectively do so under applicable law, that any holder of a participation in the Note may exercise rights of set-off or counterclaim and other rights with respect to such participation as fully as if such holder of a participation were a direct creditor of Borrower or an applicable Guarantor pursuant to this Agreement in the amount of such participation.

**8.2 No Waiver.** The remedies in this Section 8 and elsewhere in this Agreement are in addition to, not in limitation of, any other right, power, privilege, or remedy, either in law, in equity, or otherwise, to which Lender may be entitled. No failure or delay on the part of Lender in exercising any right, power, or remedy will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. Lender shall not be deemed to have waived any rights under this Agreement or any of the other Loan Documents unless such waiver is given in writing and signed by Lender. All Lender's rights and remedies,

whether evidenced by this Agreement or by any other agreement, instrument or document shall be cumulative and may be exercised singularly or concurrently.

## **9. ENVIRONMENTAL PROVISIONS.**

**9.1 No Waivers of Other Indemnifications Relating to Environmental Condition.** Borrower represents and warrants to Lender that, except as set forth herein or in the Indemnity executed by Borrower in connection with the Loan: (i) Borrower has not and will not release or waive the liability of any past or current owner, Tenant, or operator of the Project, any party who performs work on the Project, or any party who may be responsible for the presence of or removal of Hazardous Substances on or from the Project or the Nearby Property, and (ii) Borrower has made no prior promises of indemnification to any party relating to the existence or non-existence of Hazardous Substances on the Project.

**9.2 Obligation to Comply with Environmental and Access Laws.** Borrower shall keep and maintain the Project in compliance with any and all Laws relating to public safety and the condition of the environment, including, but not limited to, Environmental Laws and Access Laws.

**9.3 Prohibited Activities.** Borrower agrees that, so long as Borrower owns any interest in the Project, Borrower and Borrower's agents, contractors, authorized representatives, and employees shall not engage in any of the following prohibited activities, and Borrower shall use diligent efforts to assure that Borrower's invitees and Tenants, and such Tenants' employees, agents, and invitees do not: (i) cause or permit any release or discharge of Hazardous Substances on the Project in any manner or quantity that would violate any Environmental Law; (ii) cause or permit any manufacturing, storage, holding, handling, usage, placement, transporting, spilling, leaking, discharging, or dumping of Hazardous Substance in or on any portion of the Project in violation of any Environmental Law; (iii) suffer or permit any other act upon or concerning the Project that would result in a violation of any Environmental Law; or (iv) suffer or permit any other act upon or concerning the Project that would result in a violation of any Access Law or require any alterations or improvements to be made on the Project under any of the Access Laws.

### **9.4 Obligation to Cure Non-Compliance.**

**9.4.1** If Borrower at any time becomes aware of (i) any Hazardous Substances on or other environmental problem or liability with respect to the Project or any Nearby Property in any manner or quantity that would violate any Environmental Law, (ii) any failure of the Project or any improvements to be constructed on the Property to comply with any of the Environmental Laws, (iii) any failure of the Project or the related improvements or the marketing efforts and other operations undertaken with respect thereto to comply with any of the Access Laws, or (iv) any lien, action or notice resulting from violation of any Environmental Laws or Access Laws, Borrower shall notify Lender immediately, and shall thereafter exercise due diligence to ascertain the scope and nature of such condition. If the condition is such that Environmental Laws require the giving of notice to the governmental agencies having appropriate jurisdiction or the implementation of other preventive measures, Borrower shall furnish such notice or implement such preventive measures promptly.

**9.4.2** If, upon giving such notice or for any other reason, one or more governmental agencies having appropriate jurisdiction requires removal or treatment of Hazardous Substances from or on the Project or the making of alterations to the Project to conform to Access Laws, or such removal, treatment, or alteration is required by Environmental Laws or Access Laws, Borrower will: (i) to the extent required by Environmental Laws, take all actions that are necessary to clean up any Hazardous Substances affecting the Project, including removal, treatment, containment or any other remedial action required to restore the Project to a safe condition in compliance with applicable Laws, including Environmental Laws, (ii) take all actions that are necessary to modify the Project and all related improvements and marketing materials so as to achieve compliance with applicable Laws, including Access Laws, and/or (iii) attempt, through appropriate legal or administrative proceedings, to obtain a stay of enforcement

proceedings if Borrower believes in good faith that Borrower is not required by law to cure such Hazardous Substances condition or to make alterations to comply with Access Laws.

**9.5 Indemnification of Lender.** Borrower shall indemnify, defend and hold Lender harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including reasonable attorneys' fees and costs) that result in actual cost and expense to Lender prior to the Transition Date and arise directly or indirectly from or out of, or in any way connected with: (i) the inaccuracy of representations made by Borrower regarding compliance of the Property with Environmental Laws and Access Laws; (ii) any activities on the Project that directly or indirectly result in the Project or any Nearby Property becoming contaminated with Hazardous Substances; (iii) any spills, releases, discharges or disposal of Hazardous Substances at or from the Project occurring prior to the Transition Date; (iv) the imposition, recording or filing of any lien with regard to Hazardous Substances prior to the Transition Date or relating to Hazardous Substances that existed on the Project prior to the Transition Date; (v) any non-compliance of the Project with or violation of any Environmental Law prior to the Transition Date; (vi) the discovery and/or cleanup of Hazardous Substances that were deposited on or were existing on the Project prior to such Transition Date except to the extent that Lender, its agents, successors or assigns deposited such Hazardous Substances on the Project; (vii) the discovery and/or cleanup of Hazardous Substances that were deposited on any Nearby Property as a result of Borrower's actions or omissions; or (viii) any alleged or actual failure of any improvements now or hereafter constructed on the Project to continuously comply with all Access Laws now or hereafter enacted for any reason whatsoever. Borrower acknowledges that, as between Borrower and Lender, Borrower will be solely responsible for all costs and expenses relating to the cleanup of Hazardous Substances from the Project or the cleanup of any Hazardous Substances from any Nearby Property as a result of Borrower's actions or omissions and the modification and correction of any of the improvements constructed on the Project so as to comply fully with all Access Laws. Notwithstanding the foregoing, Borrower shall have no obligation to indemnify Lender or hold Lender harmless under this Section 9.5 to the extent any of the foregoing is caused by the gross negligence or willful misconduct of Lender.

## 10. RE-APPRAISAL.

Lender shall have the right to obtain a new or updated Appraisal of the Project from time to time, and Borrower shall cooperate with Lender in this regard. Borrower shall reimburse Lender, within five (5) Business Days after Lender's request, for the cost of any Appraisal obtained to comply with this Agreement, or as a consequence of any applicable law or regulatory requirement or bank policy promulgated to comply therewith, or if an Event of Default exists.

## 11. OTHER PROVISIONS.

**11.1 Authorized Representative.** Borrower hereby appoints Carrie Harmon, Chief Operating Officer (the "**Authorized Representative**"), acting individually, as its Authorized Representative for purposes of dealing with Lender on behalf of Borrower in respect to any and all matters in connection with this Agreement, the other Loan Documents, and the Loan. The Authorized Representative shall have the power, in his or her individual discretion and subject to the delegation of authority approved by Borrower's Board of Directors, to give and receive all notices, monies, approvals, and other documents and instruments, and to take any other action on behalf of Borrower. All actions by the Authorized Representative shall be final and binding on Borrower, subject to applicable laws regarding limitations on an agent's authority. Lender may rely on the authority given to the Authorized Representative until actual receipt by Lender of a duly authorized resolution removing the Authorized Representative or substituting a different person for the Authorized Representative.

**11.2 Participation/Syndication.** Lender shall have the right, at any time and from time to time, to assign or sell the Loan, or any portion thereof, and/or enter into one or more participations in the Loan, accompanied by an assignment and/or delegation of any or all related rights or obligations of Lender under the Loan Documents, without the need for any form of consent from Borrower or any Guarantor. Borrower agrees to cooperate with Lender's efforts



to do any of the foregoing, to provide such further or additional financial or other documentation as Lender may reasonably request in connection with any such sale, assignment or participation, and to execute all documents reasonably required by Lender in connection therewith, and provided such cooperation shall be at no material expense or liability to Borrower.

**11.3 Remedies; Waiver; Amendments.** No waiver of any provision of this Agreement or any other Loan Document, or consent to departure therefrom, is effective unless in writing and signed by Lender. No such consent or waiver extends beyond the particular case and purpose involved. No amendment to this Agreement is effective unless in writing and signed by Borrower and Lender. If at any time or times, by assignment or otherwise, Lender transfers any of the Obligations or any part of the Collateral to another person, such transfer shall carry with it Lender's powers and rights under this Agreement with respect to the Obligation or Collateral so transferred and the transferee shall have said powers and rights, whether or not they are specifically referred to in the transfer. To the extent that Lender retains any other of the Obligations or any part of the Collateral, Lender will continue to have the rights and powers with respect to the Obligations and the Collateral as set forth in this Agreement.

**11.4 No Setoff by Borrower.** Borrower's obligations to timely pay and perform all obligations under this Agreement, the Note, the Security Instruments, and the other Loan Documents shall be absolute and unconditional and shall not be affected by any event or circumstance, including, without limitation, any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Borrower may have or claim against Lender or any other Person.

**11.5 USA PATRIOT Act Notice.** Lender hereby notifies Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001), Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with such act.

**11.6 Attorney Fees and Expenses.** Borrower agrees to reimburse Lender for all of Lender's reasonable costs, charges, expenses, and attorneys' fees that Lender incurs, with or without litigation: (i) in connection with the enforcement of any remedy contained in this Agreement or any other Loan Document, or (ii) in connection with any action taken by Lender in accordance with the terms of this Agreement or any of the other Loan Documents to protect its interests or to recover amounts owed under the Loan, including, without limitation, any actions necessitated by the bankruptcy of Borrower or the exercise by any other creditor of Borrower of its right against Borrower or the Project. Borrower specifically acknowledges that Lender may recover its reasonable costs, charges, expenses, and attorneys' fees in any litigation, appeal of any trial court decision, any arbitration proceeding, any action contesting or seeking to restrain, enjoin, stay or postpone the exercise of any remedy, and any bankruptcy or other insolvency proceeding involving Borrower. Such costs, expenses, and fees shall be due and payable upon demand and, if not paid within thirty (30) days thereafter, shall bear interest from the date of such demand to and including the date of collection at the default rate stated in the Note or at the highest rate of interest permitted by Law, if less.

**11.7 Set Off.** Borrower grants to Lender a continuing lien on and Security Interest in any and all deposits or other sums at any time credited by or due from Lender (or any of its banking or lending affiliates, or any bank acting as a participant under any loan arrangement between Lender and Borrower), or any Lender Affiliate to Borrower and any cash, securities, instruments or other property of Borrower in the possession of Lender or any Lender Affiliate, whether for safekeeping or otherwise, or in transit to or from Lender or any Lender Affiliate (regardless of the reason Lender or Lender Affiliate had received the same or whether Lender or Lender Affiliate has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of Borrower to Lender or any Lender Affiliate and such deposits and other sums may be applied or set off against such liabilities and obligations of Borrower to Lender or any Lender Affiliate.

**11.8 Indemnification and Defense Obligations.** If a claim arises for which Borrower has a duty to indemnify or defend Lender hereunder or under any of the other Loan Documents, counsel selected by Borrower for

Lender's defense shall be subject to Lender's approval, in its reasonable discretion, and Lender shall be entitled to make all decisions relating to its defense, including, without limitation, the litigation strategy and the terms of any settlement.

**11.9 Governing Law.** The provisions of this Agreement and the respective rights and duties of Borrower and Lender hereunder shall be governed by and construed in accordance with the laws of the State of California and any applicable federal laws. Borrower hereby irrevocably submits to the non-exclusive jurisdiction of any California state or federal court sitting in the County of Riverside, State of California, over any action or proceeding arising out of or relating to this Agreement, or any document related to the Obligations, and Borrower hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such California state or federal court. Borrower hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

**11.10 Interpretation.** The several captions to different Sections of this Agreement are inserted for convenience only and shall be ignored in interpreting the provisions hereof. In this Agreement unless the context otherwise requires, words in the singular number include the plural, and in the plural number include the singular. Time is of the essence in the performance of the Obligations under this Agreement. All grace periods in this Agreement and all other Loan Documents shall run concurrently.

**11.11 Notices.** Any notice, demand, request, or other communication that any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three (3) Business Days after mailing; (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service; or (d) if by confirmed fax or e-mail transmission on the day of transmission so long as a copy is sent on the same day by overnight courier to the addresses set forth below:

**If to Borrower:** PERRIS PARK HOUSING LLC  
5555 Arlington Avenue  
Riverside, CA 92504  
Attn: Michael Walsh  
Telephone: 951-343-5461  
E-mail: mfwalsh@rivco.org

**If to Lender:** BANNER BANK  
5930 Granite Lake Drive, Suite 170  
Granite Bay, CA 95746  
Attn: Sandy Bowen  
Telephone: 916-648-3471  
E-mail: sandy.bowen@bannerbank.com

Either party may change its address for notices by notifying the other party in writing of the change.

**11.12 Survival of Agreements; Relationship.** All agreements, representations, and warranties made in this Agreement will survive the making of the extension of credit hereunder, and will bind and inure to the benefit of Borrower and Lender, and their respective successors and assigns; *provided, however*, that no subsequent holder of the Note shall, by acquiring that Note, become obligated to make any Loan hereunder and no successor to or assignee of Borrower may borrow hereunder without Lender's written assent. Borrower may not assign this Agreement or the right to receive any disbursements hereunder or any interest herein. The rights and powers given in this Agreement to Lender are in addition to those otherwise created or existing in the Collateral by virtue of other agreements or writings. The relationship between Borrower and Lender with respect to this Agreement, the Note, and any other Loan

Document is and shall be solely that of debtor and creditor, respectively, and Lender has no fiduciary obligation toward Borrower with respect to any such document or the transactions contemplated thereby.

**11.13 Severability.** If any provision of this Agreement or any of the other Loan Documents, or any action taken hereunder, or any application thereof, is held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement or the other Loan Documents, each of which shall be construed and enforced without reference to such illegal or invalid portion and shall be deemed to be effective or taken in the manner and to the full extent permitted by Law.

**11.14 Joint and Several Liability.** If more than one Borrower executes this Agreement, the liability of each Borrower shall be joint and several. Upon the occurrence of an Event of Default, Lender may proceed against any Borrower, any Guarantor, or any of its security for the Loan in such order and manner as Lender in its sole discretion may elect.

**11.15 No Third-Party Beneficiaries.** There are no third-party beneficiaries to the Loan Documents.

**11.16 Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

**11.17 Errors and Omissions.** Borrower, for and in consideration of the Loan, agrees, if requested by Lender, to fully cooperate and adjust for clerical errors, if any, in some or all of the Loan Documents if deemed necessary in the reasonable discretion of Lender to enable Lender to sell, convey, seek guaranty or market said Loan to any entity, including but not limited to an investor, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, Federal Housing Authority or the Department of Veteran Affairs, or any Municipal Bonding Authority. Borrower agrees to comply with all above noted requests by Lender within thirty (30) days from date of mailing said requests.

**11.18 Judicial Reference.** The parties agree to proceed under this judicial reference provision as follows:

**11.18.1** With the exception of items specified in Section 11.19.2 below, any controversy, dispute or claim (each, a "**Claim**") between the parties arising out of or relating to the Loan will be resolved by a reference proceeding in California in accordance with the provisions of Section 638 et seq. of the California Code of Civil Procedure, or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to the reference proceeding. Venue for the reference proceeding will be in the state or federal court in any county or district in California where venue is appropriate under applicable law (the "**Court**").

**11.18.2** The matters that shall not be subject to a reference are the following: (i) non-judicial foreclosure of any security interest in real or personal property, (ii) exercise of self-help remedies (including, without limitation, set-off), (iii) appointment of a receiver and (iv) temporary, provisional or ancillary remedies (including, without limitation, writs of attachment, writs of possession, temporary restraining orders or preliminary injunctions). This reference provision does not limit the right of any party to exercise or oppose any of the rights and remedies described in clauses (i) and (ii) or to seek or oppose from a court of competent jurisdiction any of the items described in clauses (iii) and (iv). The exercise of, or opposition to, any of those items does not waive the right of any party to a reference pursuant to this Section 11.19 as provided herein.

**11.18.3** The single referee shall be a retired judge or justice who served at least five (5) years on the California court selected by mutual written agreement of the parties. If the parties do not agree within ten (10) days of a written request to do so by any party then, upon request of any party, the referee shall be selected by the Court in accordance with Section 640(b) of the California Code of Civil Procedure. A request for appointment of a referee may

be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to Section 170.6 of the California Code of Civil Procedure, each party shall have one peremptory challenge to the referee selected by the presiding judge of the Court (or his or her representative).

**11.18.4** The parties agree that time is of the essence in conducting the reference proceedings. Accordingly, the referee shall (i) be requested, subject to change in the time periods within fifteen (15) days after the date of selection of the referee, (ii) if practicable, try all issues within one hundred twenty (120) days after the date of the conference and (iii) report a statement of decision within twenty (20) days after the matter has been submitted for decision.

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

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

**11.18.7** The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceedings. The referee shall be empowered to enter equitable as well as legal relief, to enter equitable orders that will be binding on the parties, and to rule on any motion that would be authorized in a court proceeding, including, without limitation, motions for summary judgment or summary adjudication. The referee shall issue a decision at the close of the reference proceedings that disposes of all claims of the parties that are the subject of the reference. Pursuant to Section 644 of the California Code of Civil Procedure, such decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court, and any such decision will be final, binding and conclusive. The parties reserve the right to appeal from the final judgment or order or from any appealable decision or order entered by the referee. The parties reserve the right to findings of fact, conclusions of law, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted is also to be a reference proceeding under this provision.

**11.18.8** If the enabling legislation that provides for the appointment of the referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted by a retired judge or justice, in accordance with the California Arbitration Act (consisting of Sections 1280-1294.2 of the California Code of Civil Procedure), as amended from time to time. The limitations with respect to discovery set forth in this Section shall apply to any such arbitration proceeding.

**11.18.9** THE PARTIES RECOGNIZE AND AGREE THAT ALL CONTROVERSIES, DISPUTES AND CLAIMS RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT A JURY.

**12. NON-LIABILITY OF COUNTY OF RIVERSIDE.** LENDER HEREBY ACKNOWLEDGES AND AGREES THAT THE LOAN AND OTHER OBLIGATIONS SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO FINANCIAL OBLIGATIONS, SHALL NOT BE A DEBT, LIABILITY OR OBLIGATION OF THE COUNTY OF RIVERSIDE (COUNTY) OR ANY OF THE COUNTY'S AGENCIES, DISTRICTS, SPECIAL DISTRICTS, AND DEPARTMENTS, THEIR RESPECTIVE DIRECTORS, OFFICERS, BOARD OF SUPERVISORS, EMPLOYEES, ELECTED OR APPOINTED OFFICIALS, AGENTS, OR REPRESENTATIVES AND NEITHER THE COUNTY NOR ANY OF ITS AGENCIES, DISTRICTS, SPECIAL DISTRICTS, AND DEPARTMENTS, THEIR RESPECTIVE DIRECTORS, OFFICERS, BOARD OF SUPERVISORS, EMPLOYEES, ELECTED OR APPOINTED OFFICIALS, AGENTS, OR REPRESENTATIVES SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL SUCH LOAN AND OBLIGATIONS BE PAYABLE OUT OF THE COUNTY'S GENERAL FUND, OR OTHER FUNDS OR PROPERTIES OF THE COUNTY OR OUT OF ANY OF THE FUNDS, PROPERTIES, OR ASSETS OF THE COUNTY'S AGENCIES, DISTRICTS, SPECIAL DISTRICTS, AND DEPARTMENTS, THEIR RESPECTIVE DIRECTORS, OFFICERS, BOARD OF SUPERVISORS, EMPLOYEES, ELECTED OR APPOINTED OFFICIALS, AGENTS, OR REPRESENTATIVES.

**13. Exhibits.** The following Exhibits are made a part of this Agreement and shall control over any inconsistent provisions herein or in the other Loan Documents.

- EXHIBIT A: Legal Description of Property
- EXHIBIT B: Financial Reporting and Covenants
- EXHIBIT C: Affordable Housing Rider

**[Remainder of page intentionally left blank; signatures appear on the following page.]**

**NO ORAL AGREEMENTS**

A CONTRACT, PROMISE, UNDERTAKING OR COMMITMENT TO LOAN MONEY OR GRANT OR EXTEND CREDIT, IN AN AMOUNT GREATER THAN \$100,000, NOT PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, MADE BY A PERSON ENGAGED IN THE BUSINESS OF LENDING MONEY OR EXTENDING CREDIT MUST BE IN WRITING AND SUBSCRIBED BY LENDER OR ITS AGENT TO BE VALID UNDER CALIFORNIA LAW.

Executed as of the date of this Agreement.

