



February 15, 2024

**TO:** CADA Board of Directors

**SUBJECT:** **February 23, 2024 Board Meeting**  
**AGENDA ITEM 6**

**MIDDLE INCOME HOUSING PROGRAM – NOTICE OF FUNDING  
AVAILABILITY (NOFA) RECOMMENDATIONS**

**CONTACT:** Danielle Foster, Executive Director  
Marc de la Vergne, Deputy Director  
Todd Leon, Development Director

**RECOMMENDED ACTION:**

Staff is recommending the Board adopt the attached resolution (Attachment 1), authorizing the Executive Director, or her designee, to execute the attached forms of Promissory Note, Deed of Trust, and Regulatory Agreement, substantially consistent with the enclosed drafts to provide: (1) a \$25,000, one-year loan at three percent interest to the three limited partnerships for the Studio30, Esperanza, and Grace projects; (2) a 55-year Regulatory Agreement on each property for the provision of 203 low- and moderate- income housing units collectively for households at or below 80% and 120% of the Area Median Income (AMI); and completion of any other related documents necessary to these transactions. These loans shall be provided in sequence once each active project obtains a certificate of occupancy and as each new project gains full financing and starts construction.

**BACKGROUND**

In June 2023, CADA created the Middle-Income Housing Program and adopted program guidelines and a budget after initiating its first project agreement for 1901 8<sup>th</sup> Street that resulted in 65 units at 80% of Area Median Income (AMI) and below and 7 units at 120% of Area Median Income (AMI) and below. Subsequent to this initial project approval, CADA decided to open up dialogue and an opportunity for developers to hear more about this new program and have an equal opportunity to access the remaining \$150,000 budgeted for the program through a Notice of Funding Availability (NOFA) before offering the funds through “over the counter” applications as potential projects apply.

At the end of September 2023, CADA issued a NOFA that had a submittal deadline of October 30, 2023. The NOFA information was distributed broadly amongst the development community, partners, and posted on CADA’s BID and RFP Opportunities website. As a result of this NOFA process, CADA received the following program applications:

1. Studio30 – 30 Units at 16<sup>th</sup> and E Streets (Urban Capital)
2. Esperanza – 132 Units at 12<sup>th</sup> and E Streets (Urban Capital)
3. Grace – 41 Units at 15<sup>th</sup> and G Streets (Urban Capital)

Details of each application are provided in the Analysis section below. Each project is requesting the following terms:

- A loan in the amount of \$25,000 (per project) with a one-year term at 3% interest
- A 55-Year Regulatory Agreement, maintaining affordability over that term (subject to continued welfare tax exemption laws)

Projects would provide units from 80% AMI (low-income) to 120% AMI (moderate-income), with the moderate-income units being leased at a rent affordable to the tenant, based on their income and at a minimum affordability amount affordable to an 80% AMI household. Urban Capital is currently working with Pacific Housing as its non-profit partner on these project partnerships and is exploring opportunities to work with other non-profit partners, as may be beneficial to the tenants, the projects, and other non-profit agencies. The final Managing General Partner for each of the three projects would be subject to CADA staff approval.

## **ANALYSIS**

Staff is excited to support the continued offering of this housing affordability level that is not currently being served by typical affordable housing development nor by conventional market rate development. While the recommended projects are outside the CADA Capitol Area Plan Area and the R Street Project Area, development of these units will greatly benefit CADA's project areas and the downtown community overall while not relying heavily on assistance from CADA. Specifically, providing CADA R Street Area funds to these projects through three one-year loans will provide a half unit credit back to CADA for each apartment unit assisted. So, for 203 units, CADA will receive a 101-unit credit for the R Street Project Area. Each loan will have a term of one year. Following repayment, the loan funds will be available to fund additional projects.

**Studio 30 (16<sup>th</sup> and E Streets):** The "Studio30" project includes 30 housing units located at 500 16<sup>th</sup> Street, on the vibrant and recently-revitalized 16<sup>th</sup> Street corridor. This multifamily project will include twenty 324 square foot studios and ten 450 square foot one-bedroom lofts. Units will feature full size kitchen appliances, an in-unit washer and dryer, and access to 15 long-term bike stalls. The building will be fully electric and enrolled in SMUD's Solar Shares Program.