**BORROWER:**

PERRIS PARK HOUSING LLC,  
a California limited liability company

By: Riverside Community Housing Corp.,  
a California nonprofit public benefit corporation,  
its Sole Manager/Member

By: \_\_\_\_\_  
Carrie Harmon  
Its Chief Operating Officer

**LENDER:**

BANNER BANK,  
an Washington state-chartered commercial bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:  
General Counsel

By: \_\_\_\_\_  
Lisa Sanchez  
Deputy General Counsel

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOT 1 OF THAT CERTAIN CERTIFICATE OF COMPLIANCE, LOT LINE ADJUSTMENT NO. 99-0022, IN THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, RECORDED APRIL 9, 1999 AS INSTRUMENT NO. 1999-182554 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 5 OF PEROU'S SUBDIVISION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 31, IN TOWNSHIP 4 SOUTH, RANGE 3 WEST, AS SHOWN BY MAP ON FILE IN BOOK 15, PAGE 698 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT SOUTHEAST CORNER OF SAID SECTION 31, SAID POINT ALSO BEING THE CENTERLINE INTERSECTIONS OF PERRIS BOULEVARD AND ELLIS AVENUE AS SHOWN ON MAP FILED IN MAP BOOK 86 PAGE 48 OF RECORD OF SURVEYS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

THENCE NORTH 00° 14' 13" WEST 680.04 FEET ALONG THE CENTERLINE OF PERRIS AVENUE, SAID CENTERLINE ALSO BEING THE EAST LINE OF SAID LOT 5;

THENCE SOUTH 89° 45' 47" WEST 30.00 FEET PERPENDICULAR TO SAID CENTERLINE TO THE WEST RIGHT-OF-WAY LINE OF PERRIS BOULEVARD 30.00 FEET WIDE HALF WIDTH, SAID POINT ALSO BEING THE NORTHEAST CORNER OF PARCEL 1 AS SHOWN ON SAID RECORD OF SURVEY, TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89° 45' 44" WEST 475.35 FEET ALONG THE NORTH LINE OF SAID PARCEL 1;

THENCE SOUTH 00° 14' 16" EAST 629.40 FEET PERPENDICULAR TO SAID NORTH LINE TO A POINT ON THE NORTH RIGHT-OF-WAY OF ELLIS AVENUE, 30.00 FEET WIDE HALF WIDTH;

THENCE NORTH 89° 50' 04" EAST 475.34 FEET ALONG SAID NORTH RIGHT-OF-WAY TO A POINT ON THE WEST RIGHT-OF-WAY OF PERRIS BOULEVARD, 30.00 FEET WIDE HALF WIDTH;

THENCE NORTH 00° 14' 13" WEST 630.00 FEET ALONG SAID WEST RIGHT-OF-WAY LINE TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MATERIALS AS RESERVED TO THE UNITED STATES AS SET FORTH IN AN INSTRUMENT RECORDED MARCH 22, 1895 IN BOOK 26, PAGE 59 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 313-290-020-2

## EXHIBIT B

### FINANCIAL REPORTING / FINANCIAL COVENANTS

#### 1. Financial Reporting Requirements

##### **Borrower and Riverside Community Housing Corporation:**

- Quarterly self-prepared operating statements and rent rolls for the Project, due within 30 days after each calendar quarter end (3/31, 6/30, 9/30, 12/31), commencing with the quarter ending June 30, 2022.
- Annual audited financial statements due within 180 days after each fiscal year end (12/31), commencing with the fiscal year ending December 31, 2022.

##### **Guarantor:**

- Annual internally-prepared financial statements due within 90 days after each fiscal year end (12/31), commencing with the fiscal year ending December 31, 2022.
- Annual audited financial statements due within 180 days after each fiscal year end (12/31), commencing with the fiscal year ending December 31, 2022.

#### 2. Financial Covenants

**2.1** Borrower shall, at all times, maintain funds in the Debt Service Reserve Account in an amount equal to at least three (3) months of principal and interest due under the Note. Failure to comply with this covenant shall constitute an Event of Default.

**2.2** Borrower hereby assigns and pledges all of its right, title and interest in and to the Debt Service Reserve Account as security for the obligations of Borrower set forth in this Agreement and the other Loan Documents and, notwithstanding anything to the contrary contained herein, if an Event of Default has occurred and is continuing under any of the Loan Documents: (i) any amounts deposited into or remaining in the Debt Service Reserve Account shall be for the account of Lender and may be withdrawn by Lender for application to amounts outstanding under the Loan Documents in any manner that Lender may elect, in Lender's sole discretion, and (ii) Borrower shall have no further rights with respect to the Debt Service Reserve Account. Lender shall control the Debt Service Reserve Account, retain possession of any instruments evidencing deposits therein, and may file any and all UCC financing statements that it deems appropriate to perfect its security interest therein. Borrower shall cooperate in providing any and all assistance and additional documentation necessary to perfect and continue Lender's security interest in the Debt Service Reserve Account. The Debt Service Reserve Account shall be a custodial account established by Borrower with Lender and shall not constitute a trust fund. Borrower acknowledges and agrees that the Debt Service Reserve Account is subject to the sole dominion, control, and discretion of Lender and its authorized agents or designees, subject to the terms hereof. Borrower specifically acknowledges and agrees that the deposits in the Debt Service Reserve Account shall be subject to a management hold, Borrower may not withdraw funds from the Debt Service Reserve Account without Lender's approval, and Lender is authorized to refuse to allow the withdrawal of any funds in the Debt Service Reserve Account until Borrower has satisfied all conditions for release of the Debt Service Reserve Account. Borrower waives all notice of acceptance of this assignment and pledge of the Debt Service Reserve Account. The security interest granted in the Debt Service Reserve Account shall not be affected by any renewals, extensions, or modifications of this Agreement or any other Loan Documents, nor by any surrender or release of other collateral securing the Loan or of any guaranty of the same. Lender is not required to exhaust recourse against Borrower or anyone else that may be liable for the obligations under the Loan Documents or against any other Collateral before realizing on the security interests granted in the Debt Service Reserve Account.



EXHIBIT C  
AFFORDABLE HOUSING RIDER

1. **Definitions.**

**"Affordable Housing Requirements"** means the covenants and obligations of the owner of the Property pursuant to the terms of the Regulatory Agreements, each HAP Contract, and any Housing Program in which Borrower or the Project participates.

**"HAP Contract"** means a Housing Assistance Payments Contract between Borrower and Housing Authority of the County of Riverside, a public entity, corporate and politic, with respect to Section 8 subsidies for one or more apartment units in the Project.

**"Housing Program"** means Section 8 Program, California Tax Credit Allocation Program ("TCAC"), California Debt Limitation Allocation Committee ("CDLAC") Program, and the Family Self Sufficiency Program.

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

**"Regulatory Agreements"** means that certain Regulatory Agreement in favor of TCAC recorded in the Official Records of Riverside County, California under Instrument No. 2000-438609 and that certain California Housing Finance Agency School Facility Fee Reimbursement Program ("SFFRP") Regulatory Agreement SFFRP No. 1999-015 recorded in the Official Records of Riverside County, California under Instrument No. 2001-253432, each of which may be referred to herein individually as a **"Regulatory Agreement."**

**"Section 8"** means Section 8 of the Housing Act of 1937 (42 U.S.C. § 1437f) as amended and its implementing regulations located in 24 CFR Section 982.155 et. seq.

2. **Additional Closing Conditions.**

2.1 Borrower shall have delivered to Lender a fully executed Consent to Assignment of HAP Contract as Security for Financing, in the form required by HUD.

2.2 The Project shall be in compliance with the Affordable Housing Requirements, and there shall be no existing default under the Regulatory Agreements or HAP Contract.

3. **Representations and Warranties.** Borrower hereby makes the additional representations and warranties set forth below, which shall be true and correct, in all material respects, as of the date of this Agreement and at all times any Obligations remain outstanding:

3.1 The Project and the use of the Project is currently in compliance with and does not violate any Affordable Housing Requirements.

3.2 All existing Leases comply in all material respects with the Affordable Housing Requirements.

3.3 The HAP Contract is in full force and effect, and there are no defaults thereunder.

4. **Covenants.**

4.1 Borrower shall at all times comply with the Affordable Housing Requirements, including, without limitation, all leasing, record-keeping, and annual reporting requirements. Borrower shall notify Lender promptly of any notice of default or violation of the Affordable Housing Requirements received by Borrower. Borrower shall not amend

the Regulatory Agreements, record any new regulatory agreement, or subject the Project to any additional Affordable Housing Requirements, without Lender's prior written consent.

**4.2** Borrower shall comply with all of its obligations under the HAP Contract. Borrower shall notify Lender promptly of any notice of default or violation of the HAP Contract received by Borrower. Borrower shall not terminate the HAP Contract without Lender's prior written consent or suffer a termination of the HAP Contract due to an event of default by Borrower thereunder.

**4.3** Borrower shall maintain accurate and proper books of account and other records relating to compliance with the Affordable Housing Requirements and HAP Contract.

**4.4** Within ten (10) days after Lender's written request, Borrower shall provide Lender all information requested by Lender regarding Borrower's compliance with the Affordable Housing Requirements and HAP Contract.

**4.5** Borrower shall indemnify, defend and hold each Indemnified Party harmless from and against all claims, injury, damage, loss, liability, cost, and expense (including attorneys' fees, costs, and expenses) of any and every kind by reason of any failure of Borrower or the Project to comply with the Affordable Housing Requirements or the HAP Contract, except to the extent of the gross negligence or willful misconduct of an Indemnified Party.

## **5. Additional Events of Default.**

**5.1** Violation of any of the covenants set forth in Section 4 of this EXHIBIT C, or any failure of Borrower to comply with the Affordable Housing Requirements during any period that such Affordable Housing Requirements apply to the Project, shall constitute an Event of Default.

**5.2** A default under the HAP Contract shall constitute an Event of Default, unless (i) such default is cured within any applicable cure period therefor, or (ii) the default is not likely to result in a Material Adverse Change to Borrower or the Project.

**5.3** If TCAC exercises any remedy under its Regulatory Agreement, the commencement of such remedy at any time without Lender's consent shall constitute an Event of Default.

**5.4** Termination of the HAP Contract for the Project for any reason without Lender's prior written consent shall constitute an Event of Default.

WHEN DOCUMENT IS FULLY EXECUTED RETURN  
CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010  
Post Office Box 1147, Riverside, Ca 92502-1147  
Thank you.

DRAFT 5/4/22  
For Discussion Purposes Only

## PROMISSORY NOTE



PROJECT NAME: Perris Park Apartments  
BANNER LOAN NO: 14014074

**Date:** \_\_\_\_\_, 2022  
**Borrower:** PERRIS PARK HOUSING LLC  
5555 Arlington Avenue  
Riverside, CA 92504  
**Lender:** BANNER BANK  
5930 Granite Lake Drive, Suite 170  
Granite Bay, CA 95746  
**Loan Amount:** \$3,500,000.00  
**Interest Rate:** \_\_\_\_% per annum  
**Maturity Date:** June 1, 2032

FOR VALUE RECEIVED, the undersigned, PERRIS PARK HOUSING LLC, a California limited liability company ("**Borrower**"), promises to pay to the order of BANNER BANK, a Washington state chartered commercial bank, or its successors or assigns ("**Lender**"), at the address set forth above or such other place as Lender may from time to time designate in writing, the sum of THREE MILLION FIVE HUNDRED THOUSAND AND NO/100THS U.S. DOLLARS (\$3,500,000.00), or so much thereof as may from time to time be disbursed hereunder, in lawful money of the United States of America, together with interest on the unpaid principal balance from time to time outstanding hereunder from the date of this Note until paid at the rate set forth below.

1. **Loan and Loan Documents.** This Promissory Note (this "**Note**") evidences a term loan in the amount set forth above (the "**Loan**") being made contemporaneously herewith from Lender to Borrower. This Note is issued pursuant to that certain Term Loan Agreement executed contemporaneously herewith between Borrower and Lender (the "**Loan Agreement**"). The terms (including meanings given to defined terms) and conditions of the Loan Agreement are incorporated herein to the extent not inconsistent herewith. This Note is secured by that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement, and Fixture Filing executed contemporaneously herewith by Borrower (the "**Deed of Trust**"), creating a lien on the real and personal property described therein. The Loan Agreement, Note, Deed of Trust, and any other written instruments evidencing, securing, or otherwise governing the Loan are referred to collectively as the "**Loan Documents**." Borrower hereby agrees to perform and comply with all of the agreements, terms, and conditions of all of the Loan Documents to which it is a party.

2. **Interest Rate.** In the absence of an Event of Default hereunder, interest shall accrue on the aggregate principal balance outstanding from time to time under the Loan at a fixed rate per annum equal to \_\_\_\_\_ and \_\_\_\_\_ percent (\_\_\_\_%) (the "**Note Rate**").

2.1 **Default Rate.** Following an Event of Default in the payment of any installment of principal or interest when due hereunder, or an Event of Default in the observance or performance of any other obligation hereunder or under any of the other Loan Documents, and for so long as such Event of Default shall be continuing, interest shall accrue hereunder from the date of such Event of Default at an annual interest rate equal to *the greater of* (a) five percent (5%) above the then-applicable Note Rate or (b) twelve percent (12%) per annum (the "**Default Rate**"). In any event,

after the entire principal amount of the Loan shall become due and payable, whether by acceleration, at maturity, or otherwise, this Note shall bear interest at the Default Rate.

**2.2 Computation of Interest.** All interest calculated under this Note shall be computed on the basis of a year consisting of 360 days, but applied to the actual number of days elapsed (actual/360), including the first day but excluding the last day. Any payment not received by 5:00 p.m. Pacific Time will be treated as having been received by Lender on the next day, and interest shall continue to accrue until the next day.

**3. Maturity Date.** This Note will become due and payable in full on June 1, 2032 (the applicable maturity date, as such date may be accelerated following an Event of Default, in which case the Loan shall mature on the date of acceleration, shall be referred to herein as the "**Maturity Date**").

**4. Repayment Terms.**

**4.1 Monthly Payments of Principal and Interest.** Unless the Loan closes on the first of the month, Borrower shall pay interest accruing from the closing of the Loan through the last day of the month in which the Loan closes in advance at Closing. Commencing on August 1, 2022, and continuing on the first day of each succeeding month thereafter for the term of this Note, Borrower shall make equal monthly payments of principal and accrued interest in the amount of \$\_\_\_\_\_ per month.

**4.2 At Maturity.** The entire outstanding principal balance of the Note and all unpaid accrued interest and other amounts owing under the Note shall be due and payable in full upon the applicable Maturity Date, including any Maturity Date resulting from Lender's election to accelerate the Loan following an Event of Default.

**4.3 Late Charge.** If any installment payment of principal and/or interest due hereunder is not paid within fifteen (15) days of the date it is due (specifically excluding the payment due on the Maturity Date), Borrower shall pay, in addition to the delinquent payment, a late charge of five percent (5.0%) of the amount overdue in order to defray the expense incident to handling such delinquent payment.

**4.4 Application of Payments.** Payments received shall be applied first to accrued interest and then in such order as Lender may elect in its sole discretion. Remittances in any form other than immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by the holder hereof in immediately available U.S. funds. All payments shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practices of the collecting bank or banks.

**5. Prepayment.**

**5.1 Right to Prepay.** Borrower may voluntarily prepay this Note in whole or in part upon fifteen (15) days' prior written notice to Lender without penalty or prepayment premium.

**5.2 Effect of Prepayment.** Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, they will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Banner Bank, Attn: Loan Servicing Center, P.O. Box 1589, Bothell, Washington 98041.

**6. Business Purpose; Maximum Interest and Fees.** Borrower represents and warrants to Lender that the proceeds of this Note shall be used exclusively for commercial, business, or investment purposes, and that none of the proceeds of this Note shall be used by Borrower for personal, family, or household purposes. Borrower agrees to the Note Rate or the Default Rate, as applicable, plus any other charges to Borrower or benefit received by Lender under the Loan Documents that may be interpreted to be in the nature of interest. Notwithstanding any other provision of the Loan Documents, the interest, fees and charges under the Loan Documents shall not exceed the maximum amounts permitted by any applicable law, and should Lender ever receive as interest an amount that would exceed permissible rates, such amount shall be applied to the reduction of the unpaid principal balance and not to the payment of interest. This provision shall supersede every other provision of all the Loan Documents.

**7. Acceleration.** Upon the occurrence of an Event of Default resulting from Borrower's failure to pay any amount payable hereunder as and when due or upon the occurrence of any other Event of Default under this Note or under any of the other Loan Documents, Lender may declare, at its sole option and without notice to any party, the entire indebtedness evidenced hereby immediately due and payable in full. Failure to exercise this option or any other right Lender may have shall not constitute a waiver of the right to exercise such option or any other right in the event of any subsequent Event of Default.

**8. Costs and Fees of Collection; Interest on Judgments.** Borrower and every other person or entity at any time liable for the payment of the indebtedness evidenced hereby shall also be liable for all costs, expenses, and fees incurred by Lender in collecting any amounts owing hereunder, including, but not limited to, reasonable attorneys' fees. Any judgment recovered by Lender shall bear interest at the Default Rate.

**9. Waiver of Presentment.** Borrower and every other person or entity at any time liable for the payment of the indebtedness evidenced hereby each waive diligence, demand, presentment for payment, notice of protest, and notice of nonpayment of this Note. Every such person or entity further consents to any extension of the time of payment hereof or other modification of the terms of payment of this Note, the release of all or any part of the security for this Note, or the release of any party liable for the payment of the indebtedness evidenced hereby at any time and from time to time for any reason whatsoever. Any such extension or release may be made without notice to any of such persons or entities and without discharging their liability.

**10. Time is of the Essence.** Time is of the essence of this Note and the performance of each of the agreements and provisions contained herein.

**11. Joint and Several Liability.** The liability hereunder of multiple parties identified herein as Borrower shall be joint and several.

**12. Applicable Law.** This Note shall be construed in accordance with the laws of the State of California, without regard to that state's choice of law rules. Borrower hereby consents to the jurisdiction of the courts of Riverside County, the State of California.

**13. Successors and Assigns.** Borrower may not assign any of its rights or obligations under this Note without the prior written consent of Lender. Subject to the preceding sentence, this Note shall be binding upon the respective heirs, legal representatives, successors, and assigns of Borrower and shall inure to the benefit of Lender and its successors and assigns, including, without limitation, each successive holder of this Note and any other lenders now or hereafter participating in the Loan.

**14. Recourse.** BORROWER ACKNOWLEDGES LIABILITY FOR PAYMENT OF ALL AMOUNTS OWING UNDER THIS NOTE AND THE OTHER LOAN DOCUMENTS AND AGREES THAT LENDER DOES NOT HAVE TO FORECLOSE ITS DEED OF TRUST OR ANY OTHER COLLATERAL BEFORE DEMANDING FULL PAYMENT FROM

BORROWER. Lender shall not have recourse against Riverside Community Housing Corp., the sole member of Borrower, or its assets.

**15. Judicial Reference.**

**15.1** The judicial reference provisions of the Loan Agreement shall apply.

**15.2** If any Guarantor is liable for only a portion of the indebtedness, Borrower hereby waives its rights under California Civil Code Section 2822(a) to designate the portion of the indebtedness that shall be satisfied by Borrower's partial payment.

**16. NON-LIABILITY OF COUNTY OF RIVERSIDE.** LENDER HEREBY ACKNOWLEDGES AND AGREES THAT THE LOAN EVIDENCED BY THIS NOTE SHALL NOT BE A DEBT, LIABILITY, OR OBLIGATION OF THE COUNTY OF RIVERSIDE ("**COUNTY**") OR ANY OF THE COUNTY'S AGENCIES, DISTRICTS, SPECIAL DISTRICTS, AND DEPARTMENTS, THEIR RESPECTIVE DIRECTORS, OFFICERS, BOARD OF SUPERVISORS, EMPLOYEES, ELECTED OR APPOINTED OFFICIALS, AGENTS, OR REPRESENTATIVES AND NEITHER THE COUNTY NOR ANY OF ITS AGENCIES, DISTRICTS, SPECIAL DISTRICTS, AND DEPARTMENTS, THEIR RESPECTIVE DIRECTORS, OFFICERS, BOARD OF SUPERVISORS, EMPLOYEES, ELECTED OR APPOINTED OFFICIALS, AGENTS, OR REPRESENTATIVES SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL SUCH LOAN BE PAYABLE OUT OF THE COUNTY'S GENERAL FUND, OR OTHER FUNDS, ASSETS OR PROPERTIES OF THE COUNTY OR ANY FUNDS ASSETS, OR PROPERTIES OF THE COUNTY'S AGENCIES, DISTRICTS, SPECIAL DISTRICTS, AND DEPARTMENTS, THEIR RESPECTIVE DIRECTORS, OFFICERS, BOARD OF SUPERVISORS, EMPLOYEES, ELECTED OR APPOINTED OFFICIALS, AGENTS, OR REPRESENTATIVES.

A CONTRACT, PROMISE, UNDERTAKING OR COMMITMENT TO LOAN MONEY OR GRANT OR EXTEND CREDIT, IN AN AMOUNT GREATER THAN \$100,000, NOT PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, MADE BY A PERSON ENGAGED IN THE BUSINESS OF LENDING MONEY OR EXTENDING CREDIT MUST BE IN WRITING AND SUBSCRIBED BY LENDER OR ITS AGENT TO BE VALID UNDER CALIFORNIA LAW.

**[Remainder of page intentionally left blank; signatures appear on following page]**

DATED as of the date set forth above.

**BORROWER:**

PERRIS PARK HOUSING LLC,  
a California limited liability company

By: Riverside Community Housing Corp.,  
a California nonprofit public benefit  
corporation,  
its Sole Manager/Member

By: \_\_\_\_\_  
Carrie Harmon  
Its Chief Operating Officer

APPROVED AS TO FORM:  
General Counsel

By: \_\_\_\_\_  
Lisa Sanchez  
Deputy General Counsel

WHEN DOCUMENT IS FULLY EXECUTED RETURN  
CLERK'S COPY  
to Riverside County Clerk of the Board, Stop 1010  
Post Office Box 1147, Riverside, Ca 92502-1147  
Thank you.

DRAFT 5/4/22  
For Discussion Purposes Only

When Recorded Return to:

Banner Bank  
5930 Granite Lake Drive, Suite 170  
Granite Bay, CA 95746  
Attn: Sandy Bowen  
Loan No. 14014074



## DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FIXTURE FILING

**NOTICE TO RECORDER:** THIS DEED OF TRUST IS A SECURITY AGREEMENT, FIXTURE FILING, AND FINANCING STATEMENT UNDER SECTION 9502 OF THE CALIFORNIA COMMERCIAL CODE, WITH BORROWER AS DEBTOR AND BENEFICIARY AS SECURED PARTY, AND SHOULD BE FILED AND INDEXED IN THE REAL ESTATE RECORDS NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A FIXTURE FILING.

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FIXTURE FILING ("**Deed of Trust**") is made as of \_\_\_\_\_, 2022, by PERRIS PARK HOUSING LLC, a California limited liability company ("**Borrower**" or "**Grantor**"), whose mailing address 5555 Arlington Avenue, Riverside, CA 92504; to UPF WASHINGTON, INCORPORATED, a Washington corporation ("**Trustee**"), whose mailing address is 12410 E. Mirabeau Parkway, Suite 100, Spokane, WA 99216; for the benefit of BANNER BANK, a Washington state chartered commercial bank ("**Lender**" or "**Beneficiary**"), whose mailing address is 5930 Granite Lake Drive, Suite 170, Granite Bay, CA 95746.

**Notice to Grantor:** The Note secured by this Deed of Trust may contain provisions for a variable interest rate.

### 1. GRANT IN TRUST AND SECURED OBLIGATIONS.

1.1 **Grant in Trust.** In consideration of the loan (the "**Loan**") evidenced by the Note and Loan Agreement (both defined below), Borrower, as Grantor, hereby irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, all of Borrower's present and future estate, right,

JUN 07 2022 14.1



title, claim, and interest, either in law or in equity, in and to the following property ("**Property**"), which Property is not used principally for agricultural purposes:

1.1.1 The real property described in EXHIBIT A attached hereto, and all existing and future rights to the alleys, streets and roads adjoining or abutting the real property, all present and future easements, access, air and development rights, minerals and oil, gas and other hydrocarbon substances, royalties, water, water rights and water stock, and all other rights, hereditaments, privileges, permits, licenses, franchises and appurtenances belonging or in any way appertaining to such real property ("**Realty**");

1.1.2 All present and future buildings, improvements and tenements located on the Realty ("**Improvements**");

1.1.3 All present and future fixtures and articles of property attached to, or used or adapted for use in, the ownership, development, construction, operation or maintenance of the Realty and Improvements, including, without limitation, all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus; all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces; all ranges, stoves, disposers, refrigerators and other appliances; all escalators and elevators, baths, sinks, cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash; all carpeting, underpadding, floor covering, paneling, and draperies; and all shrubbery and plants. All such items shall be deemed part of the Realty and not severable wholly or in part without material injury to the freehold;

1.1.4 All present and future rents, revenues, issues, profits and income from the Realty or the Improvements, and all present and future leases and other agreements for the occupancy or use of all or any part of the Realty and Improvements, including, without limitation, all cash or security deposits, letters of credit and letter of credit rights guaranteeing or supporting any lease or tenancy, advance rentals and deposits or payments of similar nature, and all guarantees of tenants' or occupants' performance under such leases or agreements of occupancy or use of all or part of the Realty, the Improvements, or both, and all letters of intent to lease;

1.1.5 All present and future tangible personal property used in connection with the ownership, development, operation or maintenance of the Realty and Improvements, whether located at the Realty or off-site, including, without limitation, all furniture, furnishings, equipment, and supplies;

1.1.6 All present and future intangible personal property used in connection with the ownership, development, construction, operation, management, or maintenance of the Realty and Improvements, and all land use entitlements, permits, licenses and franchises, contract rights (including, without limitation, the HAP Contract and all architectural, engineering, consulting, management, and maintenance contracts), accounts receivable, escrow accounts, insurance policies, deposits, instruments, documents of title, general intangibles, business records and the exclusive right to the use of Borrower's trade names;

1.1.7 All present and future materials, supplies, and other goods, wherever located, whether in the possession of Borrower, warehouseman, bailee, or any other person, purchased for use in the construction, operation or furnishing of the Improvements, whether such items are located at the Realty or off-site, together with all documents, contract rights, and general intangibles relating thereto;

1.1.8 All present or future site plans, plats, architectural plans and specifications, work drawings, surveys, engineering reports, test borings, market surveys, and other work products relating to the Realty and Improvements;

1.1.9 All present or future contracts relating to the ownership, operation, maintenance, or rehabilitation of the Realty or Improvements, including, without limitation, the HAP Contract, Property Management Agreement, rehabilitation contracts, and construction contracts, together with, to the extent transferable by Borrower, all performance, payment, completion or other surety bonds in connection with or related to any such rehabilitation or construction contracts;

1.1.10 All present and future contracts and policies of insurance that insure any buildings, structures or improvements on the Realty, including, without limitation, the Improvements, or any fixtures or personal property thereon, against casualty and theft, and all monies and proceeds and rights thereto that may become payable by virtue of any insurance contracts or policies;

1.1.11 All of Borrower's right, title and interest in and to the proceeds of any and all condemnation actions now or hereafter affecting the Property;

1.1.12 All claims, causes of action, warranties, accounts receivable, escrow accounts, insurance policies, deposits (including tax, insurance and other reserves), instruments, documents of title, general intangibles, and business records;

1.1.13 All present and future monetary deposits to any city, county, public body or agency, irrigation, sewer or water district or company, and any other body or agency, for the installation, or to secure the installation, of any utility pertaining to the Realty or the Improvements;

1.1.14 All refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally-registered credits (such as emissions reduction credits), other credits, waivers and payments, whether in cash or in kind, due from or payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (each, a "**Governmental Authority**") or (ii) any insurance or utility company relating to any or all of the Realty or Improvements or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Realty;

1.1.15 All refunds, rebates, reimbursements, credits and payments of any kind due from or payable by any Governmental Authority for any taxes, special taxes, assessments, or similar governmental or quasi-governmental charges or levies imposed upon Borrower with respect to the Realty or Improvements or upon any or all of the Realty or Improvements or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Realty or Improvements;

1.1.16 All proceeds (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, all insurance proceeds and condemnation awards;

1.1.17 All books, records, and data pertaining to any and all of the Property described above, however recorded, stored, or maintained, including digital, electronic, and computer-readable data and any computer hardware or software necessary to access and process such data; and

1.1.18 All products and proceeds of the foregoing.

Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement.

**1.2 Secured Obligations.** The following obligations are secured by this Deed of Trust (collectively the "**Secured Obligations**"):

**1.2.1** Payment of the sum of THREE MILLION FIVE HUNDRED THOUSAND AND NO/100THS U.S. DOLLARS (\$3,500,000.00) with interest thereon, according to the terms and provisions of a promissory note of even date, made by Borrower in favor of Lender (including any and all modifications, extensions, renewals and replacements thereof, the "**Note**");

**1.2.2** Payment of all sums advanced to protect the security of this Deed of Trust, together with interest thereon as herein provided;

**1.2.3** Payment of all other sums that are or that may become owing under the Loan Documents (defined below), or which may be advanced by Lender pursuant to the Loan Documents;

**1.2.4** The performance of all other covenants, agreements and obligations of Borrower contained in the Loan Documents; and

**1.2.5** Payment and performance of any future obligations of Borrower or any other party to Lender if the documentation evidencing such future obligation expressly provides that it is secured by this Deed of Trust.

For purposes of this Deed of Trust, the term "**Loan Documents**" means the Term Loan Agreement of even date herewith between Borrower and Lender governing the Loan (the "**Loan Agreement**"), the Note, this Deed of Trust, and all related documents and instruments (except for the Guaranty executed by Guarantor and the Indemnity Agreement (the "**Indemnity Agreement**") made by Borrower and Guarantor for the benefit of Lender concurrently herewith), and any and all modifications, extensions, renewals and replacements thereof.

## 2. TITLE AND USE.

**2.1 Warranty of Title.** Borrower covenants and agrees that: (i) Borrower is lawfully seized of the estate hereby conveyed and has full right and power to grant, convey and assign the Property, (ii) the Property is free from liens, encumbrances, exceptions and other charges of any kind whatsoever, except for the exceptions listed in Lender's title insurance policy insuring this Deed of Trust or exceptions otherwise approved in writing by Lender ("**Permitted Encumbrances**"), (iii) no other liens or encumbrances, whether superior or inferior to this Deed of Trust, shall be created or suffered to be created by Borrower without the prior written consent of Lender, (iv) no default on the part of Borrower or any other person exists under any of the Permitted Encumbrances and all of the Permitted Encumbrances are in full force and effect and in good standing, without modification, (v) complete and current copies of the Permitted Encumbrances have been furnished to Lender, and none of them have been or will be modified by Borrower without Lender's prior written consent, (vi) Borrower shall fully comply with all the terms of the Permitted Encumbrances and shall deliver to Lender a copy of all notices delivered in connection with the Permitted Encumbrances, (vii) Lender has the right to contact the other parties to the Permitted Encumbrances to confirm the status thereof, and Borrower from time to time shall, at the request of Lender, request of such parties a certificate confirming such information regarding the Permitted Encumbrances as Lender may request, and

(viii) Borrower shall warrant and defend the Property unto Lender against all claims and demands of any other person whatsoever, subject only to non-delinquent taxes and assessments and the Permitted Encumbrances.

**2.2 Non-Agricultural Use.** Borrower represents and warrants to Lender that the Property is not used principally for agricultural purposes.

**3. BORROWER'S COVENANTS.**

**3.1 Payment and Performance of Secured Obligations.** Borrower shall pay when due all sums that are now or that may become owing under the Note, and shall pay and perform all other Secured Obligations in accordance with their terms.

**3.2 Payment of Taxes, Utilities, Liens and Charges.**

**3.2.1 Taxes and Assessments.** Except as the same may otherwise be paid under Section 4, Borrower shall pay when due, directly to the payee thereof, all taxes and assessments (including, without limitation, non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Deed of Trust. Upon request, Borrower shall promptly furnish to Lender all notices of amounts due under this subsection 3.2.1 and all receipts evidencing such payments.

**3.2.2 Utilities.** Borrower shall pay, or cause to be paid, when due, all utility charges and assessments for services furnished to the Property.

**3.2.3 Labor and Materials.** Borrower shall pay when due the claims of all persons supplying labor or materials to or in connection with the Property.

**3.2.4 Liens and Charges.** Borrower shall promptly discharge any lien, encumbrance, or other charge, whether superior or inferior to this Deed of Trust, that may be claimed against the Property.

**3.2.5 Taxes, Assessments and Other Charges Imposed on Lender.** If, at any time after the date of this Deed of Trust, any law is enacted or changed (including any interpretation thereof) that subjects Lender to any tax, assessment, or other charge that is currently inapplicable to Lender or to any increase in any tax (except federal, state or local income taxes), assessments, or other charge, in any form measured by or based on any portion of the indebtedness secured by this Deed of Trust, Borrower shall pay such new or increased amount to Lender on demand.

**3.2.6 Right to Contest.** Notwithstanding anything set forth in this Section 3.2, so long as no Event of Default has occurred hereunder, Borrower shall have the right to contest the amount or validity in whole or in part of any lien, encumbrance or other charge against the Property by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, in which event Borrower, upon written notice to Lender, may defer payment of any such lien, encumbrance or other charge, so long as (i) Borrower has provided Lender with evidence satisfactory to Lender that such proceedings will operate to prevent the sale of the Property or any portion thereof, or the imposition of any penalties on Borrower or the Property; (ii) neither the Property nor any part thereof will, by reason of such postponement or deferment, be in danger of being forfeited or lost; (iii) before the date such lien, encumbrance or other charge becomes delinquent, Borrower shall provide Lender with such security as Lender may require to insure payment thereof

and prevent any forfeiture or loss of the Property or any part thereof; and (iv) on a final determination of such contest, which is not appealable or is not being appealed, Borrower shall pay the amount of the lien, encumbrance or other charge if and when due, and prior to the imposition of any penalties or delinquent interest.

### 3.3 Insurance.

**3.3.1 Coverages Required.** Borrower shall keep in effect the insurance policies required by the Loan Agreement.

**3.3.2 Application of Insurance Proceeds.** In the event of any loss, Borrower shall give prompt written notice thereof to the insurance carrier and Lender. Borrower hereby authorizes Lender as Borrower's attorney-in-fact to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Lender's or Borrower's name, any action relating to any claim, and to collect and receive insurance proceeds; *provided, however*, that Lender shall have no obligation to do so. Lender shall apply any insurance proceeds received by it hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and then, in its absolute discretion and without regard to the adequacy of its security, to:

(a) The payment of the Secured Obligations, whether then due and payable or not. Any such application of proceeds to principal on the Note shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof, or

(b) The reimbursement of Borrower, under Lender's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Lender may, at its option, condition the reimbursement on Lender's approval of the plans and specifications of the reconstruction, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Lender may reasonably require.

Except to the extent that insurance proceeds are applied to payment of the Secured Obligations, nothing herein contained shall be deemed to excuse Borrower from restoring, repairing, or maintaining the Property as provided in Section 3.4, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount.

**3.3.3 Availability of Insurance Proceeds for Restoration.** Notwithstanding Section 3.3.2 above, Lender shall make insurance proceeds available to Borrower to pay for costs associated with the repair or restoration of the Property, if all of the following conditions are satisfied:

(a) There is no Event of Default or Potential Default;

(b) Borrower has furnished to Lender and Lender shall have approved a detailed budget and cost breakdown for the restoration and rebuilding work, describing the nature and type of expenses and the cost thereof estimated by Borrower for such restoration and rebuilding work, including, without limitation, the cost of materials and supplies, architect's, engineer's and designer's fees, general contractor's fees, and the anticipated monthly disbursement schedule;

(c) Lender has reviewed and approved the construction contract for the repair and restoration, and if required by Lender, Lender shall have received payment and performance bonds with dual obligee rider;

(d) Lender has received evidence satisfactory to it that the insurance proceeds are adequate to restore the Property to its condition immediately prior to the casualty, and if the proceeds are insufficient, Lender shall have received from Borrower the amount of the deficiency for disbursement with the insurance proceeds;

(e) Lender has received evidence satisfactory to it that Borrower has sufficient funds to pay all operating expenses, taxes, debt service and other carrying costs of the Property through the period of repair or restoration;

(f) Borrower has furnished to Lender and Lender shall have approved plans and specifications for the restoration or rebuilding work, and written evidence satisfactory to it that the same has been approved by all governmental authorities having jurisdiction over the Property;

(g) in Lender's judgment, the rebuilding and restoration work can be completed at least six (6) months prior to the maturity date of the Note, as such date may be extended in Lender's sole discretion;

(h) in Lender's judgment, the Property will produce sufficient income and be of sufficient value to be adequate security for the Secured Obligations; and

(i) Borrower has executed and delivered to Lender such additional security documents and instruments as Lender deems reasonably necessary to continue and perfect Lender's security interest in the Property.

(j) Each disbursement of the insurance proceeds shall be made in accordance with Lender's then standard procedures for disbursement of construction loan proceeds.

**3.3.4 Transfer of Title.** If the Property is sold pursuant to Section 9 or if Lender otherwise acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

### **3.4 Preservation and Maintenance of Property; Right of Entry.**

**3.4.1 Preservation and Maintenance.** Borrower shall (i) not commit or suffer any waste or permit any impairment or deterioration of the Property, except for ordinary wear and tear, (ii) not abandon the Property, (iii) restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and replace fixtures, equipment, machinery and appliances of the Property when necessary to keep such items in good condition and repair, and (v) generally operate and maintain the Property in a commercially reasonable manner.

**3.4.2 Alterations.** None of the Improvements shall be structurally altered, removed or demolished, in whole or in part, without Lender's prior written consent, nor shall any fixture or personal property covered by this Deed of Trust be removed at any time without like consent unless actually replaced by an article of equal suitability that is owned by Borrower free and clear of any lien or security interest.

**3.4.3 Right of Entry.** Lender is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice (which, in the absence of exigent circumstances, shall mean not less than one (1) business day), for the purpose of inspecting the Property to determine Borrower's compliance with the Deed of Trust and the other Loan Documents.

**3.5 Parking.** If any part of the parking areas included within the Property is taken by condemnation, and before the parking areas are diminished for any other reason, Borrower shall take all actions as are necessary to provide parking facilities in kind, size and location to comply with all zoning and other regulations and all leases. Before making any contract for substitute parking facilities, Borrower shall furnish to Lender satisfactory assurance of completion thereof free of liens and in conformity with all zoning and other regulations. This Deed of Trust shall constitute a first lien on all such substitute parking facilities.

**3.6 Use of Property.** Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions applicable to the Property, and pay all fees and charges in connection therewith. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

**3.7 Condemnation.** Borrower shall notify Lender promptly of any action or proceeding relating to any condemnation or other taking (including, without limitation, any change in the grade of the Property), whether direct or indirect, of the Property or part thereof or interest therein, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking. All awards, payments, damages, direct, consequential and otherwise, claims, and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Lender, and all proceeds of any such awards, payments, damages or claims shall be paid to Lender. Lender shall apply any such proceeds in the manner and upon the terms and conditions set forth in Sections 3.3.2 and 3.3.3 above relating to the application of insurance proceeds.

**3.8 Protection of Lender's Security.** Borrower shall give notice to Lender of and shall appear in and defend any action or proceeding that may affect the Property, the interests of Lender or Trustee therein, or the rights or remedies of Lender or Trustee under the Loan Documents. If any such action or proceeding is commenced, or Borrower fails to perform any obligation under the Loan Documents, Lender or Trustee may, at their option, make any appearances, disburse any sums, make any entries upon the Property, and take any actions as may be necessary or desirable to (i) protect or enforce the security of this Deed of Trust, (ii) remedy Borrower's failure to perform its obligations under the Loan Documents (without waiving such default by Borrower), or (iii) otherwise protect Lender's or Trustee's interests. Borrower shall pay all losses, damages, fees, costs, and expenses incurred by Lender and Trustee in taking such actions, including, without limitation, reasonable attorneys' fees.

**3.9 Reimbursement of Lender's and Trustee's Expenses.** All amounts disbursed by Lender and Trustee pursuant to Section 3.8 or any other provision of this Deed of Trust, with interest thereon, shall be additional indebtedness of Borrower secured by this Deed of Trust. All such amounts shall be due and payable immediately and bear interest from the date of disbursement at the lesser of the default rate under the Note, or the maximum rate permitted by law.

**3.10 Books and Records, Financial Statement.** Borrower shall keep and maintain at Borrower's address stated above, or such other place as Lender may approve in writing, books of accounts and records adequate to reflect correctly the operation of the Property, and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination, inspection and copying at any reasonable time by Lender, upon prior notice of not less than one (1) business day.

#### **4. RESERVES.**

**4.1 Deposits.** Following an Event of Default (as defined in the Loan Agreement) or Borrower's failure to pay any taxes, assessments, or insurance premiums, when due, Lender may, at its sole election, require Borrower to establish reserves for the Property as set forth below. Following receipt of notice from Lender that Lender will begin requiring Borrower to establish reserves, Borrower shall deposit with Lender, at the time Borrower makes each monthly payment due under the Note, a sum, as estimated by Lender, equal to (i) the taxes and special assessments next due on the Property, and (ii) the premiums that will next become due on insurance policies as may be required under the Loan Agreement, less all sums already deposited therefor, divided by the number of months to elapse before two (2) months prior to the date when such taxes, special assessments and premiums will become delinquent. Lender may require Borrower to deposit with Lender, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Borrower or the Property as Lender reasonably deems necessary to protect Lender's interest in the Property ("**Other Impositions**"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Lender's option. If required by Lender, Borrower shall promptly deliver to Lender all bills and notices with respect to any taxes, assessments, premiums and Other Impositions. Lender shall not be required to pay Borrower any interest, earnings or profits on any sums deposited with Lender. All sums deposited with Lender under this Section 4.1 are hereby pledged as security for the Secured Obligations.

**4.2 Application of Deposits.** All such deposited sums shall be held by Lender and applied in such order as Lender elects to pay such taxes, assessments, premiums and Other Impositions or, upon any Event of Default, may be applied in whole or in part, to the Secured Obligations. The arrangement provided for in this Section 4 is solely for the added protection of Lender and entails no responsibility on Lender's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Deed of Trust by Lender, any funds on hand shall be turned over to the assignee and any responsibility of Lender with respect thereto shall terminate. Each Transfer of the Property shall transfer automatically to the transferee all rights of Borrower with respect to any funds deposited hereunder. Upon payment in full of the Secured Obligations, Lender shall promptly refund to Borrower or the applicable transferee the remaining balance of any deposits then held by Lender.