Proposed affordability (a minimum of):

<b>Affordability Levels</b>	<b>Unit Sizes</b>
Up to 80% AMI (low income)	15 Studios
Up to 120% AMI (moderate income)	5 Studios and 10 One-Bedroom Loft Units

The project developers believe this mix of units will allow them to adapt to the clientele that apply at the project. They have indicated that they will provide additional 80% units if that's where the greatest resident demand is identified. The welfare tax exemption will be prorated based on the number of qualifying 80% AMI households and rents. The project will be owned and operated through a partnership of Pacific Housing and Urban Capital. Pacific Housing is a qualified non-profit with over two decades of affordable housing experience and a 100% success rate complying with welfare tax exemption requirements on 287 properties statewide.

The project was financed by the following entities:

- Equity -- \$2.87 million
  - Provided by Urban Capital and DJM Capital Partners
- Debt -- \$4.4 million (12-month construction loan with 6-month extension option)
  - Mission National Bank
  - Personal guarantees by developer
  - Refinance to permanent financing to occur with a 1.25 debt service coverage ratio.

This project is currently under construction with an estimated completion of Fall 2024.

**Grace (15<sup>th</sup> and G Streets):** The “Grace” project includes 41 housing units located at 620-628 15<sup>th</sup> Street, on the vibrant 15<sup>th</sup> Street corridor. This multifamily project will include eleven 324 square foot studios and thirty-two 450 square foot one-bedroom lofts. Units will feature full size kitchen appliances, an in-unit washer and dryer, and a ground floor restaurant. The residential units will be fully electric and enrolled in SMUD’s Solar Shares Program.

Proposed affordability (a minimum of):

Affordability Levels	Unit Sizes
Up to 80% AMI (low income)	10 Studios
Up to 120% AMI (moderate income)	1 Studio and 30 One-Bedroom Loft Units

Actual affordability will be subject to requirements of additional funding sources and will be decided following finalizing the sources in the project proforma. The project developers believe this mix of units will allow them to adapt to the clientele that apply at the project. They have indicated that they will provide additional 80% units if that’s where the greatest resident demand is identified. The welfare tax exemption will be prorated based on the number of qualifying 80% AMI households and rents. The project will be owned and operated through a partnership of Pacific Housing and Urban Capital, unless another non-profit partner offers a better fit for the project and is approved by CADA staff.

This project is pending full capitalization with the following sources to date and planned sources and uses:

- Equity Raised to Date -- \$1.23 million (\$4.387 million goal)
  - Provided by Urban Capital Qualified Opportunity Fund
  - \$3.15 million pending, out to market with JLL
- Debt -- \$6.91 million
  - Debt Term Sheets Received - \$6.5 - \$7.1 million
  - Archway Capital and Genesis Capital
  - Developer has worked with Genesis Capital four times prior

Sequencing between Grace and the next project, Esperanza, will be based on financing.

**Esperanza (12<sup>th</sup> and E Streets):** The “Esperanza” project includes 132 housing units located at 424 12<sup>th</sup> Street on the vibrant and revitalizing 12<sup>th</sup> Street corridor. This multifamily project will include eighty-six 324 square foot studios and forty-six 450 square foot one-bedroom lofts. Units will feature full size kitchen appliances, an in-unit washer and dryer, and access to over 60 long-

term bicycle parking stalls. The building will be fully electric and enrolled in SMUD’s Solar Shares Program.

Proposed affordability (a minimum of):

<b>Affordability Levels</b>	<b>Unit Sizes</b>
Up to 80% AMI (low income)	32 Studios
Up to 120% AMI (moderate income)	54 Studio and 46 One-Bedroom Loft Units

Actual affordability will be subject to requirements of additional funding sources and following finalizing the sources for the project proforma. The project developers believe this mix of units will allow them to adapt to the clientele that apply at the project. They have indicated that they will provide additional 80% units if that’s where the greatest resident demand is identified. The welfare tax exemption will be prorated based on the number of qualifying 80% AMI households and rents. The project will be owned and operated through a partnership of Pacific Housing and Urban Capital and will be professionally managed through FPI Property Management, unless otherwise approved by CADA.