**4.3 Adjustments to Deposits.** If the total deposits held by Lender exceeds the amount deemed necessary by Lender to provide for the payment of such taxes, assessments, premiums and Other Impositions, such excess shall, provided there is no Event of Default or Potential Default, be credited by Lender on the next due installment or installments of such deposits. If at any time the total deposits held



by Lender are less than the amount deemed necessary by Lender to provide for the payment of such taxes, assessments, premiums and Other Impositions, Borrower shall promptly deposit the deficiency with Lender after receipt of written demand from Lender.

## **5. RESTRICTIONS ON TRANSFER OR ENCUMBRANCE.**

The Loan Agreement contains certain restrictions on any transfer or encumbrance of the Property, any portion thereof or any interest therein, and on any direct or indirect transfer or encumbrance of direct or indirect ownership interests in Borrower. Those provisions are incorporated by this reference. The occurrence of any Transfer or attempted Transfer not permitted under the Loan Agreement shall be an immediate Event of Default whereupon the Secured Obligations shall be immediately due and payable in full without notice or demand from Lender.

## **6. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

**6.1 Grant to Lender.** This Deed of Trust constitutes a security agreement pursuant to the Uniform Commercial Code with respect to (a) any of the Property that, under applicable law, is not real property or effectively made part of the real property by the provisions of this Deed of Trust; and (b) any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Borrower as Debtor and Lender as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (which shall thereafter be included within the definition of "Property" for purposes of this Deed of Trust). Borrower hereby grants Lender a security interest in all property described in clauses (a) and (b) above as security for the Secured Obligations. Borrower and Lender agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall be construed as limiting the parties' stated intention that everything used in connection with the production of income from the Property, or adapted for use therein, or which is described or reflected in this Deed of Trust, is and at all times shall be regarded as part of the Realty.

**6.2 Lender's Rights and Remedies.** Borrower hereby authorizes Lender to file one or more financing statements, continuation statements, financing statement amendments, and such other documents as Lender may from time to time require to perfect and continue the perfection of Lender's security interest in the Property. Borrower shall pay all fees and costs that Lender may incur in filing such documents in public offices and in obtaining such record searches as Lender may reasonably require. With respect to the property subject to the foregoing security interest, Lender shall have all the rights and remedies (i) of a secured party under the Uniform Commercial Code, (ii) provided herein, including, without limitation, the right to cause such Property to be sold by Trustee under the power of sale granted by this Deed of Trust, and (iii) provided by law. In exercising its remedies, Lender may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies. Upon demand by Lender following an Event of Default hereunder, Borrower shall assemble any items of personal property and make them available to Lender at the Realty. Lender shall give Borrower at least ten (10) business days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law.

**7. ASSIGNMENT OF RENTS AND LEASES; LEASES OF PROPERTY; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.**

**7.1 Assignment of Rents and Leases.** As part of the consideration for the Secured Obligations, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all right, title and interest of Borrower in and to: (a) any and all present and future leases, subleases, and other agreements for the occupancy or use of all or any part of the Property, and any and all amendments, extensions, renewals and replacements thereof ("**Leases**"); (b) all cash or security deposits, letters of credit and letter of credit rights, advance rentals and deposits of a similar nature under the Leases; (c) any and all guarantees of tenants' or occupants' performances under any and all Leases; and (d) all rents, issues, profits and revenues ("**Rents**") now due or that may become due or to which Borrower may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Leases, including, without limitation, minimum, additional, percentage and deficiency rents and liquidated damages and all rights to and proceeds of rental loss or business interruption insurance. Borrower hereby further grants to Lender the rights set forth in California Civil Code Section 2938, regardless of whether declaration of default has been delivered to Beneficiary, and each of the following rights: (a) to enter upon and take possession of the Property for the purpose of collecting the Rents; (b) to dispossess by the usual summary proceedings any tenant defaulting in the payment of Rents; (c) to lease the Property or any part thereof; and (d) to apply the Rents after payment of all necessary charges and expenses, to the Secured Obligations and other sums secured hereby. The assignments in this Section are absolute assignments and irrevocable from Borrower to Lender and not merely the passing of security interests or assignments for security only.

**7.2 Collection of Funds.** Prior to any Event of Default hereunder, Borrower shall have a license to, and shall, collect and receive all Rents of the Property as trustee for the benefit of Lender; apply the Rents so collected first to the payment of taxes, assessments and other charges on the Property prior to delinquency; second to the cost of insurance, maintenance and repairs required by the terms of this Deed of Trust; third to the costs of discharging any obligation or liability of Borrower under the Leases; and fourth to the Secured Obligations, with the balance, if any, to the account of Borrower so long as there is no Event of Default. Upon delivery of written notice by Lender to Borrower of an Event of Default hereunder and stating that Lender exercises its rights to the Rents, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all Rents from the Property as the same become due and payable, including, without limitation, Rents then due and unpaid, and all such Rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only. Upon delivery of such written notice by Lender, Borrower hereby agrees to direct each tenant or occupant of the Property to pay all Rents to Lender on Lender's written demand therefor, without any liability on the part of said tenant or occupant to inquire further as to the existence of a default by Borrower. Borrower hereby authorizes Lender, as Borrower's attorney-in-fact (which agency is coupled with an interest), to make such direction to tenants and occupants upon Borrowers' failure to do so as required herein. Payments made to Lender by tenants or occupants shall, as to such tenants and occupants, be in discharge of the payors' obligations to Borrower. Lender may exercise, in Lender's or Borrower's name, all rights and remedies available to Borrower with respect to collection of Rents. Nothing herein shall be construed as obligating Lender to perform any of Borrower's obligations under any of the Leases.

**7.3 Borrower's Representations and Warranties.** Borrower hereby represents and warrants to Lender that Borrower has not executed and will not execute any other assignment of the Leases or Rents, that Borrower has not performed and will not perform any acts and has not executed, and will not

execute, any instrument which would prevent Lender from exercising its rights under this Section 7, and that at the time of execution of this Deed of Trust there has been no anticipation or prepayment of any of the Rents of the Property for more than one (1) month prior to the due dates thereof. Borrower further represents and warrants to Lender that, except as disclosed to Lender prior to closing, all existing Leases are in good standing and there is no default thereunder, whether by Borrower or lessee, and that, to Borrower's knowledge, there is no event or condition which, with notice or the passage of time or both, would be a default thereunder. Borrower shall execute and deliver to Lender such further assignments of rents and leases of the Property as Lender may from time to time request.

**7.4 Leases of the Property.** Borrower shall comply with and observe Borrower's obligations as landlord under all Leases and will do all that is necessary to preserve all Leases in force and free from any right of counterclaim, defense or set off. At Lender's request, Borrower shall furnish Lender with executed copies of all Leases now existing or hereunder made and all Leases hereafter entered into will be on a form and in substance satisfactory to Lender, as provided in Section 7.1 above. All Leases will specifically provide that the tenant attorns to any person succeeding to the interest of Borrower upon any foreclosure of this Deed of Trust or conveyance in lieu thereof; such attornment shall be in such form as Lender may approve and shall provide that tenant shall not have the right of set off or defense to payment of rents for any event or act that occurred prior to such successor obtaining title to Borrower's interest except to the extent such event or act is continuing at the time such successor obtains such title. Without Lender's written consent, Borrower shall not (i) collect or accept payment of any Rents more than one (1) month prior to the due dates thereof; (ii) modify, surrender or terminate any Lease, except as otherwise permitted by the Loan Agreement; (iii) waive, discharge, release or modify the obligations of any tenant or other occupant of the Property under any Lease; or (iv) request or consent to the subordination of any Lease to any lien subordinate to this Deed of Trust.

**7.5 Lender's Rights.** Upon any Event of Default hereunder, Lender may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Borrower, including, without limitation, the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Property, the removal and eviction of tenants and other occupants, the making of alterations and repairs to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Lender to protect the security of this Deed of Trust. From and after the occurrence of any such Event of Default, if any owner of the Property shall occupy the Property, or part thereof, such owner shall pay to Lender in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure to do so Lender shall be entitled to remove such owner from the Property by any appropriate action or proceedings.

**7.6 Appointment of Receiver.** Following an Event of Default hereunder, Lender shall be entitled (regardless of the adequacy of Lender's security) to the appointment of a custodial receiver or general receiver with power of sale, and Borrower hereby irrevocably consents to the appointment of a custodial or general receiver for the Property or any portion thereof. The receiver shall have the usual powers and duties of receivers in like or similar cases, all the powers and duties of Lender set forth in this Deed of Trust or any of the other Loan Documents, and, in the case of a general receiver, a right to sell the Property. Employment by Lender shall not disqualify a person from serving as receiver. To the fullest extent permitted by applicable law, the receiver may serve without bond and may be Lender or an employee of Lender. The receiver shall be entitled to receive a reasonable fee for all of its services rendered in connection with the receivership.

**7.7 Letters of Credit.** Borrower shall notify Lender in writing prior to becoming the beneficiary under any letter of credit supporting any of the Leases, or otherwise in connection with the Property, and will take all actions, and execute all documents, necessary or appropriate to give Lender control (as defined in the Uniform Commercial Code) of such letter of credit and all letter of credit rights thereunder and, if so required by Lender, to deliver the letter of credit to Lender or constitute Lender the transferee beneficiary of such letter of credit.

**7.8 Application of Rents.** All Rents collected subsequent to delivery of written notice by Lender to Borrower of an Event of Default hereunder shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including, without limitation, attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower under the Leases, and then to the Secured Obligations. Lender or the receiver shall be liable to account only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower, or anyone having an interest in the Property by reason of any act or omission of Lender or the receiver.

**7.9 Deficiencies.** To the extent, if any, that the costs of taking control of and managing the Property, collecting the Rents, and discharging obligations and liabilities of Borrower under the Leases, exceed the Rents of the Property, the excess sums expended for such purposes shall be indebtedness secured by this Deed of Trust. Such excess sums shall be payable upon demand by Lender and shall bear interest from the date of disbursement at the greater of the default rate under the Note, or the maximum rate permitted by law.

**7.10 Lender Not Mortgagee in Possession.** Nothing herein shall constitute Lender a "mortgagee in possession" prior to its actual entry upon and taking possession of the Property. Entry upon and taking possession by a receiver shall not constitute possession by Lender.

**7.11 Lender Not Responsible.** Under no circumstances shall Lender have any duty to produce Rents from the Property. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Property, Lender is not and shall not be (i) responsible for performing any of the obligations of the lessor under any Lease; (ii) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or (iii) liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it, except for such matters as may arise solely from the willful misconduct or gross negligence of Lender.

**7.12 Enforcement.** Lender may enforce this assignment without first resorting to or exhausting any security or collateral for the Secured Obligations.

## **8. ASSIGNMENT OF CONTRACTS.**

**8.1 Assignment.** In addition to, and without in any way derogating from the security interest granted Lender in, the Property, Borrower hereby assigns, grants, transfers, and sets over unto Lender, Borrower's right, title, and interest in, to all contracts pertaining to the ownership, development, construction, operation, management, or maintenance of the Realty and Improvements (the "**Contracts**"), including, without limitation, the Property Management Agreement and HAP Contract.

**8.2 Security for Loan.** This assignment is made solely as additional security for the payment and performance of all of the Secured Obligations. Lender shall have no right pursuant to this assignment to enforce Borrower's rights with respect to the Contracts until Borrower is in default under any of its obligations to Lender pursuant to this Deed of Trust or any of the other Loan Documents. However, after an Event of Default, Lender shall have the right, in the name of and on behalf of Borrower, to enforce any rights under such Contracts.

**8.3 Liabilities.** Notwithstanding the assignment contained herein, Lender does not assume any obligations or duties of Borrower under the Contracts by virtue of this assignment of Contracts.

**8.4 Right to Cure Defaults.** Lender shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower such action as Lender may at any time determine to be necessary or advisable to cure any default under the Contracts or to protect the rights of Borrower or Lender thereunder.

**8.5 Attorney-in-Fact.** Borrower hereby irrevocably constitutes and appoints Lender as its attorney-in-fact, upon the occurrence of an Event of Default, to demand, receive, and enforce any and all of Borrower's rights under and with respect to the Contracts and to perform any and all acts with respect to the Contracts that Lender reasonably deems necessary, with the same force and effect as if performed by Borrower in the absence of this assignment.

## **9. EVENTS OF DEFAULT.**

**9.1 Events of Default.** The occurrence of any one or more of the following shall constitute an Event of Default hereunder:

**9.1.1** Failure to make any payment when due under the Note, this Deed of Trust, the Loan Agreement or any other Loan Documents or the Indemnity Agreement and such failure is not cured within fifteen (15) days after the due date of such payment, except that no grace period shall apply to payments due on maturity of the Note; or

**9.1.2** The occurrence of any Event of Default under the Loan Documents.

**9.2 Acceleration upon Default; Additional Remedies.** Upon any Event of Default, Lender may, at its option and without notice to or demand upon Borrower, exercise any one or more of the following actions: (a) declare all the Secured Obligations immediately due and payable; (b) bring a court action to enforce the provisions of this Deed of Trust or any of the other Loan Documents; (c) foreclose this Deed of Trust as a mortgage; (d) cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law; (e) elect to exercise its rights with respect to the Leases and the Rents; (f) exercise any or all of the other rights and remedies under this Deed of Trust and the other Loan Documents; and/or (g) exercise any other right or remedy available under law or in equity. To the extent permitted by law, every right and remedy provided in this Deed of Trust or afforded by law or equity or any other agreement between Lender and Borrower, may be exercised concurrently, independently or successively, in any order whatsoever. Lender may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

**9.3 Exercise of Power of Sale.** For any sale under the power of sale granted by this Deed of Trust, Lender or Trustee shall record and give all notices required by law and then, upon the expiration of such time as is required by law, Trustee may sell the Property upon any terms and conditions specified by

Lender and permitted by applicable law. Trustee may postpone any sale by public announcement at the time and place notified for the sale. If the Property includes several lots or parcels, Lender in its discretion may designate their order of sale or may elect to sell all of them as an entirety. The Property, real, personal and mixed, may be sold in one parcel. To the extent any of the Property sold by the Trustee is personal property, Trustee shall be acting as the agent of Lender in selling such Property. Any person permitted by law to purchase at any sale may do so. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a deed or deeds conveying the Property sold, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

**9.4 Sales of Personal Property.** For purposes of the power of sale, Lender may elect to treat as personal property any Property that is intangible or that can be severed from the Realty or Improvements without causing structural damage. If it chooses to do so, Lender may dispose of any personal property separately from the sale of real property, in any manner permitted by the Uniform Commercial Code in effect in the Property State, including, without limitation, any public or private sale, or in any manner permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default for purposes of Section 2924c of the California Civil Code.

**9.5 Application of Sale Proceeds.** The proceeds of any sale under this Deed of Trust shall be applied in the following manner: (a) first to the payment of the costs and expenses of the sale; including, without limitation, Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Trustee, together with interest on all advances made by Trustee from the date of disbursement at the applicable interest rate under the Note; (b) second to the payment of all sums expended by Lender under the terms of this Deed of Trust and not yet repaid, together with interest on such sums from date of disbursement at the applicable interest rate under the Note; and (c) third to the payment of all other Secured Obligations in any order that Lender chooses; and (d) the remainder, if any, to the person or persons legally entitled to it.

**9.6 Waiver of Order of Sale and Marshalling.** Lender shall have the right to determine the order in which any or all portions of the secured indebtedness are satisfied from the proceeds realized upon the exercise of any remedies provided herein. Borrower, any party who consents to this Deed of Trust, and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof, hereby waives any and all right to require marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein, or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust. To the extent allowed by law, Borrower waives (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Property, (ii) all rights of valuation, appraisal, stay of execution, reinstatement and redemption laws in the event of foreclosure of the liens hereby created, (iii) all rights and remedies that Borrower may have or be able to assert by reason of the laws of the State where the Property is located pertaining to the rights and remedies of sureties, and (iv) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured by this Deed of Trust.

**9.7 Non-Waiver of Defaults.** The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided,

shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

**9.8 Determination of Fair Value.** To the extent applicable law requires that the "fair market value" or "fair value" of the Property be determined as of the foreclosure date in order to enforce a deficiency against Borrower or any other party liable for repayment of the Secured Obligations, the term "fair market value" or "fair value" shall include those matters required by law and the additional factors set forth below:

**9.8.1** The Property shall be valued "as is" and "with all faults" and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the foreclosure.

**9.8.2** An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Property, including, without limitation, brokerage commissions, title policy expenses, tax pro-rations, escrow fees, and other common charges that are incurred by the seller of real property.

Borrower shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

**9.9 Expenses during Redemption Period.** If this Deed of Trust is foreclosed as a mortgage and the Property sold at a foreclosure sale, the purchaser may during any redemption period allowed, make such repairs or alterations to the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the greater of the default rate under the Note, or the maximum rate permitted by law, shall be added to and become a part of the amount required to be paid for redemption from such sale.

**9.10 Foreclosure Subject to Tenancies.** Lender shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the Property.

**9.11 Early Payment Following Default.** If any Event of Default has occurred prior to the Maturity Date (as defined in the Note), any tender of payment of the indebtedness secured hereby at any time prior to or at a judicial or non-judicial foreclosure sale of the Property by Borrower, or anyone on behalf of Borrower, shall include any amounts due and owing under any swap agreement or other financial contract as a result of such prepayment.

**9.12 Lender's and Trustee's Expenses.** Borrower shall pay all of Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust or to protect Lender's security interest hereunder, whether or not any suit is filed, including, without limitation, legal fees and disbursements, foreclosure costs and title charges. All such sums, with interest thereon, shall be additional indebtedness of Borrower secured by this Deed of Trust. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the greater of the default rate under the Note, or the maximum rate permitted by law.

## **10. GENERAL.**

**10.1 No Offset.** The obligations of Borrower to timely pay and perform all obligations under the Note, this Deed of Trust, and the other Loan Documents shall be absolute and unconditional and

shall not be affected by any event or circumstance, including, without limitation, any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Borrower or any guarantor may have or claim against Lender or any other Person.

**10.2 Application of Payments.** Except as applicable law or this Deed of Trust may otherwise provide, all payments received by Lender under the Note or this Deed of Trust shall be applied by Lender in the following order of priority: (a) Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust; (b) interest payable on advances made to protect the security of this Deed of Trust; (c) principal of such advances; (d) amounts payable to Lender by Borrower under Section 4 for any reserves required by Lender pursuant to Section 4 of this Deed of Trust; (e) interest and late charges payable on the Note; (f) principal of the Note; and (g) any other Secured Obligations in such order as Lender, at its option, may determine; *provided, however*, that Lender may, at its option, apply any such payments received to interest on or principal of the Note prior to applying such payments to interest on and principal of advances made to protect the security of this Deed of Trust.

**10.3 Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Borrower or the grantee shall pay Trustee's reasonable costs incurred in so reconveying the Property.

**10.4 Successor Trustee.** In accordance with applicable law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

**10.5 Lender's Powers.** Without affecting the liability of any person for payment or performance of the Secured Obligations or any of Lender's rights or remedies, Lender, at its option, may extend the time for payment of the indebtedness secured hereby or any part thereof, reduce payment thereon, release anyone liable on any of the indebtedness secured hereby, accept a renewal note or notes therefor, modify the terms and time of payment of the indebtedness, release the lien of this Deed of Trust on any part of the Property, take or release other or additional security, release or reconvey or cause to be released or reconveyed all or any part of the Property, or consent and/or cause Trustee to consent to the making of any map or plat of the Property, consent or cause Trustee to consent to the granting of any easement or creating any restriction on the Property, or join or cause Trustee to join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

**10.6 Subrogation.** Lender shall be subrogated to the liens of all encumbrances, whether released of record or not, that are discharged in whole or in part by the proceeds of the Note.

**10.7 Limitation on Interest and Charges.** The interest, fees and charges under the Loan Documents shall not exceed the maximum amounts permitted by any applicable law. If any such interest, fee or charge exceeds the maximum, such excess sums shall be construed as having been immediately applied by Lender to the principal balance of the Note when received.



**10.8 Additional Documents; Power of Attorney.** Borrower, from time to time, shall execute, acknowledge and deliver to Lender upon request, and hereby irrevocably appoints Lender its attorney-in-fact, coupled with an interest, to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, absolute assignments, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Lender, as Lender may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Deed of Trust, and the priority thereof. Borrower shall pay to Lender upon request therefor all reasonable costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

**10.9 Waiver of Statute of Limitations.** To the full extent Borrower may do so, Borrower hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured by this Deed of Trust.

**10.10 Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Lender of any particular default shall constitute a waiver of any other default or of any similar default in the future. Without limiting the generality of the foregoing, the acceptance by Lender of payment of any sum secured by this Deed of Trust after the due date thereof shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust, nor shall Lender's receipt of any awards, proceeds or damages under Sections 3.3 or 3.7 hereof operate to cure or waive any default in payment of sums secured by this Deed of Trust.

**10.11 Modifications and Waivers.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

**10.12 Notice.** Any notice to Borrower under this Deed of Trust shall be to the address noted above or such other address as may be designated by Borrower in writing so long as such notice is given in accordance with the notice provisions in the Loan Agreement.

**10.13 Financial Contracts.** For purposes hereof, all obligations of Borrower to Lender under any and all Financial Contracts between Borrower and Lender or its affiliates and any indebtedness or obligation contained therein or evidenced thereby shall be considered an obligation of Borrower secured hereby.

**10.14 Certain Obligations Unsecured.** Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the following obligations (the "**Unsecured Obligations**"): (a) any obligations evidenced by or arising under the Indemnity, and (b) any obligations arising under the Guaranty. Nothing in this Section shall, in itself, impair or limit Lender's right to obtain a judgment in accordance with applicable law after foreclosure for any deficiency in recovery of all obligations that are secured by this Deed of Trust following foreclosure.

**10.15 Governing Law; Severability; Captions.** This Deed of Trust shall be governed by the laws of the State of California, without regard to that state's choice of law rules. If any provision or clause of this Deed of Trust conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof that can be given effect without the conflicting provision, and to this end the provisions hereof are declared to be severable. The captions and headings of the paragraphs and articles of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

**10.16 Definitions.** As used herein: the term "**Borrower**" means the Grantor herein named, together with any subsequent owner of the Property or any part thereof or interest therein; the term "**Trustee**" means the Trustee herein named, together with any successor Trustee; and the term "**Lender**" means the Lender herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

**10.17 Successors and Assigns; Joint and Several Liability; Agents.** This Deed of Trust shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns, subject to the provisions of Section 5 hereof. In exercising any rights hereunder or taking actions provided for herein, Lender and Trustee may act through their respective employees, agents or independent contractors as authorized by Lender and Trustee.

**10.18 Time.** Time is of the essence in connection with all obligations of Borrower herein.

**10.19 Estoppel Certificate.** Borrower shall, within ten days of a written request from Lender and at no charge to Lender, furnish Lender or any other party designated by Lender with a written statement, duly acknowledged, setting forth the sums secured hereby and any right of set-off, counterclaim or other defense that may exist with regard to the Secured Obligations.

**10.20 Environmental Impairment.** Borrower hereby acknowledges and agrees that the condition of the Property is a material basis upon which Lender has agreed to make the Loan. Borrower hereby further acknowledges and agrees that if all or any portion of the Property is determined to be "environmentally impaired" or to be an "affected parcel" (as those terms are defined in Section 726.5 of the California Code of Civil Procedure), such determination might (a) impair the security which Lender has agreed to take in making the Loan, and/or (b) place an independent liability upon Lender for which Lender is not otherwise protected and which Lender would not accept in the first instance in making the Loan to Borrower. Accordingly, Borrower hereby agrees that in any such event, then, without waiver of any other rights or remedies Lender may have under this Deed of Trust, (i) at Lender's option, the obligations and indebtedness of Borrower shall not be secured by this Deed of Trust, in which event, Borrower shall not have the benefit of certain protections afforded under California Code of Civil Procedure Section 580a, 580d or 726 or any other anti-deficiency laws now existing or hereinafter enacted, (ii) Lender shall have all rights and remedies pursuant to California Code of Civil Procedure Section 726.5, including, without limitation, the right of Lender to waive its lien against all or any portion of the Property encumbered hereby and pursue Borrower as an unsecured creditor, and (iii) Lender shall have the further right to pursue any other remedy available at law or in equity, including, without limitation, under the separate environmental indemnity agreement executed by Borrower in favor of Lender.

**10.21 Waiver of Right of Offset.** No portion of the obligations secured by this Deed of Trust shall be or be deemed to be offset or compensated by all or any part of any claim, cause of action, counterclaim, or cross-claim, whether liquidated or unliquidated, that Borrower may have or claim to have

against Lender. Borrower hereby waives to the fullest extent permitted by law, the benefits of Section 431.70 of the California Code of Civil Procedure, which provides:

Where cross-demands for money have existed between persons at any point in time when neither demand was barred by the statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in the answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting the person's claim would at the time of filing the answer be barred by the statute of limitations. If the cross-demand would otherwise be barred by the statute of limitations, the relief accorded under this section shall not exceed the value of the relief granted to the other party. The defense provided by this section is not available if the cross-demand is barred for failure to assert it in a prior action under Section 426.30. Neither person can be deprived of the benefits of this section by the assignment or death of the other. For the purposes of this section, a money judgment is a "demand for money" and, as applied to a money judgment, the demand is barred by the statute of limitations when enforcement of the judgment is barred under Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9.

**10.22 Borrower Waivers.** Borrower hereby specifically, unconditionally, and irrevocably waives: (i) all rights of a property owner granted under Section 1265.225(a) of the California Code of Civil Procedure that provides for allocation of condemnation proceeds between a property owner and a lienholder; (ii) all rights to require marshaling of assets or to require realization on the Property in a particular order provided by Sections 2899 and 3433 of the California Civil Code; and (iii) any similar rights that may arise under any other laws or successor statutes of similar import.

**10.23 Waiver Regarding Application of Payments.** If a guarantor is liable only for a portion of the Secured Obligations, Borrower hereby waives its rights under California Civil Code Section 2822(a) to designate a portion of the Secured Obligations that will be satisfied by Borrower's partial payment.

**10.24 Stop Payment Notice.** In the case of a stop payment notice pursuant to Section 8500, et seq., of the California Civil Code, Borrower shall, within ten (10) days following Lender's request, post such security or make other arrangements as Lender may require in its sole discretion.

**10.25 Further Assurances; Clerical Errors.** Borrower agrees to execute and acknowledge such additional documents as may be necessary or desirable in order to carry out the intent and purpose of this Deed of Trust and the other Loan Documents, to confirm or establish the lien hereof, or to correct any clerical errors or legal deficiencies. Without limiting the foregoing, Borrower agrees to execute a replacement Note in the event the Note is lost or destroyed and to execute an amended and restated substitute Note to correct any clerical or other errors that may be discovered in the original Note. Failure of Borrower to comply with any request by Lender pursuant to this Section within ten (10) business days after written request by Lender shall constitute an Event of Default.

**[Remainder of page intentionally left blank; signatures appear on the following page]**

**A CONTRACT, PROMISE, UNDERTAKING OR COMMITMENT TO LOAN MONEY OR GRANT OR EXTEND CREDIT, IN AN AMOUNT GREATER THAN \$100,000, NOT PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, MADE BY A PERSON ENGAGED IN THE BUSINESS OF LENDING MONEY OR EXTENDING CREDIT MUST BE IN WRITING AND SUBSCRIBED BY BENEFICIARY OR ITS AGENT TO BE VALID UNDER CALIFORNIA LAW.**

DATED as of the day and year first written above.

**GRANTOR/BORROWER:**

PERRIS PARK HOUSING LLC,  
a California limited liability company

By: Riverside Community Housing Corp.,  
a California nonprofit public benefit corporation,  
its Sole Manager/Member

By: \_\_\_\_\_  
Carrie Harmon  
Its Chief Operating Officer

State UBI No. \_\_\_\_\_

APPROVED AS TO FORM:  
General Counsel

By: \_\_\_\_\_  
Lisa Sanchez  
Deputy General Counsel

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE REALTY**

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOT 1 OF THAT CERTAIN CERTIFICATE OF COMPLIANCE, LOT LINE ADJUSTMENT NO. 99-0022, IN THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, RECORDED APRIL 9, 1999 AS INSTRUMENT NO. 1999-182554 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 5 OF PEROU'S SUBDIVISION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 31, IN TOWNSHIP 4 SOUTH, RANGE 3 WEST, AS SHOWN BY MAP ON FILE IN BOOK 15, PAGE 698 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT SOUTHEAST CORNER OF SAID SECTION 31, SAID POINT ALSO BEING THE CENTERLINE INTERSECTIONS OF PERRIS BOULEVARD AND ELLIS AVENUE AS SHOWN ON MAP FILED IN MAP BOOK 86 PAGE 48 OF RECORD OF SURVEYS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

THENCE NORTH 00° 14' 13" WEST 680.04 FEET ALONG THE CENTERLINE OF PERRIS AVENUE, SAID CENTERLINE ALSO BEING THE EAST LINE OF SAID LOT 5;

THENCE SOUTH 89° 45' 47" WEST 30.00 FEET PERPENDICULAR TO SAID CENTERLINE TO THE WEST RIGHT-OF-WAY LINE OF PERRIS BOULEVARD 30.00 FEET WIDE HALF WIDTH, SAID POINT ALSO BEING THE NORTHEAST CORNER OF PARCEL 1 AS SHOWN ON SAID RECORD OF SURVEY, TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89° 45' 44" WEST 475.35 FEET ALONG THE NORTH LINE OF SAID PARCEL 1;

THENCE SOUTH 00° 14' 16" EAST 629.40 FEET PERPENDICULAR TO SAID NORTH LINE TO A POINT ON THE NORTH RIGHT-OF-WAY OF ELLIS AVENUE, 30.00 FEET WIDE HALF WIDTH;

THENCE NORTH 89° 50' 04" EAST 475.34 FEET ALONG SAID NORTH RIGHT-OF-WAY TO A POINT ON THE WEST RIGHT-OF-WAY OF PERRIS BOULEVARD, 30.00 FEET WIDE HALF WIDTH;

THENCE NORTH 00° 14' 13" WEST 630.00 FEET ALONG SAID WEST RIGHT-OF-WAY LINE TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MATERIALS AS RESERVED TO THE UNITED STATES AS SET FORTH IN AN INSTRUMENT RECORDED MARCH 22, 1895 IN BOOK 26, PAGE 59 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 313-290-020-2

## INDEMNITY AGREEMENT (Environmental and Building Laws)



THIS UNSECURED INDEMNITY AGREEMENT ("**Indemnity Agreement**" or "**Agreement**"), dated for reference purposes \_\_\_\_\_, 2022, is entered into by PERRIS PARK HOUSING LLC, a California limited liability company ("**Borrower**"), and by HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE, a California public entity, corporate and politic (collectively, if more than one individual and/or entity, "**Guarantor**") (Borrower and Guarantor are collectively referred to as "**Indemnitors**"), for the benefit of BANNER BANK, a Washington state chartered commercial bank ("**Lender**") and its successors, participants and assigns and the other Indemnified Parties (defined below).

### RECITALS

A. Borrower has requested that Lender make a term loan to Borrower in the amount of THREE MILLION FIVE HUNDRED THOUSAND AND NO/100THS U.S. DOLLARS (\$3,500,000.00) (the "**Loan**"). The Loan shall be evidenced by a promissory note (the "**Note**") executed by Borrower in favor of Lender in the amount of the Loan. The Loan shall be secured by a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "**Deed of Trust**") encumbering Borrower's interest in certain real property described in EXHIBIT A attached hereto.

B. Lender's agreement to make the Loan to Borrower is conditioned on Indemnitors' execution of this Indemnity Agreement. Indemnitors acknowledge that they will derive material financial benefits from Borrower's financing arrangements with Lender and that Lender would not make the Loan to Borrower absent this Agreement.

### AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and as a material inducement for Lender's agreement to make the Loan to Borrower, Indemnitors certify, represent, warrant, covenant, and agree as follows:

#### 1. Defined Terms.

1.1 "**Building and Access Laws**" means the Fair Housing Act of 1968, as amended, the Fair Housing Amendments Act of 1988, the Americans With Disabilities Act of 1990, as amended, all government and private covenants, conditions, and restrictions relating to the Property, building code requirements and laws affecting the improvements on the Property, and all other federal, state and local laws, ordinances, regulations and rules relating to the construction, operation, and maintenance of the improvements on the Property and the marketing and use of such improvements in a non-discriminatory manner.

1.2 "**Environmental Laws**" means all federal, state and local laws, statutes, codes, ordinances, regulations, judgments, orders, injunctions, decrees, covenants, restrictions and standards presently in effect or that may be promulgated in the future applicable to Borrower or to the Property relating to industrial hygiene or to environmental or unsafe conditions or to human health including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Substances, those relating to or connected with the construction (or construction-related activities), fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property, and those relating to the atmosphere, soil, grading, excavation, surface and ground water, storm water, wetlands, stream sediments and vegetation on, under, in or about the Property and Nearby Property (including those relating to the construction of improvements on the Property and the resulting water quality, air quality, soils quality and other environmental quality of the Property and Nearby Property). "Environmental Law" also shall include, but not be limited to, the following laws,

as they have been or will be amended from time to time: (a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986; (b) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984; (c) the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977; (d) the Toxic Substances Control Act; (e) the Emergency Planning and Community Right-to-Know Act of 1986; (f) the Clean Air Act, as amended by the Clean Air Act Amendments; (g) the National Environmental Policy Act of 1969; (h) the River and Harbor Act of 1899; (i) the Endangered Species Act of 1973; (j) the Occupational Safety and Health Act of 1970, to the extent such laws relate to hazardous materials or the protection of human health; (k) the Safe Drinking Water Act; (l) the Hazardous Materials Transportation Act; (m) the Federal Resource Conservation and Recovery Act of 1976; (n) the Federal Hazardous Materials Transportation Control Act; and (o) the Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978; and all regulations from time to time adopted in respect to the foregoing laws, and all other federal, state and local laws, statutes, codes, ordinances, regulations, judgments, orders, injunctions, decrees, covenants, restrictions and standards presently in effect or that may be promulgated in the future relating to the use, release, handling, storage, transportation, clean-up, or other disposal of Hazardous Substances, or relating to the water quality, air quality, soils quality, and other environmental quality of real property and improvements located or to be constructed upon real property, or related to the protection of endangered species, as such laws and ordinances may be amended from time to time.

**1.3 “Environmental Proceeding”** means any lawsuit or proceeding, whether civil (including actions by private parties), criminal, or administrative, relating to the environmental condition of the Property or the presence of Hazardous Substances thereon.

**1.4 “Environmental Reports”** means soils, geologic, and engineering reports prepared to assess any environmental risks associated with any portion of the Property that have been provided to Lender by Borrower or otherwise obtained by Lender prior to Lender's making the Loan.

**1.5 “Hazardous Substances”** means any waste, pollutants, contaminants, petroleum or petroleum product, asbestos, tremolite, anthophyllite or actinolite, polychlorinated biphenyls, or other chemical, substance, or material that: (a) after release into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer and/or genetic abnormalities, or (b) is now or at any time in the future becomes regulated under, or is defined, classified or designated as hazardous, toxic, radioactive or dangerous, or other similar term or category under any Environmental Laws; but shall not include: (1) pre-packaged supplies, cleaning materials, petroleum products, household products, paints, solvents, lubricants and other materials customarily used in the construction, operation, maintenance or use of comparable multifamily properties, (2) cleaning materials, household products, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Property; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Environmental Laws.

**1.6 “Indemnified Parties”** means Lender, any person or entity who is or will have been involved in the origination or servicing of the Loan, any person or entity in whose name the encumbrance created by the Deed of Trust has been recorded, persons and entities who may hold or acquire an interest in the Loan, as well as custodians, trustees and other fiduciaries who hold a full or partial interest in the Loan for the benefit of third parties (each, individually, an **“Indemnified Party”**).

**1.7 “Loan Documents”** means any and all documents evidencing, securing or otherwise governing the Loan, specifically excluding, however, this Indemnity Agreement.



1.8 **“Nearby Property”** means real property that is adjacent to or in the immediate vicinity of the Property that could reasonably cause contamination of the Property or could become contaminated with Hazardous Substances as a result of construction, operations, or other activities involving Hazardous Substances on, over, or under the Property or on, over, or under such adjacent or nearby property.

1.9 **“Property”** means the real property legally described on EXHIBIT A hereto and all other property that now or hereafter secures the Loan, all buildings, improvements, and personal property now or hereafter located thereon, the soil, groundwater, streams crossing or abutting the real property, and the aquifers underlying such real property.

1.10 **“Transition Date”** means the earlier of the following dates: (a) the date on which the lien of the Deed of Trust is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective and possession of the Property has been given to and accepted by Lender or any other purchaser or grantee, or (b) prior to completion of any foreclosure or deed in lieu of foreclosure, if Lender, its agents, employees, affiliates, or any receiver appointed to take possession of the Property on behalf of or at the request of Lender causes any release of Hazardous Substances or other contamination, alteration, or change in physical condition, the date prior to the date when such release, contamination, or change in physical condition by actions of Lender or its agent, employee, affiliate or receiver has occurred. However, as to clause (b), the Transition Date applies only to any release of Hazardous Substances or other contamination, alteration, or change in physical characteristics caused by Lender, its agents, employees, affiliates, or any receiver appointed at Lender's request, but not to Hazardous Substances that existed on the Property prior to such change in custody and possession or receivership, nor to Hazardous Substances that enter onto the Property after the Transition Date from natural forces that cannot be reasonably controlled by Lender (e.g., contaminated groundwater intrusion).

2. **Scope of Indemnitors' Investigation.** Indemnitors' investigation of the environmental condition of the Property has included all of the following undertaken by Borrower and confirmed to the other Indemnitors: physical examination of the Property; the acquisition and review of the applicable Environmental Reports; review of or consultation with consultants about applicable Environmental Laws; and any other actions deemed necessary by Indemnitors to confirm the accuracy of all representations and warranties contained in the Loan Documents regarding such matters.

3. **Lender's Right to Enter.** Lender shall have the right to enter and inspect the Property at any time after reasonable notice to Indemnitors, and, in the event of a default under any of the Loan Documents, and consistent with remedies provided in the Loan Documents, shall also have the right to appoint a receiver to enforce Lender's right to inspect the Property.

4. **Obligation to Cure Non-Compliance.**

4.1 **Notice.** If Indemnitors at any time become aware of: (a) any Hazardous Substances on or other environmental problem or liability with respect to the Property or any Nearby Property that constitute actual violations of any Environmental Laws, (b) any failure of the Property or the improvements thereon to comply with any of the Environmental Laws, (c) any failure of the Property or the improvements thereon or the marketing and other operations undertaken with respect thereto to comply with any of the Building and Access Laws, (d) any lien, action or written notice resulting from violation of any Environmental Laws, or Building and Access Laws or (e) any Environmental Proceeding affecting the Property, and that are material in nature, Indemnitors shall immediately notify Lender thereof in writing, and shall thereafter exercise due diligence to ascertain the scope and nature of such condition. If the condition is such that state or federal law requires the giving of notice to the governmental agencies having appropriate jurisdiction or the implementation of other preventive measures, Indemnitors shall promptly furnish such notice or implement such preventive measures.

**4.2 Cure.** If, upon giving such notice or for any other reason, one or more governmental agencies having appropriate jurisdiction requires removal or treatment of Hazardous Substances from or on the Property or the making of alterations to the Property to conform to Building and Access Laws or Environmental Laws, or such removal, treatment, or alteration is required by Environmental Laws or Building and Access Laws, Indemnitors will: (a) to the extent required by Environmental Laws, take all actions that are necessary or desirable to clean up any Hazardous Substances affecting the Property, including removal, treatment, containment or any other remedial action required to restore the Property to a safe condition in compliance with applicable laws and regulations, including Environmental Laws, (b) take all actions that are necessary or desirable to modify the Property and all improvements and marketing materials so as to achieve compliance with applicable laws and regulations, including Building and Access Laws and/or Environmental Laws, and/or (c) attempt to contest, appeal, or obtain a stay of enforcement proceedings if Indemnitors believe in good faith that Indemnitors are not required by law to cure such Hazardous Substances condition or to make alterations to comply with Environmental Laws or Building and Access Laws.

**4.3 Indemnitors' Expense.** Except for the correction of any violations of Building and Access Laws and/or Environmental Laws to the extent caused by Indemnified Parties, their agents, successors and assigns, Indemnitors agree that the amelioration, treatment, containment, or removal of all Hazardous Substances that may be discovered on the Property or Nearby Property (occurring from Hazardous Substances originating on the Property) arising prior to the Transition Date and the modification of any improvements on the Property in order to comply with Environmental Laws or Building and Access Laws for violations occurring prior to the Transition Date shall be at Indemnitors' sole expense, reserving unto Indemnitors any claims for contribution or indemnity that Indemnitors may have against other parties who may be held liable therefor.

**5. Indemnification of Indemnified Parties.** Indemnitors shall indemnify, defend, and hold harmless Indemnified Parties from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including reasonable attorneys' fees and costs), that (a) accrue to or are made against or incurred by Indemnified Parties relating to any Transferred Property that result in actual cost and expense to an Indemnified Party arising after one or more Indemnified Parties is in title to the Transferred Property; and (b) directly or indirectly arise from or out of, or are in any way connected with:

**5.1** the inaccuracy of any Indemnitor's representations regarding (a) the environmental condition of the Property or (b) compliance of the Property or the improvements with Environmental Laws or Building and Access Laws;

**5.2** any spills, releases, discharges or disposal of Hazardous Substances at or from the Transferred Property occurring prior to the Transition Date;

**5.3** the imposition, recording or filing of any lien with regard to Hazardous Substances prior to the Transition Date or relating to Hazardous Substances that existed on the Property prior to the Transition Date;

**5.4** any non-compliance with or violation of any Environmental Laws occurring prior to the Transition Date;

**5.5** any activities on the Transferred Property prior to the Transition Date that directly or indirectly result in the Property or any Nearby Property becoming contaminated with Hazardous Substances, provided, such activities have not been conducted by any Indemnified Party, their agents, successors or assigns;

**5.6** the discovery and/or cleanup of Hazardous Substances that were deposited on or were existing on the Transferred Property prior to the Transition Date except to the extent that an Indemnified Party, its agents, successors or assigns deposited such Hazardous Substances on the Transferred Property;

5.7 the discovery and/or cleanup of Hazardous Substances that were deposited on any Nearby Property as a result of an Indemnitor's actions or omissions; or

5.8 any alleged or actual failure of any improvements now or hereafter constructed by Borrower on the Transferred Property to continuously substantially comply with all Building and Access Laws now or hereafter enacted for any reason whatsoever, so long as such failure or violation did not first occur after the Transition Date.