Urban Capital and Ibex Ventures are aiming to fully capitalize the project by May 2024. JLL took the project to market on November 1, 2023.

- Equity (pending) -- \$12.07 million
- Debt (pending) -- \$16.55 million

The project developers can provide a verbal update on this project’s financing at the board meeting discussion.

Staff reviewed these projects and found them to be good opportunities to further CADA’s middle-income program, with minimal risk, a low cost per unit, and timely turnover of the funds. The projects comply with program guidelines and will fulfill underwriting criteria once fully-financed. Staff is recommending including a condition that these loans be provided in sequence once the active project under construction obtains a certificate of occupancy and as the next new project gains full financing and starts construction. Managing the timing of the project assistance will help further reduce any risk to CADA funds and allow for market absorption of the housing between projects.

While staff recognizes that these projects were submitted by the same developer, there have been several additional developers who have met with CADA staff to learn more about this incentive program opportunity to provide 80% units. Additional projects are currently in predevelopment stages and staff anticipates future applications for this program. Even with these three projects, there will still be \$75,000 in funding available for more requests. These three projects fill a gap in local housing options and do so through an innovative public-private-non-profit partnership that can be replicated efficiently.

### **FINANCIAL IMPACT**

CADA will provide three one-year three-percent \$25,000 loans to the proposed projects, which is \$75,000 of the remaining program budget of \$150,000 funded from the R Street Affordable Housing Development Reserve for the Middle-Income Housing Program. The loans will assist in covering the project partnership formation costs. The partnership is necessary to bind the non-profit and for-profit partners together on the project, as required to comply with state code. These loans will be repaid within one year, with interest, and returned to the Middle-Income Housing

Program fund where it can be used for a subsequent middle-income project or projects through CADA's over-the-counter application process that will now be first-come, first served and reviewed for funding.

## **POLICY**

Provision of these loans and regulatory agreements to the proposed projects supports CADA's work in building and serving a vibrant Capitol Area Neighborhood, R Street Corridor, and downtown and leading the way in community development innovation. Having a variety of housing types and affordability levels within the Central City benefits the commercial and residential stability of downtown, including existing CADA project areas, and furthers the community health by broadening the available range of household types and income levels that the housing is able to serve.

## **STRATEGIC PLAN**

These projects fulfill the following components of the CADA Strategic Plan: fiscal responsibility, collaboration, urban development leadership, creativity and community stewardship in the provision of mixed-income housing. Utilizing partnerships in the completion of our mission has been and continues to be a hallmark of CADA's work. The strategic plan called for studying the downtown market to identify CADA's niche, and this income band at 80% AMI is currently an underserved demographic. This proposal also further combines environmental sustainability with housing development by weaving together local workforce needs and housing options, and it supports new innovation and infill.

## **ENVIRONMENTAL IMPACT**

This action is exempt under the California Environmental Quality Act (CEQA) as it involves only the provision of funding for a project that has already undergone CEQA review. CEQA reviews of these project developments were completed by the City of Sacramento through the planning entitlement review process.

## **CONTRACT AWARD CONSIDERATIONS**

Not applicable.

Attachments:

1. Resolution 24-09
2. Form of Promissory Note
3. Form of Deed of Trust
4. Form of Regulatory Agreement

**RESOLUTION NO. 24 - 09**

February 23, 2024

Adopted by the Capitol Area Development Authority

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THREE \$25,000 CADA LOANS TO THE STUDIO30, ESPERANZA, AND GRACE PROJECTS PURSUANT TO A PROMISSORY NOTE SECURED BY A DEED OF TRUST AND TO EXECUTE AND RECORD THE NECESSARY ACCOMPANYING REGULATORY AGREEMENT FOR THE PROVISION OF A COMBINED 203 LOW- AND MODERATE-INCOME HOUSING UNITS FOR 55 YEARS**