Indemnitors acknowledge that, as between Indemnitors and Indemnified Parties, for those obligations of Indemnitors described in this Section 5, Indemnitors will be solely responsible for all costs and expenses relating to the cleanup of Hazardous Substances from the Transferred Property or from any related Nearby Property or to the modification and correction of any of the improvements constructed on the Transferred Property to make them comply substantially with all Building and Access Laws. If Lender becomes the owner of, or acquires an interest in or rights to the Property by foreclosure or by a conveyance in lieu of foreclosure of the Deed of Trust, or any other instruments securing the Loan, or by any other means, the foregoing indemnification and defense obligations of Indemnitor shall survive such transfer of the Transferred Property. Notwithstanding the preceding sentence, Indemnitor shall have no obligation to defend, indemnify or hold Lender harmless from any claim, demand, damage, loss, lien, liability, etc. to the extent arising from the gross negligence or willful misconduct of the applicable Indemnified Party on or after the Transition Date.

6. **Defense of Indemnified Parties.** If any party asserts a claim against an Indemnified Party for which Indemnitors have agreed to defend and indemnify such Indemnified Party, counsel selected by Indemnitors for an Indemnified Party's defense shall be subject to the Indemnified Party's approval, in its reasonable discretion. In the event of a conflict of interest between the Indemnitors and Indemnitees, or the potential impairment of the lien, the Indemnified Party shall have the right to make all decisions relating to the dispute. In the absence of one of the foregoing conditions, the Indemnified Party must pay the costs of the defense when it seeks to control the litigation. Indemnitors shall not, without the prior written consent of the Indemnified Party to the claim, which shall not be unreasonably withheld, accept the terms of any settlement. The obligations and liabilities of Indemnitors under this Indemnity Agreement shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure relating to any of the Loan Documents, including, without limitation, any assignment and assumption of Indemnitors' obligations hereunder.

7. **Promises of Indemnity Are Unconditional and Separate from the Loan.** Indemnitors' obligations under this Indemnity Agreement are unconditional and shall not be limited by any limitations of liability provided for in any of the Loan Documents. Furthermore, the representations, warranties, and covenants of Indemnitors set forth in this Indemnity Agreement: (a) are separate and distinct obligations from Borrower's and Guarantor's obligations under the Loan Documents, (b) are not secured by the Deed of Trust or any other security instruments securing the Loan and shall not be discharged or satisfied by foreclosure of the liens created by the Deed of Trust or other security instruments, and (c) shall continue in effect after the Transition Date, to the extent provided in Section 5 above.

8. **Payments to Indemnified Parties.** All amounts payable under this Indemnity Agreement shall be paid when due or, for reimbursement of amounts paid by an Indemnified Party, within thirty (30) days after an Indemnified Party's delivery of demand to Indemnitors. Any amount not paid when due shall thereafter bear interest at the default rate of interest under the promissory note evidencing the Loan (whether or not such promissory note itself remains enforceable).

9. **Attorney and Professional Fees.** Each Indemnitor agrees to reimburse, within thirty (30) days of demand, the applicable Indemnified Parties for all costs, expenses, and reasonable attorneys' fees that such Indemnified Parties incur in connection with the realization or enforcement of any obligation or remedy contained in this Indemnity Agreement, with or without litigation. Payment by an Indemnified Party shall not be a condition precedent to the obligations of any Indemnitor under this Indemnity Agreement.

**10. Indemnitors' Waivers.** Each Indemnitor agrees that its obligations hereunder shall not be affected by any circumstances, whether or not referred to herein, that might otherwise constitute a legal or equitable discharge of a guarantor or a surety. Without limiting the generality of the foregoing, each Indemnitor waives any rights, claims, defenses, abatement, or rights of setoff or recoupment based on or arising out of: (a) all statutes of limitations that may offer a defense to any action brought against such Indemnitor by Indemnified Parties; (b) any legal disability, discharge, or limitation of the liability of Borrower to Lender, whether consensual or arising by operation of law or any proceeding; (c) any laws in effect from time to time limiting the liability of a surety; (d) the death or disability of Borrower or any Indemnitor; or (e) any right to require Lender to exhaust any security for the performance of obligations under any of the Loan Documents or to proceed against Borrower, Guarantor, or any other person in any particular order, whether such right exists by statute or otherwise.

**11. Miscellaneous.**

**11.1 Notices.** Any notice, demand, request or other communication that any party hereto may be required or may desire to give hereunder shall be made in writing to the addresses below and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three (3) business days after mailing; (c) if by Federal Express or other reliable overnight courier service, on the next business day after delivery to such courier service; or (d) if by confirmed e-mail transmission on the day of transmission so long as a copy is sent on the same day by overnight courier to the applicable address set forth below:

**If to Indemnitor:** PERRIS PARK HOUSING LLC  
HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE  
5555 Arlington Avenue  
Riverside, CA 92504  
Attention: Michael Walsh

**If to Lender:** BANNER BANK  
5930 Granite Lake Drive, Suite 170  
Granite Bay, CA 95746  
Attn: Sandy Bowen

Any party may change its address by notifying the other party in writing as set forth above.

**11.2 Benefit of Lender's Affiliates, Successors, and Purchasers.** Each representation, warranty, covenant, promise of indemnity, and other obligation of Indemnitors herein in favor of Lender shall also inure to the benefit of any successors and assigns of Lender's interest in the Loan or any portion of the Property, as well as any purchasers of all or any portion of the Property at a foreclosure sale and the purchaser under the first conveyance of any portion of Property following the consummation of any foreclosure or deed in lieu of foreclosure, but not any other purchasers of the Property.

**11.3 Rights Cumulative.** The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies that Lender has under the Loan Documents or that Lender would otherwise have at law or in equity.

**11.4 No Waiver.** The failure of an Indemnified Party to promptly enforce any right or remedy under this Indemnity Agreement shall not constitute a waiver thereof and shall not affect or impair the liability of Indemnitors.

**11.5 Release of Liability.** Any one or more parties liable upon or in respect of this Indemnity Agreement may be released without affecting the liability of any party not so released.

**11.6 Successors.** This Indemnity Agreement shall be binding upon Indemnitors and their heirs, representatives, successors and assigns.

**11.7 Severability.** If any provision of this Indemnity Agreement is invalid, illegal or unenforceable, such provision shall be considered severed from the rest of this Indemnity Agreement and the remaining provisions shall continue in full force and effect as if the invalid provision had not been included.

**11.8 Joint and Several Liability.** The liability hereunder of each Indemnitor shall be joint and several.

**11.9 Mutual Negotiation.** Each Indemnitor and Indemnified Party confirm that they have mutually negotiated this Indemnity Agreement and that none of the terms or provisions of this Indemnity Agreement shall be construed by presumption against either party.

**11.10 Governing Law.** This Indemnity Agreement shall be governed by the laws of the State of in which the Property is located, without regard to that state's choice of law rules.

**11.11 Execution of Counterparts.** This Indemnity Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

## **12. California Provisions**

**12.1 Judicial Reference.** The parties agree to proceed under this judicial reference provision as follows:

**12.1.1** With the exception of the items specified in Section 12.1.2 below, any controversy, dispute or claim (each a "**Claim**") between the parties arising out of or relating to this Agreement will be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure, or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to the reference proceeding. Venue for the reference proceeding will be in the state or federal court located in Riverside County (the "**Court**").

**12.1.2** The matters that shall not be subject to a reference are the following: (i) non-judicial foreclosure of any security interests in real or personal property, (ii) exercise of self-help remedies (including, without limitation, set-off), (iii) appointment of a receiver, and (iv) temporary, provisional, or ancillary remedies (including, without limitation, writs of attachment, writs of possession, temporary restraining orders or preliminary injunctions). This reference provision does not limit the right of any party to exercise or oppose any of the rights and remedies described in clauses (i) and (ii) or to seek or oppose from a court of competent jurisdiction any of the items described in clauses (iii) and (iv). The exercise of, or opposition to, any of those items does not waive the right of any party to a reference pursuant to this Section 12.1 as provided herein.

**12.1.3** The single referee shall be a retired judge or justice selected by mutual written agreement of the parties. If the parties do not agree within ten (10) days of a written request to do so by any party, then, upon request of any party, the referee shall be selected by the presiding judge of the Court (or his or her representative). A request for appointment of a referee may be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to Section 170.6 of the California Code of Civil Procedure, each party shall have one peremptory challenge to the referee selected by the presiding judge of the Court (or his or her representative).

**12.1.4** The parties agree that time is of the essence in conducting the reference

proceedings. Accordingly, the referee shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within fifteen (15) days after the date of selection of the referee, (ii) if practicable, try all issues within one hundred twenty (120) days after the date of the conference, and (iii) report a statement of decision within twenty (20) days after the matter has been submitted for decision,

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

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

**12.1.7** The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, to enter equitable orders that will be binding on the parties, and to rule on any motion that would be authorized in a court proceeding, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision at the close of the reference proceeding that disposes of all claims of the parties that are the subject of the reference. Pursuant to Section 644 of the California Code of Civil Procedure, such decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court, and any such decision will be final, binding, and conclusive. The parties reserve the right to appeal from the final judgment or order or from any appealable decision or order entered by the referee. The parties reserve the right to findings of fact, conclusions of law, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

**12.1.8** If the enabling legislation that provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted by a retired judge or justice, in accordance with the California Arbitration Act §1280 through §1294.2 of the California Code of Civil Procedure, as amended from time to time. The limitations with respect to discovery set forth in this Section shall apply to any such arbitration proceeding.

**12.1.9** THE PARTIES RECOGNIZE AND AGREE THAT ALL CONTROVERSIES, DISPUTES, AND CLAIMS RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS, HIS, OR HER OWN CHOICE, EACH PARTY KNOWINGLY AND VOLUNTARILY, AND FOR THE

MUTUAL BENEFIT OF ALL PARTIES, AGREES THAT THIS REFERENCE PROVISION WILL APPLY TO ANY CLAIM BETWEEN OR AMONG THEM ARISING OUT OF OR IN ANY WAY RELATED TO THIS INDEMNITY AGREEMENT.

**12.2 Waiver.** Each Indemnitor hereby unconditionally and irrevocably waives:

**12.2.1** an election of remedies by any Indemnified Party, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for the Loan (whether such security is real property or personal property), has destroyed such Indemnitor's rights of subrogation and reimbursement against Borrower by the operation of Section 580d of the California Code of Civil Procedure or otherwise.

**12.2.2** any and all benefits which might otherwise be available to such Indemnitor under California Civil Code Sections 2787 through 2855, 2899, 2953, or 3433, and California Code of Civil Procedure Sections 580a, 580b, 580d and 726.

**12.3 Loan Amount; No Limitation.** The amount of Indemnitors' liability under this Indemnity Agreement is unrelated to, and independent of, the amount of any loss that Lender may suffer by reason of the failure of the Loan to be repaid in full, and shall not be determined by reference to the amount of any Loan loss. No amount paid to any Indemnified Party pursuant to this Indemnity Agreement shall be considered to be paid on account of the Loan or any deficiency or loss suffered by Lender by reason of the failure of the Loan to be repaid in full. The enforcement of this Indemnity Agreement by any Indemnified Party shall not be construed as an indirect attempt to recover any such loan loss. Indemnitors acknowledge that Indemnitors may have liability under this Indemnity Agreement even if the Loan is repaid in full by reason of a full credit bid at any foreclosure sale, and that the amount of Indemnitors' liability hereunder could exceed the entire amount paid by an Indemnified Party for the Property.

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

**12.5 Inspection Rights.** Lender shall have the right to enter and inspect the Property for Hazardous Substances pursuant to California Civil Code Section 2929.5, to obtain a court order to enforce that right, and to have a receiver appointed pursuant to California Code of Civil Procedure Section 564 to enforce Lender's right to enter and inspect the Property.

**12.6 Remedies.**

**12.6.1** Upon any breach of this Indemnity Agreement, each Indemnified Party shall have the right to commence and maintain an action or actions in any court of competent jurisdiction for breach of contract pursuant to California Code of Civil Procedure Section 736, whether commenced prior to foreclosure of the Property or after foreclosure of the Property, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred or advanced by Lender (collectively, the "**Environmental Costs**") relating to the cleanup, remediation or other response action required by Environmental Laws or which Lender believes necessary to protect the Property. Each Indemnitor acknowledges and agrees that notwithstanding any term of provision contained herein or in the Loan Documents, the Environmental Costs shall be exceptions to any non-recourse or exculpatory provision, and each

Indemnitor shall be fully and personally liable for the Environmental Costs hereunder and such liability shall not be limited to the original principal amount of the obligations secured by the Deed of Trust or any other security instrument.

**12.6.2** Upon any Event of Default under the Loan Documents, in addition to any other remedies provided therein and applicable law, Lender shall have the right to waive the lien of the Deed of Trust against the Property or any portion thereof, whether fixtures or personal property, to the extent such property is found to be environmentally impaired in accordance with California Code of Civil Procedure Section 726.5 and to exercise any and all rights and remedies of an unsecured creditor against Indemnitors and all of Indemnitors' assets and property for the recovery of any deficiency, including, without limitation, seeking an attachment order pursuant to California Code of Civil Procedure Section 483.010. As between Indemnified Parties and Indemnitors, for purposes of California Code of Civil Procedure Section 726.5, Indemnitors shall have the burden of proving that they or any related party (or any affiliate or agent of any Indemnitor or any related party) were not in any way negligent in permitting the release or threatened release of the Hazardous Substances. Each Indemnitor acknowledges and agrees that, notwithstanding any term or provision contained herein or in the Loan Documents, all judgments and awards entered against an Indemnitor under this Section and California Code of Civil Procedure Section 726.5 shall be exceptions to any non-recourse or exculpatory provisions of the Loan Documents.

**12.7 California Code Sections.** This Indemnity Agreement is intended to be cumulative of any rights of Lender under California Code of Civil Procedure Sections 564, 726.5 and 736 and under California Civil Code Section 2929.5. Each Indemnitor hereby agrees that its liability hereunder shall not be affected by any restrictions or limitations such statutes may contain.

### **13. TRANSACTION-SPECIFIC PROVISIONS.**

**13.1 Limitation of Funds Available for Indemnity Agreement.** Notwithstanding anything to the contrary contained herein, Lender acknowledges and agrees that Guarantor has no authority to pledge Restricted Assets of Guarantor to support this Indemnity Agreement, and Lender's recourse against Guarantor under this Indemnity Agreement shall not extend to such Restricted Assets. For purposes of this Indemnity Agreement, "**Restricted Assets**" means any funds, subsidy, real or personal property, securities, accounts receivable, inventory, or other assets that Guarantor is prohibited from pledging as collateral or support for its financial obligations pursuant to (i) federal, state, or local laws or regulations, including, without limitation, laws and regulations governing programs administered by U.S. Department of Housing and Urban Development (HUD) in which Guarantor participates, including, without limitation, the Section 8 program, Community Development Block Grant (CDBG) program, the HOME Investment Partnership Act program, Neighborhood Stabilization Program, or Rental Assistance Demonstration or (ii) agreements entered into by Guarantor in connection with the Section 8 program, Community Development Block Grant (CDBG) program, the HOME Investment Partnership Act program, Neighborhood Stabilization Program, Rental Assistance Demonstration, or other housing programs in which it participates.

**13.2 Nonliability of County of Riverside.** LENDER HEREBY ACKNOWLEDGES AND AGREES THAT THE OBLIGATIONS OF BORROWER AND GUARANTOR SET FORTH HEREIN SHALL NOT BE A DEBT, LIABILITY OR OBLIGATION OF THE COUNTY OF RIVERSIDE ("**COUNTY**") OR ANY OF THE COUNTY'S AGENCIES, DISTRICTS, SPECIAL DISTRICTS, AND DEPARTMENTS, THEIR RESPECTIVE DIRECTORS, OFFICERS, BOARD OF SUPERVISORS, EMPLOYEES, ELECTED OR APPOINTED OFFICIALS, AGENTS, OR REPRESENTATIVES AND NEITHER THE COUNTY NOR ANY OF ITS AGENCIES, DISTRICTS, SPECIAL DISTRICTS, AND DEPARTMENTS, THEIR RESPECTIVE DIRECTORS, OFFICERS, BOARD OF SUPERVISORS, EMPLOYEES, ELECTED OR APPOINTED OFFICIALS, AGENTS, OR REPRESENTATIVES SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL SUCH OBLIGATIONS BE PAYABLE OUT OF THE COUNTY'S GENERAL FUND OR OTHER FUNDS, ASSETS OR PROPERTIES OF THE COUNTY OR ANY FUNDS, PROPERTIES OR ASSETS OF THE COUNTY'S AGENCIES, DISTRICTS, SPECIAL DISTRICTS, AND DEPARTMENTS, THEIR RESPECTIVE DIRECTORS, OFFICERS, BOARD OF SUPERVISORS, EMPLOYEES, ELECTED OR APPOINTED OFFICIALS, AGENTS OR REPRESENTATIVES.



[Remainder of Page Intentionally Left Blank; Signature(s) Appear on the Following Page.]

**A CONTRACT, PROMISE, UNDERTAKING OR COMMITMENT TO LOAN MONEY OR GRANT OR EXTEND CREDIT, IN AN AMOUNT GREATER THAN \$100,000, NOT PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, MADE BY A PERSON ENGAGED IN THE BUSINESS OF LENDING MONEY OR EXTENDING CREDIT MUST BE IN WRITING AND SUBSCRIBED BY LENDER OR ITS AGENT TO BE VALID UNDER CALIFORNIA LAW.**

Dated as of the date first set forth above.

**Indemnitors:**

**Borrower:**

PERRIS PARK HOUSING LLC,  
a California limited liability company

By: Riverside Community Housing Corp.,  
a California nonprofit public benefit corporation,  
its Sole Manager/Member

By: \_\_\_\_\_  
Carrie Harmon  
Chief Operating Officer

APPROVED AS TO FORM:  
General Counsel

By: \_\_\_\_\_  
Lisa Sanchez  
Deputy General Counsel

**Guarantor:**

HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE,  
a California public entity, corporate and politic

By: \_\_\_\_\_  
Heidi Marshall  
Executive Director

APPROVED AS TO FORM:  
General Counsel

By: \_\_\_\_\_  
Amrit P. Dhillon, Deputy General Counsel

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOT 1 OF THAT CERTAIN CERTIFICATE OF COMPLIANCE, LOT LINE ADJUSTMENT NO. 99-0022, IN THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, RECORDED APRIL 9, 1999 AS INSTRUMENT NO. 1999-182554 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 5 OF PEROU'S SUBDIVISION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 31, IN TOWNSHIP 4 SOUTH, RANGE 3 WEST, AS SHOWN BY MAP ON FILE IN BOOK 15, PAGE 698 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT SOUTHEAST CORNER OF SAID SECTION 31, SAID POINT ALSO BEING THE CENTERLINE INTERSECTIONS OF PERRIS BOULEVARD AND ELLIS AVENUE AS SHOWN ON MAP FILED IN MAP BOOK 86 PAGE 48 OF RECORD OF SURVEYS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

THENCE NORTH 00° 14' 13" WEST 680.04 FEET ALONG THE CENTERLINE OF PERRIS AVENUE, SAID CENTERLINE ALSO BEING THE EAST LINE OF SAID LOT 5;

THENCE SOUTH 89° 45' 47" WEST 30.00 FEET PERPENDICULAR TO SAID CENTERLINE TO THE WEST RIGHT-OF-WAY LINE OF PERRIS BOULEVARD 30.00 FEET WIDE HALF WIDTH, SAID POINT ALSO BEING THE NORTHEAST CORNER OF PARCEL 1 AS SHOWN ON SAID RECORD OF SURVEY, TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89° 45' 44" WEST 475.35 FEET ALONG THE NORTH LINE OF SAID PARCEL 1;

THENCE SOUTH 00° 14' 16" EAST 629.40 FEET PERPENDICULAR TO SAID NORTH LINE TO A POINT ON THE NORTH RIGHT-OF-WAY OF ELLIS AVENUE, 30.00 FEET WIDE HALF WIDTH;

THENCE NORTH 89° 50' 04" EAST 475.34 FEET ALONG SAID NORTH RIGHT-OF-WAY TO A POINT ON THE WEST RIGHT-OF-WAY OF PERRIS BOULEVARD, 30.00 FEET WIDE HALF WIDTH;

THENCE NORTH 00° 14' 13" WEST 630.00 FEET ALONG SAID WEST RIGHT-OF-WAY LINE TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MATERIALS AS RESERVED TO THE UNITED STATES AS SET FORTH IN AN INSTRUMENT RECORDED MARCH 22, 1895 IN BOOK 26, PAGE 59 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 313-290-020-2

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010  
Post Office Box 1147, Riverside, Ca 92502-1147  
Thank you.

DRAFT 5/4/22  
For Discussion Purposes Only

**REPLACEMENT RESERVE AND  
SECURITY AGREEMENT**



PROJECT NAME: Perris Park Apartments  
LOAN NO: 14014074

This REPLACEMENT RESERVE AND SECURITY AGREEMENT (this "**Agreement**") is made this \_\_\_\_\_, 2022, by PERRIS PARK HOUSING LLC, a California limited liability company ("**Borrower**"), and BANNER BANK, a Washington state-chartered commercial bank, its successors, participants, and assigns ("**Lender**").

**RECITALS:**

A. Borrower has requested a term loan from Lender (the "**Loan**") to refinance an existing term loan from Lender which financed the acquisition of an 80-unit multifamily residential project located in Riverside County, California, known as Perris Park Apartments (the "**Project**"), and finance costs of rehabilitation for the Project.

B. The Loan is evidenced by that certain Promissory Note of even date herewith, in the maximum principal amount of \$3,500,000.00 made by Borrower and payable to the order of Lender (the "**Note**"), and that certain Term Loan Agreement of even date herewith, by and between Borrower and Lender (the "**Loan Agreement**"). Capitalized terms used, but not defined herein, shall have the meanings ascribed to such terms in the Loan Agreement.

C. Concurrently herewith, Borrower will grant to Lender a Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing to be recorded against the Project to secure Borrower's obligations under the Loan (the "**Deed of Trust**").

D. The Note, the Deed of Trust, the Loan Agreement, and all other documents executed in connection with the Loan, including this Agreement, shall be referred to herein as the "**Loan Documents**".

E. Lender requires that Borrower enter into this Agreement and make certain deposits with Lender as provided in this Agreement as additional security for all of Borrower's obligations under the Loan Documents.

**AGREEMENTS**

NOW, THEREFORE, in consideration of the above and the mutual promises contained in this Agreement, the receipt and sufficiency of which are acknowledged, Borrower and Lender agree as follows:

**1. Deposits to the Replacement Reserve.**

1.1 Subject to the provisions of Sections 2, 8 and 17 of this Agreement, on each date that a regularly scheduled payment of principal and interest is due under the Note, commencing with the first month after closing of the Loan, Borrower shall deposit with Lender the applicable Monthly Deposit (as defined in Section 1.2 of this Agreement).

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1.2 The "**Monthly Deposit**" required to be made with each payment of principal and interest on the Note is [\$2,000.00] per month during the term of the Loan.

1.3 The Lender shall deposit each Monthly Deposit, as received, in Banner Bank Account No. \_\_\_\_\_ (the "**Replacement Reserve Account**") which is an interest bearing account for the benefit of Borrower but under the sole dominion and control of Lender. The Monthly Deposits and all other funds in the Replacement Reserve Account are referred to collectively as the "**Replacement Reserve**". Lender or a designated representative of Lender shall have the sole right to make withdrawals from the Replacement Reserve Account in accordance with this Agreement. All interest earned on funds in the Replacement Reserve Account shall be added to and become part of the Replacement Reserve. Lender shall not be responsible for any losses resulting from the investment of the Replacement Reserve or for obtaining any specific level or percentage of earnings on such investment.

## 2. Replacement Reserve is Additional Security.

2.1 Borrower assigns to Lender the Replacement Reserve Account and all funds comprising the Replacement Reserve as additional security for all of Borrower's obligations under the Loan Documents; *provided, however*, upon satisfactory review of all Lender required information, including property cash flow report satisfactory to Lender, Lender shall make disbursements from the Replacement Reserve in accordance with the terms of this Agreement.

2.2 Except as otherwise provided in Section 5.1 and 5.2 of this Agreement, Lender shall make disbursements from the Replacement Reserve to reimburse Borrower for the costs of those items listed on EXHIBIT A (the "**Replacements**") in accordance with the provisions of Section 3 below. Lender shall not be obligated to make disbursements from the Replacement Reserve to reimburse Borrower for the costs of routine maintenance to the Project.

## 3. Disbursements from Replacement Reserve.

### 3.1 Request for Disbursement.

3.1.1 Upon written request from Borrower and satisfaction of the requirements set forth in Sections 3 and 4 of this Agreement, Lender shall disburse to Borrower amounts from the Replacement Reserve necessary to reimburse Borrower or, if Borrower has not yet paid for the approved repairs, to pay for the actual approved costs of Replacements, upon completion of such Replacements (or upon partial completion in the case of Replacements made pursuant to Section 3.1.4 as determined by Lender). In no event shall Lender be obligated to disburse funds from the Replacement Reserve if a default exists under this Agreement (including but not limited to Borrower's failure to pay in full any fees, costs and expenses then due and payable under this Agreement), or a Potential Default or Event of Default exists under any of the other Loan Documents.

3.1.2 Each request for disbursement from the Replacement Reserve Account shall be on a form specified or approved by Lender and shall include invoices or estimates specifying (i) the specific Replacement for which the disbursement is requested, (ii) the quantity and price of each item purchased, if the Replacement includes the purchase or replacement of specific items (such as appliances), (iii) the price of all materials (grouped by type or category) used in any Replacement other than the purchase or replacement of specific items, and (iv) the cost of all contracted labor or other services applicable to each Replacement for which such request for disbursement is made. With each request for disbursement, Borrower shall certify that all Replacements have been made in accordance with all applicable laws, ordinances, and regulations of any governmental office or authority having jurisdiction over the Project. Each request for disbursement shall include copies of invoices for all items or materials purchased and all contracted labor or

services provided and, unless Lender has agreed to issue joint checks as described below in connection with a particular Replacement, each request for disbursement shall include evidence satisfactory to Lender of payment of all such amounts.

**3.1.3** Lender, at its option, may issue joint checks, payable to Borrower and the supplier, materialman, mechanic, subcontractor or other party to whom payment is due in connection with an approved Replacement. In the case of all payments made by joint check, Lender may require a waiver of liens from each contractor receiving payment prior to Lender's disbursement of any further disbursement from the Replacement Reserve.

**3.1.4** If (i) the cost of a Replacement exceeds \$10,000.00, (ii) the contractor performing the Replacement requires periodic payments pursuant to terms of a written contract, and (iii) Lender has approved in writing in advance such periodic payments, a request for reimbursement from the Replacement Reserve may be made after completion of a portion of the work under such contract, provided (a) such contract requires payment upon completion of such portion of the work, (b) the materials for which the request is made are on site at the Project and are properly secured or have been installed in the Project, (c) all other conditions in this Agreement for disbursement have been satisfied, (d) funds remaining in the Replacement Reserve Account are, in Lender's judgment, sufficient to complete such Replacement and the other Replacements when required, and (e) if required by Lender, each contractor or subcontractor receiving payments under such contract shall provide a waiver of lien with respect to amounts which have been paid to that contractor or subcontractor.

**3.1.5** Borrower may request disbursements from the Replacement Reserve Account once per month. Except in connection with the final disbursement, the total cost of all Replacements in any request shall not be less than \$1,000.00. Requests for disbursements for expenses incurred during any fiscal year must be made no later than the last day of the first quarter of the following fiscal year.

#### **4. Performance of Replacements.**

##### **4.1 Workmanlike Completion.**

**4.1.1** Borrower shall make each Replacement when required in order to keep the Project in good order and repair and in a good marketable condition and to keep the Project or any portion thereof from deteriorating. Borrower shall complete all Replacements in a good and workmanlike manner as soon as practicable following the commencement of making each such Replacement.

**4.1.2** Lender shall have the right to approve all contracts or work orders with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Replacements. Upon Lender's request, Borrower shall assign any contract or subcontract to Lender.

**4.1.3** If Lender determines in its sole discretion that any Replacement is not being performed in a workmanlike or timely manner or that any Replacement has not been completed in a workmanlike manner and timely manner, Lender shall have the option to withhold disbursement for such unsatisfactory Replacement and to proceed under existing contracts or to contract with third parties to complete such Replacement and to apply the Replacement Reserve toward the labor and materials necessary to complete such Replacement, upon providing notice to Borrower and to exercise any and all other remedies available to Lender upon a default pursuant to Section 5.2 hereof.

**4.1.4** If at any time Lender determines that replacements not listed on EXHIBIT A are advisable to keep the Project in good order and repair and in a good marketable condition, or

to prevent deterioration of the Project (the "**Additional Replacements**"), Lender may send Borrower written notice of the need for making such Additional Replacements. Borrower shall promptly commence making such Additional Replacements in accordance with all the requirements of this Agreement. If Borrower fails to commence such Additional Replacements within 30 days after such notice and diligently pursues completion of such Additional Replacements, such failure shall be a default under this Agreement, and, in addition to all other rights Lender may have under the Loan Documents upon a default, Lender may contract with third parties to make such Additional Replacements and may at its sole discretion (i) apply the funds in the Immediate Needs & Replacement Reserve toward the labor and materials necessary to complete such Additional Replacements, or (ii) demand payment of such Additional Replacements from Borrower. Except for Section 3.1, all references in this Agreement to "Replacements" shall include the "Additional Replacements".

**4.1.5** In order to facilitate Lender's completion or making of the Replacements pursuant to Sections 4.1.3 and 4.1.4 above, and without limiting Lender's rights under any other Loan Document, Lender is granted the right to enter onto the Project and perform any and all work and labor necessary to complete or make the Replacements and employ watchmen to protect the Project from damage. All sums so expended by Lender shall be deemed to have been advanced to Borrower and secured by the Deed of Trust. For this purpose, Borrower constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake the Replacements in the name of Borrower. Borrower empowers said attorney-in-fact as follows:

**4.1.5.1** to use any funds in the Replacement Reserve for the purpose of making or completing the Replacements;

**4.1.5.2** to make such additions, changes and corrections to the Replacements as shall be necessary or desirable to complete the Replacements;

**4.1.5.3** to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes;

**4.1.5.4** to pay, settle or compromise all existing bills and claims which are or may become liens against the Project, or as may be necessary or desirable for the completion of the Replacements, or for clearance of title;

**4.1.5.5** to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents;

**4.1.5.6** to prosecute and defend all actions or proceedings in connection with the Project or the rehabilitation and repair of the Project; and

**4.1.5.7** to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement.

It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Borrower specifically agrees that all power granted to Lender under this Agreement may be assigned by it to its successors or assigns as holder of the Note.

**4.1.6 Nothing in this Section 4.1 shall:**

4.1.6.1 make Lender responsible for making or completing the Replacements;

4.1.6.2 require Lender to expend funds in addition to the Replacement Reserve to make or complete any Replacement; or

4.1.6.3 obligate Lender to proceed with the Replacements.

**4.2 Entry on the Property; Inspections.**

4.2.1 Without limiting Lender's rights under any other Loan Document, Borrower shall permit Lender or Lender's representatives (including an independent person such as an engineer, architect, or inspector) or third parties making Replacements pursuant to Sections 4.1.3 and 4.1.4 of this Agreement to enter onto the Project during normal business hours (subject to the rights of tenants under their leases) and upon forty-eight (48) hours prior written notice to Borrower to inspect the progress of any Replacements and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Replacements which are or may be kept at the Project, and to complete any replacements made pursuant to Sections 4.1.3 and 4.1.4. Borrower agrees to cause all contractors and subcontractors reasonably to cooperate with Lender or Lender's representatives or such other persons described above in connection with inspections described in this Section 4.2 or the completion of Replacements pursuant to Sections 4.1.3 and 4.1.4

4.2.2 Lender may inspect the Project in connection with any Replacement prior to disbursing funds from the Replacement Reserve for such Replacement. Lender, at Borrower's expense, also may require an inspection by an appropriate independent qualified professional ("**Inspector**") selected by Lender and a copy of a certificate of completion by an independent qualified professional acceptable to Lender prior to the disbursement of any amounts from the Replacement Reserve. Borrower shall pay the Inspector's fee for each such inspection.

**4.3 Lien-Free Completion.**

4.3.1 Borrower covenants and agrees that each of the Replacements and all materials, equipment, fixtures, or any other item comprising a part of any Replacement shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialman's or other liens.

4.3.2 Prior to each disbursement from the Replacement Reserve, Lender may require Borrower to provide Lender with a search of title to the Project effective to the date of the release, which search shows that no mechanic's or materialmen's liens or other liens of any nature have been placed against the Project since the date of recordation of the Deed of Trust and that title to the Project is free and clear of all liens.

4.3.3 In addition, as a condition to any disbursement, Lender may require Borrower to obtain from each contractor, subcontractor, or materialman an acknowledgment of payment and release of lien for work performed and materials supplied. Any such acknowledgment and release shall conform to the requirements of applicable law and shall cover all work performed and materials supplied (including equipment and fixtures for the Project by that contractor, subcontractor or materialman through the date covered by the current reimbursement request (or, in the event that payment to such contractor's, subcontractor or materialmen is to be made by a joint check, the release of lien shall be effective through the date covered by the previous release of funds request).



#### 4.4 Compliance with Laws and Insurance Requirements.

4.4.1 All Replacements shall comply with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction over the Project and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

4.4.2 In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided worker's compensation insurance, builder's risk, and public, liability insurance and other insurance to the extent required under applicable law in connection with a particular Replacement. All such policies shall be in form and amount satisfactory to Lender. All such policies which can be endorsed with standard mortgagee clauses making loss payable to Lender or its assigns shall be so endorsed. The originals of such policies shall be delivered to Lender.

#### 5. Default.

5.1 **Default Under This Agreement.** Borrower shall be in default under this Agreement if it fails to comply with any provision of this Agreement and such failure is not cured within ten (10) days after notice from Lender. Borrower understands that a default under this Agreement shall be deemed to be a default under the Loan Documents, and that in addition to the remedies specified in this Agreement, Lender shall be able to exercise all of its rights and remedies under the Loan Documents upon a default.

#### 5.2 Application of Replacement Reserve Upon Default.

5.2.1 If Borrower defaults on any payment due under any term or provision of any Loan Document (including any default under this Agreement), then, upon any such defaults Borrower shall immediately lose all of its rights to receive disbursements from the Replacement Reserve unless and until all amounts secured by the Deed of Trust have been paid in full and the lien of the Deed of Trust has been released by Lender. Upon any such default, Lender may in its sole and absolute discretion, use the Replacement Reserve (or any portion thereof) for any purpose, including but not limited to: (i) repayment of any indebtedness secured by the Deed of Trust, including but not limited to principal prepayments and the prepayment premium applicable to such full or partial prepayment (as applicable); *provided, however*, that such application of funds shall not cure or be deemed to cure any default; (ii) reimbursement of Lender for all losses and expenses (including, without limitation, reasonable legal fees) suffered or incurred by Lender as a result of such default; (iii) completion of the Replacements as provided in Section 4.1, or for any other repair or replacement to the Project; or (iv) payment of any amount expended in exercising (and exercise) all rights and remedies available to Lender at law or in equity or under this Agreement or under any of the other Loan Documents.

5.2.2 If Lender forecloses the Deed of Trust or acquires the Project by deed in lieu of foreclosure, then Lender may in its sole and absolute discretion, use the Replacement Reserve (or any portion thereof) for any purpose, including but not limited to: (i) repayment of any indebtedness secured by the Deed of Trust, including but not limited to principal prepayments and the prepayment premium applicable to such full or partial prepayment (as applicable); *provided, however*, that such application of funds shall not cure or be deemed to cure any default; (ii) reimbursement of Lender for all losses and expenses (including, without limitation, reasonable legal fees) suffered or incurred by Lender as a result of such default; (iii) completion of the Replacements as provided in Section 4.1 or for any other repair or replacement to the Project; or (iv) payment of any amount expended in exercising (and exercise) all rights and remedies available to Lender at law or in equity or under this Agreement or under any of the other Loan Documents.

5.2.3 Nothing in this Agreement shall obligate Lender to apply all or any portion of the Replacement Reserve on account of any default by Borrower or to repayment of the indebtedness secured by the Deed of Trust or in any specific order of priority.

6. **Borrower's Other Obligations.** Nothing contained in this Agreement shall in any manner whatsoever alter, impair or affect obligations of Borrower, or relieve Borrower of any of its obligations, to make payments and perform all of its other obligations required under the Loan Documents.

7. **Remedies Cumulative.** None of the rights and remedies conferred upon or reserved to Lender under this Agreement is intended to be exclusive of any other right, and each and every right shall be cumulative and concurrent, and may be enforced separately, successively or together, and may be exercised from time to time as often as may be deemed necessary by Lender.

8. **Balance in the Replacement Reserve.** The insufficiency of any balance in the Replacement Reserve shall not abrogate Borrower's agreement to fulfill all preservation and maintenance covenants in the Loan Documents. In the event Lender determines from time to time based on Lender's inspections that the amount of the Monthly Deposit is insufficient to fund the cost of likely Replacements and related contingencies that may arise during the remaining term of the Loan, Lender may require an increase in the amount of the Monthly Deposits upon 30 days prior written notice to Borrower.

9. **Indemnification.** Borrower agrees to indemnify and defend Lender and to hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) arising from or in any way connected with the performance of the Replacements or the holding or investment of the Replacement Reserve. Borrower assigns to Lender all rights and claims Borrower may have against all persons or entities supplying labor or materials in connection with the Replacements; *provided, however*, that Lender may not pursue any such right or claim unless Borrower is in default under this Agreement or the Loan Documents. Notwithstanding the foregoing, Borrower shall have no obligation to indemnify Lender or hold Lender harmless under this Section 9 to the extent any of the foregoing is caused by the gross negligence or willful misconduct of Lender.

10. **Determinations by Lender.** Except as otherwise provided in this Agreement, in any instance in this Agreement where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender (or its designated representative) at its discretion.

11. **Borrower's Records.** Borrower shall furnish such financial statements, invoices, records, papers and documents relating to the Project as Lender may reasonably require from time to time to make the determinations permitted or required to be made by Lender under this Agreement.

12. **Fees and Expenses.** Borrower shall pay within thirty (30) days of request from Lender (i) all reasonable costs and expenses incurred by Lender in connection with collecting, holding and disbursing the Replacement Reserve pursuant to this Agreement, and (ii) all reasonable fees, charges, costs and expenses incurred by Lender in connection with inspections made by Lender or Lender's representatives in carrying out Lender's responsibility to make certain determinations under this Agreement.

13. **Successors and Assigns Bound.** This Agreement shall be binding upon Borrower and Lender and their respective successors and assigns, and shall inure to the benefit of and may be enforced by the Lender and its successors, transferees and assigns. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Lender.

**14. No Third Party Beneficiary.** This Agreement is intended solely for the benefit of Borrower and Lender and their respective successors and assigns, and no third party shall have any rights or interest in the Replacement Reserve or this Agreement. Nothing contained in this Agreement shall be deemed or construed to create an obligation on the part of Lender to any third party, nor shall any third party have a right to enforce against Lender any right that Borrower may have under this Agreement.

**15. Completion of Replacements.** Lender's approval of any plans for any Replacement, release of funds from the Replacement Reserve, inspection of the Project by Lender or Lender's agents, or other acknowledgment of completion of any Replacement in a manner satisfactory to Lender shall not be deemed an acknowledgment or warranty to any person that the Replacement has been completed in accordance with applicable building, zoning or other codes, ordinances, statutes, laws, regulations or requirements of any governmental agency.

**16. No Agency or Partnership.** Nothing contained in this Agreement shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations, or contracts of Borrower.

**17. Assumption of Loan/Transfer of Ownership Interests.** If a Transfer (as defined in the Deed of Trust) of all or part of the Project or a direct or indirect ownership interest in Borrower shall occur, which Transfer pursuant to the terms of the Deed of Trust requires the prior written consent of Lender, Lender may review the amount of the Replacement Reserve, the amount of the Monthly Deposits and the likely repairs and replacements required by the Project and the related contingencies which may arise during the remaining term of the Loan. Based upon that review, Lender may require an additional deposit to the Replacement Reserve, and/or an increase in the amount of the Monthly Deposits as a condition to Lender's consent to such Transfer. In all events, the purchasers shall be required to assume Borrower's duties and obligations under this Agreement and shall be required to execute and deliver to Lender such documents as Lender requires to effectuate such assumption of duties and obligations. No transfer and assumption shall relieve the transferor of its obligations under this Agreement or any of the other Loan Documents, unless Borrower has obtained the prior written consent of Lender.

**18. Termination of Replacement Reserve.** After payment in full of all sums secured by the Deed of Trust and release by Lender of the lien of the Deed of Trust, Lender shall disburse to Borrower all amounts remaining in the Replacement Reserve.

**19. Entire Agreement; Amendment and Waiver.** This Agreement contains the complete and entire understanding of the parties with respect to the matters covered and no change or amendment shall be valid unless it is made in writing and executed by the parties to this Agreement. No specific waiver or forbearance for any breach of any of the terms of this Agreement shall be considered as a general waiver of that or any other term of this Agreement. If any provision of this Agreement is in conflict with any provision of the Deed of Trust regarding the Replacement Reserve, the provision contained in this Agreement shall control.

**20. Notices.** All notices under this Agreement shall be given in writing to the other party at the address, and in the manner, provided in the Loan Agreement.