**WHEREAS**, the Studio30, Esperanza, and Grace developments (“the Developments”) qualify under CADA’s middle-income housing model that relies upon the welfare tax exemption and cost-efficient housing design to provide housing affordability;

**WHEREAS**, Urban Capital and their partners will utilize these loans and regulatory agreements to provide 203 units affordable to low-income and moderate-income households at 80% and 120% of the Area Median Income within the downtown;

**WHEREAS**, provision of this middle-income housing addresses a significant community need, supports community diversity and provides a stable workforce downtown that will support the economic vitality of the Capitol Area and the City; and

**WHEREAS**, providing a \$25,000 CADA loan to each of these three Developments and encumbering the Developments with Regulatory Agreements ensures the ongoing affordability of the housing and its provision of middle-income housing for fifty-five years.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of the Capitol Area Development Authority that:

1. The Executive Director, or her designee, is authorized to execute the necessary documents for each project, including a Promissory Note, Deed of Trust, and Regulatory Agreement, substantially consistent with the enclosed drafts to provide: (1) a \$25,000, one-year loan at three percent interest to the limited partnerships for the Studio30, Esperanza, and Grace projects; (2) a 55-year Regulatory Agreement on each property for the provision of 203 low- and moderate- income housing units collectively for households at or below 80% and 120% of the Area Median Income (AMI); and completion of any other related documents necessary to these transactions.
2. These loans shall be provided in sequence once each active project obtains a certificate of occupancy and as each new project gains full financing and starts construction.

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Ann Bailey, Chair

ATTEST:

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Tara Gandara  
Secretary to the Board of Directors

**PROMISSORY NOTE**

\$100,000.00

\_\_\_\_\_, 2023  
Sacramento, California

1. Obligation. FOR VALUE RECEIVED, the **1901 8<sup>th</sup> Street Investors Limited Partnership**, a California limited partnership ("Borrower"), hereby unconditionally promises to pay to the **Capitol Area Development Authority**, a California joint powers agency ("Lender"), at **1522 14<sup>th</sup> Street, Sacramento, CA 95814**, or at such other place as Lender may from time to time designate in writing to Borrower, the principal sum of One Hundred Thousand Dollars (\$100,000.00), together with interest thereon, to be paid in lawful money of the United States of America according to the terms set forth below (the "Note").

2. Interest Rate. The interest rate per annum to be applied to the unpaid principal balance of this Note will be a fixed rate of three percent (3.00%) simple interest. Under no circumstances shall the interest rate on this Note be more than the maximum rate allowed by applicable law.

3. Payment of Principal. No principal payments shall be due or payable until the Maturity Date, at which time, the entire outstanding principal balance, and all accrued, but unpaid principal, accrued interest and other amounts outstanding on this Note shall be due and payable. Each payment made hereunder, including prepayments allowed under Section 6, shall be credited first on interest then due and the remainder on principal.

4. Maturity Date. This Note shall become due in full, including any outstanding principal and interest, 60 months from date of this Note.

5. Collateral. This Note is secured by a Deed of Trust of even date herewith by Borrower, as trustor, for the benefit of Lender, as beneficiary, covering certain real property owned by Borrower located at 1901 8<sup>th</sup> Street, in Sacramento, California, as more specifically described therein (the "Property"). This Note is also guaranteed by \_\_\_\_\_, the Administrative General Partner(s) for the Borrower, pursuant to that certain Guaranty dated the same date herewith.

6. Prepayment. Borrower shall have the right to prepay all or any part of the principal sum hereof or interest due hereunder at any time, without penalty or premium.

7. Notices. Notices provided for herein may be given by delivery personally or by sending them by registered or by certified mail, with postage charged prepaid, to the parties' mailing addresses, or to any other mailing address of which written notice is given, and notices shall be deemed given upon actual receipt thereof:

If to Borrower: 1901 8<sup>th</sup> Street Investors Limited Partnership

\_\_\_\_\_  
\_\_\_\_\_

If to Lender: Capitol Area Development Authority  
1522 14<sup>th</sup> Street  
Sacramento, CA 95814

Borrower shall promptly notify Lender of any change of address.