**21. Counterparts.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of such counterparts taken together shall constitute but one and the same instrument.

**22. Judicial Reference.** ALL DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED BY JUDICIAL REFERENCE PURSUANT TO THE PROVISIONS OF THE LOAN AGREEMENT.

23. **Severability.** The invalidity, illegality, or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.

24. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the Project is located.

**[Remainder of page intentionally left blank; signatures appear on the following page]**

Borrower and Lender have executed this Agreement on the date and year first written above.

**BORROWER:**

PERRIS PARK HOUSING LLC,  
a California limited liability company

By Riverside Community Housing Corp.,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Carrie Harmon  
Chief Operating Officer

**LENDER:**

BANNER BANK,  
a Washington state-chartered commercial bank

By: \_\_\_\_\_  
Waheed Karim  
Vice President

**EXHIBIT A**

**TO REPLACEMENT RESERVE AND SECURITY AGREEMENT**

Project specific expenses payable to third parties including but not limited to the items listed:

- Carpets
- Kitchen (Sinks, Counter Tops, Cabinetry)
- Bathroom (Sinks, Toilets, Tubs)
- Dishwashers
- Range/Ovens
- Siding
- Gutters, Downspouts & Related Eaves or Soffits
- Asphalt/Parking Lot Seal
- Water Heaters
- Refrigerators
- Washer/Dryers
- Walk Ways
- Drapes/Shades/Blinds
- Vinyl & Tile Flooring
- Dumpsters/Dumpster Enclosures
- Window Coverings (Drapes, Shades, Blinds)
- Air Conditioners
- Doors
- Heating Equipment
- Carport Roofs
- Windows
- Chimneys
- Decks/Balconies
- Roofs
- Electrical
- Smoke Detectors
- Retaining Walls
- Access Gates
- Major Building Systems
- Concrete
- Security System
- Property Signage
- Playground
- Railings/Risers
- Fencing

The items listed are presented as possible expenses payable from the Replacement Reserve Account and in no way are to be considered approved. All expenses submitted for payment are subject to Lender's approval.

## ASSIGNMENT AND SUBORDINATION OF PROPERTY MANAGEMENT AGREEMENT



PROJECT NAME: Perris Park Apartments  
BANNER LOAN NO. 14014074

This ASSIGNMENT AND SUBORDINATION OF PROPERTY MANAGEMENT AGREEMENT (this "**Agreement**"), dated as of \_\_\_\_\_, 2022, by PERRIS PARK HOUSING LLC, a California limited liability company ("**Borrower**"); and HYDER & COMPANY, a California corporation ("**Manager**"), for the benefit of BANNER BANK, a Washington state chartered commercial bank, its successors, participants, and assigns ("**Lender**").

### RECITALS

- A. Borrower has requested a term loan from Lender (the "**Loan**") to refinance an existing term loan from Lender which financed the acquisition of an 80-unit multifamily residential project located in Riverside County, California, known as Perris Park Apartments (the "**Project**"), and finance costs of rehabilitation for the Project.
- B. The Loan is evidenced by that certain Promissory Note of even date herewith, in the maximum principal amount of \$3,500,000.00 made by Borrower and payable to the order of Lender (the "**Note**"), and that certain Term Loan Agreement of even date herewith, by and between Borrower and Lender (the "**Loan Agreement**").
- C. Concurrently herewith, Borrower will grant to Lender a Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing to be recorded against the Project to secure Borrower's obligations under the Loan (the "**Deed of Trust**").
- D. The Note, the Deed of Trust, the Loan Agreement, and all other documents executed in connection with the Loan, including this Assignment, shall be referred to herein as the "**Loan Documents**".
- E. Among the conditions to closing of the Loan is a requirement that Borrower assign to Lender its interest in that certain Property Management Agreement between Borrower and Manager dated July 2, 2019 (as it may be extended or otherwise amended, the "**Management Agreement**").
- F. It is a condition precedent to closing of the Loan that Borrower and Manager execute this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and Lender's agreement to make the Loan, the parties hereby agree as follows:

1. **Certain Defined Terms.** All capitalized terms used, but not otherwise defined, herein shall have the respective meanings set forth in the Loan Documents. In addition, as used herein, the following terms shall be defined as follows:

1.1 "**Bankruptcy Event**" means shall mean the occurrence of any one or more of the following: (i) Borrower files a voluntary petition or commences a proceeding under bankruptcy or insolvency laws; (ii) an involuntary petition or proceeding under bankruptcy or insolvency laws is filed or commenced against Borrower; (iii) Borrower makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of all or any part of its property;

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(iv) all or any part of the assets of Borrower, or the proceeds thereof, are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors; or (v) all or any part of the assets of Borrower, or the proceeds thereof, are distributed to creditors of Borrower or applied to any indebtedness of Borrower by reason of the liquidation, dissolution or other winding up of Borrower.

1.2 “**Senior Obligations**” means the obligations of Borrower, whether now existing or hereafter from time to time accruing or arising, to repay the principal of, and to pay interest (including, without limitation, post-petition interest) on, the Loan and all other amounts whatsoever now or hereafter arising under the Loan Documents, including, without limitation, all interest accrued subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding.

1.3 “**Subordinated Obligations**” means the obligations of Borrower, whether now existing or hereafter from time to time accruing or arising, to pay any and all fees, sums, charges, costs, expenses, penalties, and other amounts now or hereafter payable to Manager (other than reimbursable expenses) under the Management Agreement, including, without limitation, all interest accrued subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding.

2. **Assignment and Consent.** Borrower hereby transfers, assigns and sets over to Lender, its successors and assigns, all right, title and interest of Borrower in and to the Management Agreement. Manager hereby consents to the foregoing assignment. Manager further consents to assignment of the Management Agreement by Lender following foreclosure, deed-in-lieu of foreclosure, or other realization of Lender’s interest in the Management Agreement, to a party with experience and financial wherewithal comparable to that of Borrower, as determined by Lender in the reasonable exercise of its discretion, and notwithstanding the terms of the Management Agreement. The foregoing assignment is being made by Borrower to Lender as collateral security for the full payment and performance by Borrower of all of its obligations under the Loan Documents. Although it is the intention of the parties that the assignment hereunder is a present assignment, until the occurrence of an Event of Default under any of the Loan Documents, Borrower may exercise all rights as owner of the Property under the Management Agreement, except as otherwise provided in this Agreement. The foregoing assignment shall remain in effect as long as the Loan, or any part thereof, remains unpaid, but shall terminate automatically upon the release of the Deed of Trust as a lien on the Property.

3. **Representations and Warranties.** Manager hereby represents and warrants to Lender that:

3.1 the Management Agreement is in full force and effect;

3.2 the copy of the Management Agreement attached hereto as EXHIBIT A, including all amendments thereto are true and complete, and the Management Agreement is the only agreement in effect covering the subject matter thereof;

3.3 as of the date hereof, all fees, sums, charges, costs, expenses and other amounts due and payable under the Management Agreement have been paid except such amounts as are scheduled for payment in the next thirty (30) days;

3.4 No breach or default by Borrower or Manager has occurred and is continuing under the Management Agreement;

3.5 as of the date hereof, no notice of termination and/or cancellation has been given or received under the Management Agreement, no event or condition has occurred or exists under the Management Agreement which entitles either party thereto to give a notice of termination or cancellation under such Management Agreement (such an event, a “**Termination Event**”), and to the best of Manager’s knowledge, no event or condition



has occurred or exists under the Management Agreement which with the passage of time or the giving of notice or both would constitute a Termination Event;

3.6 to the best of Manager's knowledge, there are no set-offs, counterclaims or defenses to the performance or observance of the covenants or agreements of the parties to the Management Agreement;

3.7 the Subordinated Obligations are unsecured; and

3.8 the individual executing this Agreement on Manager's behalf has full power and authority to do so.

4. **Covenants of Manager.** Until such time as all of the Senior Obligations shall have been fully paid, discharged and satisfied:

4.1 Notwithstanding anything to the contrary in the Management Agreement, Manager's aggregate compensation under the Management Agreement shall not exceed the Maximum Contract Amount (as defined in the Management Agreement);

4.2 Manager will (i) promptly perform and observe all of the covenants and agreements to be performed and observed by Manager under the Management Agreement in accordance with the terms thereof, and (ii) promptly notify Lender of any default under the Management Agreement of which Manager becomes aware;

4.3 Manager will not (i) reduce or permit the reduction of the term of the Management Agreement, (ii) increase or permit the increase of the amount of any fees payable under the Management Agreement (which fees, in the aggregate, shall not exceed the Maximum Contract Amount), or (iii) otherwise modify any portion of the Management Agreement, orally or by a writing, in such a manner as to materially reduce or limit Manager's obligations thereunder;

4.4 Manager shall not assign or transfer responsibility for the management services of the Property from Manager to any other person or entity without Lender's prior written consent;

4.5 Manager shall not contest or impede Lender's exercise of any of Lender's rights under this Agreement or the other Loan Documents;

4.6 Manager shall deposit all funds of the Project in one or more bank accounts established at Banner Bank, and Manager shall not commingle the funds of the Project with the funds of any other person or project; and

4.7 Manager shall, within fifteen (15) days after Lender's request, deliver to Lender a written statement certifying any condition or state of facts in connection with the Management Agreement or Subordinated Obligations.

5. **Lender's Rights.** Upon the occurrence of an Event of Default under the Loan Documents (a) Lender shall be entitled to exercise any and all rights of Borrower under the Management Agreement in accordance with the terms thereof, and (b) Manager shall permit and comply in all respects with Lender's exercise of such rights and remedies. Lender may cure any default by Borrower under the Management Agreement, and may perform any act, duty or obligation required to be performed by Borrower under the Management Agreement; *provided, however*, that nothing herein shall require Lender to cure any such default or to perform any such act, duty, or obligation. Lender's rights hereunder may be exercised by any receiver appointed at Lender's request.

## **6. Subordination.**

6.1 The Management Agreement is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Deed of Trust and the other Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Loan Documents (including all sums advanced for the purposes of (i) protecting or further securing the lien of the Deed of Trust, curing Events of Default by Borrower under the Loan Documents or for any other purposes expressly permitted by the Loan Documents, or (ii) constructing, renovating, repairing, furnishing, fixturing or equipping the Project).

6.2 If, by reason of its exercise of any other right or remedy under the Management Agreement, Manager acquires by right of subrogation or otherwise a lien on the Property which (but for this Section 6) would be senior to the lien of the Deed of Trust, then, in that event, such lien shall be subject and subordinate to the lien of the Deed of Trust.

6.3 During the term of this Agreement, Manager will not commence or join with any other creditor in commencing any Bankruptcy Event with respect to Borrower, without Lender's prior written consent.

## **7. Termination of Management Agreement.**

7.1 Upon the occurrence of an Event of Default, Lender may terminate the Management Agreement, at any time and without cause, by written notice to Manager. Upon such termination, unless expressly assumed by Lender, Lender shall not have any liability to Manager for any unpaid fees or expenses of any kind including, without limitation, any termination fees or penalties under the Management Agreement.

7.2 If not sooner terminated in accordance with the provisions hereof, at any time after acquiring title to the Property, through foreclosure, deed-in-lieu of foreclosure or the exercise of any other remedy, Lender may terminate the Management Agreement without cause by delivery of thirty (30) days' prior written notice to Manager (or such lesser time period as may be permitted under the terms of the Management Agreement for a notice of termination). Upon such termination, unless expressly assumed by Lender, Lender shall not have any liability to Manager for any unpaid fees or expenses of any kind including, without limitation, any termination fees or penalties under the Management Agreement; provided that for the period from Lender's acquisition of the Property through the date of such termination, and provided Manager is not in default under the Management Agreement, Lender shall be obligated to pay a monthly management fee in an amount not to exceed the *lesser of* (a) the amount provided in the Management Agreement or (b) the Maximum Contract Amount, which fee shall be prorated for any period less than a full calendar month.

8. **Attornment.** So long as Lender has not terminated the Management Agreement pursuant to the terms of Section 7 above, at any time after Lender has acquired title to the Property, through foreclosure, deed-in-lieu of foreclosure or the exercise of any other remedy, Manager shall attorn to Lender and be bound by all of the terms, covenants and conditions of the Management Agreement for so long as the Management Agreement shall be in effect, including through the term of any extensions or renewals thereof, with the same force and effect as if Lender were a party to the Management Agreement. Such attornment shall be effective and self-operative as an agreement between Manager and Lender without the execution of any further instruments on the part of any party; *provided, however*, that at Lender's request, Manager shall execute an instrument confirming such attornment.

## **9. Defaults; Right to Cure.**

9.1 Notwithstanding anything contained in the Management Agreement to the contrary, Manager shall have no right to take any action under the Management Agreement with respect to any default by Borrower, including, without limitation, any action to terminate the Management Agreement, and/or to withhold any

payments thereunder, without the express prior written consent of Lender and any such purported action or termination, absent such consent, shall be null, void and of no effect.

**9.2** If the Management Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving Borrower, and if within ninety (90) days after such rejection (or such shorter period within which Manager may be required to cease its activities pursuant to such a proceeding, but in no event later than ten (10) days prior to any such required cessation of activities) Lender may elect to certify in writing to Manager that Lender intends to perform the obligations of Borrower as and to the extent required under the applicable Management Agreement, and subject to Section 10 below, upon Lender's request Manager will execute and deliver to Lender a new Management Agreement, as applicable. Manager and Lender shall agree under such new Management Agreement to perform the obligations contemplated to be performed by Manager and Borrower, respectively, under the original Management Agreement, and such new Management Agreement shall be for a term equal to the remaining term under the original Management Agreement before giving effect to such rejection. Such new Management Agreement shall contain the same conditions, agreements, terms, provisions and limitations as the original Management Agreement (subject to Section 10 below).

**10. Liability of Lender.** Except as expressly assumed by Lender in writing, Lender shall have no liability to Manager under the Management Agreement accruing before or after Lender's acquisition of Borrower's interest in the Project through judicial or non-judicial foreclosure, conveyance in lieu of foreclosure, or the exercise of any other remedy provided under the Loan Documents, or at law, or in equity, except for (i) a management fee not to exceed the maximum fee set forth in Section 7.2 above accruing after Lender's acquisition of Borrower's interest in the Project and prior to termination of the Management Agreement, and prorated for any partial month, and (ii) reimbursable expenses actually incurred by Manager after Lender's acquisition of Borrower's interest in the Project and prior to termination of the Management Agreement. Without limiting the generality of the foregoing, under no circumstances shall Lender be:

- 10.1** liable for any omission, breach, or default by Borrower under the Management Agreement;
- 10.2** subject to any offsets, defenses, or counterclaims Manager may have against Borrower;
- 10.3** liable for any amounts due Manager under the Management Agreement, except for those expressly set forth above;
- 10.4** bound by any obligation of Borrower to indemnify or defend Manager;
- 10.5** liable for any representations or warranties of Borrower; or
- 10.6** bound by any amendment, modification, restatement, or supplement of the Management Agreement made without Lender's prior written consent, except for an extension of the term of the Management Agreement.

**11. No Waiver.** No failure to exercise, and no delay in exercising, and no course of dealing with respect to, any power, remedy or right under this Agreement by Lender shall operate as a waiver thereof, nor shall any single or partial exercise thereof by Lender preclude any other or further exercise thereof or the exercise of any other power, remedy or right. The remedies provided herein are cumulative and not exclusive of any remedies available at law or under the Loan Documents.

**12. Notice.** Any notice, demand, request, or other communication that any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three (3) business days after mailing; or (c) if by Federal Express or other reliable overnight courier service, on the next business day after delivered to such courier service, in each instance to the recipient's address set forth below:

**Manager:** HYDER & COMPANY  
1649 Capalina Rd, Suite 500  
San Marcos, CA 92069  
Attn: Gary Da Prato

**Lender:** BANNER BANK  
5930 Granite Lake Drive, Suite 170  
Granite Bay, CA 95746  
Attn: Sandy Bowen

Either party may change its address for notices by notifying the other party in writing of the change.

**13. Amendments, Waivers in Writing.** This Agreement cannot be amended except by an agreement in writing, signed by Lender, Borrower and Manager, and no provision hereof may be waived except by an instrument in writing signed by Lender.

**14. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California.

**15. Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid and/or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is illegal, invalid and/or unenforceable, as the case may be, shall not be affected, and each provision of this Agreement shall be legal, valid and enforceable to the extent permitted by law. The illegality, invalidity and/or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the legality, validity and/or enforceability thereof in any other jurisdiction.

**16. Expenses.** If any suit or other proceeding is instituted by Lender to enforce this Agreement (or any portion hereof), Borrower shall pay, upon demand, all costs and expenses (including, without limitation, attorneys' fees and disbursements including, without limitation, expert witness fees, exhibit preparation expenses, document copying expenses, courier charges, postage and communication expenses) incurred by Lender in connection therewith. The obligations of Borrower under this Section shall survive the expiration or termination of this Agreement.

**17. Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns. Notwithstanding the foregoing, neither Borrower nor Manager may assign its rights or obligations hereunder. Lender may freely assign its rights and obligations hereunder. Each reference herein to "Lender" shall be deemed a reference to "Lender, its successors and/or assigns, as the case may be". If Lender sells or assigns its interest in and to the Loan, all of Lender's rights hereunder shall be and become the rights of such successor or assignee, exercisable by it as if such successor or assignee was itself a party hereto.

**18. Counterparts.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of such counterparts taken together shall constitute but one and the same instrument.

**19. Acknowledgement by Borrower.** Borrower acknowledges notice of the foregoing subordination and agrees to make no payments to Manager except in accordance with the terms of this Agreement so long as this Agreement remains in effect.

**20. Judicial Reference.** The parties agree to proceed under this judicial reference provision as follows:

**20.1** With the exception of the items specified in Section 21.2 below, any controversy, dispute or claim (each a "**Claim**") between the parties arising out of or relating to this Agreement will be resolved by a reference

proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure, or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to the reference proceeding. Venue for the reference proceeding will be in the state or federal court in the county or district where venue is otherwise appropriate under applicable law (the "**Court**").

**20.2** The matters that shall not be subject to a reference are the following: (i) non-judicial foreclosure of any security interests in real or personal property, (ii) exercise of self-help remedies (including, without limitation, set-off), (iii) appointment of a receiver, and (iv) temporary, provisional, or ancillary remedies (including, without limitation, writs of attachment, writs of possession, temporary restraining orders or preliminary injunctions). This reference provision does not limit the right of any party to exercise or oppose any of the rights and remedies described in clauses (i) and (ii) or to seek or oppose from a court of competent jurisdiction any of the items described in clauses (iii) and (iv). The exercise of, or opposition to, any of those items does not waive the right of any party to a reference pursuant to this Section 21 as provided herein.

**20.3** The single referee shall be a retired judge or justice selected by mutual written agreement of the parties. If the parties do not agree within ten (10) days of a written request to do so by any party, then, upon request of any party, the referee shall be selected by the presiding judge of the Court (or his or her representative). A request for appointment of a referee may be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to Section 170.6 of the California Code of Civil Procedure, each party shall have one peremptory challenge to the referee selected by the presiding judge of the Court (or his or her representative).

**20.4** The parties agree that time is of the essence in conducting the reference proceedings. Accordingly, the referee shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within fifteen (15) days after the date of selection of the referee, (ii) if practicable, try all issues within one hundred twenty (120) days after the date of the conference, and (iii) report a statement of decision within twenty (20) days after the matter has been submitted for decision,

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

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

**20.7** The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, to enter equitable orders that will be binding on the parties, and to rule on any motion that would be authorized in a court proceeding, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision at the close of the reference proceeding that disposes of all claims of the parties that

are the subject of the reference. Pursuant to Section 644 of the California Code of Civil Procedure, such decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court, and any such decision will be final, binding, and conclusive. The parties reserve the right to appeal from the final judgment or order or from any appealable decision or order entered by the referee. The parties reserve the right to findings of fact, conclusions of law, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

**20.8** If the enabling legislation that provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted by a retired judge or justice, in accordance with the California Arbitration Act §1280 through §1294.2 of the California Code of Civil Procedure, as amended from time to time. The limitations with respect to discovery set forth in this Section shall apply to any such arbitration proceeding.

**20.9** THE PARTIES RECOGNIZE AND AGREE THAT ALL CONTROVERSIES, DISPUTES, AND CLAIMS RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS, HIS, OR HER OWN CHOICE, EACH PARTY KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, AGREES THAT THIS REFERENCE PROVISION WILL APPLY TO ANY CLAIM BETWEEN OR AMONG THEM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT.

**[Remainder of Page Intentionally Left Blank; Signatures Appear on Following Page]**

IN WITNESS WHEREOF, Lender, Borrower and Manager have duly executed and delivered this Agreement as of the day and year first above written.

**BORROWER:**

PERRIS PARK HOUSING LLC,  
a California limited liability company

By Riverside Community Housing Corp.,  
a California nonprofit public benefit corporation,  
its sole manager/member

By: \_\_\_\_\_  
Carrie Harmon  
Chief Operating Officer

**LENDER:**

BANNER BANK,  
a Washington state chartered commercial bank

By: \_\_\_\_\_  
Waheed Karim  
Vice President

**MANAGER:**

HYDER & COMPANY,  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**MANAGEMENT AGREEMENT**

[See attached]