8. Assignment. Borrower may not assign any of its rights, interests, duties, or obligations under this Note without Lender's prior written consent, which consent may be given or withheld in Lender's sole discretion. Any attempted or purported assignment by Borrower in violation of this Section shall be void. Lender may, in Lender's sole discretion, assign any or all of Lender's rights, interests, duties, or obligations hereunder to any person or entity without the prior written consent of Borrower.

9. Default; Acceleration. In the event of (i) any default by Borrower in the payment of this Note when due hereunder or in the performance of Borrower's obligations under this Note or any instrument securing repayment of this Note, (ii) the breach of any representation or warranty contained in this Note or any instrument securing repayment of this Note, (iii) the filing of any petition by or against Borrower in any court, whether or not pursuant to any statute of the United States or of any state, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and Borrower shall thereafter be adjudicated bankrupt, or such petition be approved by the court, or the court assumes jurisdiction of the subject matter, and such proceedings not be dismissed within 90 days after the institution of the same, (iv) the appointment of a receiver or trustee in any proceeding for all or any portion of property owned by Borrower and such receivership or trusteeship not be vacated within 90 days after the appointment of the same, (v) an assignment by Borrower for the benefit of its creditors, (vi) the foreclosure upon all or any portion of property owned by Borrower or the condemnation, seizure, attachment or appropriation thereof, or (vii) the sale, conveyance, assignment or transfer of greater than 50% of Borrower's stock, then in such event the entire indebtedness hereunder shall be immediately due and payable at the option of Lender.

10. Waiver. No waiver of any default or failure or delay to exercise any right or remedy by Lender shall operate as a waiver of any other default or of the same default in the future or as a waiver of any right or remedy with respect to the same or any other occurrence. Presentment, notice of dishonor or demand, protest and diligence in collection and bringing suit, including the pleading of any statute of limitations as a defense to any demand against Borrower, are hereby waived by Borrower, who consents that the time for payment of this Note may be extended from time to time without notice by Lender.

11. Default Interest Rate. From and after the Maturity Date of this Note, all sums due and owing hereunder shall earn interest at the maximum rate permitted to be charged under any applicable laws, rules and regulations limiting interest rates.

12. Attorneys' Fees and Costs. Borrower shall pay such fees, costs and expenses as may be incurred by Lender in connection with the exercise, preservation or enforcement of its rights, powers and remedies under the terms of this Note, including, without limitation, actual collection agency fees, costs and expenses, reasonable attorneys' fees and actual costs of suit and appeal incurred in any judicial action or proceeding and reasonable attorneys' fees and actual costs incurred in any collection attempts or non-judicial action or proceeding.

13. Binding on Heirs, Successors and Assigns. Subject to the restrictions on assignment and transfer contained in Sections 8 and 9, this Note shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of Lender and Borrower.

14. Governing Law; Venue. This Note shall be interpreted under and governed by the laws of the State of California, except for those provisions preempted by federal law. This Note is entered into and is to be performed in Sacramento County, California, and accordingly all actions or



proceedings arising in connection with this Note shall be tried and litigated in the Superior Court of California with venue in the County of Sacramento.

15. Amendments. Neither this Note nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

16. Severability. If any provision of this Note, in whole or in part, or the application of any provision, in whole or in part, is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction and such provision can be severed without substantially changing the bargain reached by the parties, such provision or part of such provision shall be severed from this Note, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of this Note, including the remainder of such provision not determined to be illegal, invalid or unenforceable.

17. Due on Sale. The obligations of the undersigned under this Note are subject to the terms of the Deed of Trust of even date herewith. The Deed of Trust contains the following due on sale provision:

**DUE ON SALE - CONSENT BY LENDER.** If Trustor shall sell, convey, or alienate the Property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the prior written consent of Beneficiary, Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any note evidencing same, immediately due and payable. To “sell, convey or alienate” means the conveyance of the Property or any right, title or interest in the Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, or by any other method of conveyance of an interest in the Property.

**IN WITNESS WHEREOF**, Borrower has executed this Note as of the date first above written.

Borrower:

**1901 8<sup>th</sup> Street Investors Limited Partnership,**  
a California limited partnership

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

**No recording fee required pursuant to  
Government Code Section 27383**

**Recording Requested by and  
When Recorded Return to:**

Capitol Area Development Authority  
1522 14<sup>th</sup> Street  
Sacramento, CA 95814  
Attn: Executive Director

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST  
ASSIGNMENT OF RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING**

**(1901 8th Street)**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust"), made \_\_\_\_\_, 2023, between **1901 8th Street Investors Limited Partnership**, a California limited partnership ("Trustor"), \_\_\_\_\_ ("Trustee"), and **Capitol Area Development Authority**, a California joint powers authority ("Beneficiary").

Trustor is the fee interest owner of that certain real property located in the County of Sacramento, State of California, described in Exhibit A attached hereto ("Property"), containing a development of seventy-two (72) units of rental housing, all of which are rent restricted as described in that certain Regulatory Agreement dated the same date herewith (collectively, "Improvements").

Trustor intends to grant Beneficiary this Deed of Trust encumbering its fee interest in the Property as security for a loan made by Beneficiary to Trustor to be used for the development of the Property.

Trustor, in consideration of the indebtedness referred to below, irrevocably grants, transfers, conveys, and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale, the Property.

TOGETHER WITH:

(a) all right, title and interest (including any claim or demand in law or equity) which Trustor now has or may hereafter acquire in or to such property; all development rights or credits and air rights; all water and water rights (whether or not appurtenant to such property) and shares of stock pertaining to such water or water rights, ownership of which affects such property; Trustor's interest in all minerals, oil, gas, and other hydrocarbon substances and rights thereto in, on, under, or upon such property and all royalties and profits from any such rights or shares of stock; and all adjacent lands within enclosures or occupied by buildings partly situated on such property;

(b) all buildings, structures, improvements, fixtures and appurtenances now and hereafter placed on such property, including, without limitation, all apparatus and equipment, whether or not physically affixed to the land or any building, used to provide or supply air-cooling, air conditioning, heat, gas, water, light, power, refrigeration, ventilation, laundry, drying, dish washing, garbage disposal or other services; and all elevators, escalators and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, partitions, ducts, compressors, plumbing, ovens, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, furniture, pictures, antennas, pools and spas and pool and spa operation and maintenance equipment and apparatus, trees and plants located on such property, all of which, including replacements and additions thereto, shall conclusively be deemed to be affixed to and be part of the real property conveyed to Trustee hereunder.

(c) all intangible property and rights related to the aforesaid property or the operation thereof or used in connection therewith including, without limitation, permits, licenses, plans, specifications, construction contracts, subcontracts, bids, deposits for utility services installations, refunds due Trustor, trade names, trademarks and service marks.

(d) all rents, issues, profits and other income from the property, including, but not limited to, all proceeds of sale or lease of the property.

(e) the personal property collateral described in Exhibit B.

Trustor agrees to execute and deliver, from time to time, such further instruments, including but not limited to, Security Agreements, Assignments, and UCC Financing Statements, as may be requested by Beneficiary to confirm the lien of this Deed of Trust on any of the aforementioned property.

All Property, both real and personal, conveyed to Trustee hereunder shall be referred to herein as the "Property".

This Deed of Trust secures the following obligations:

1.1 (a) Promissory Note entered into by Trustor, of even date herewith (and any and all renewals or extensions thereof) in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), with interest thereon according to the terms of said note ("Note"), which Trustor covenants and agrees to pay.

(b) Payment and Performance of every obligation, covenant, promise and/or agreement contained in this Deed of Trust.

(c) Payment and Performance of every obligation, covenant, promise and/or agreement contained in the Regulatory Agreement entered into by Trustor of even date herewith.

(d) Payment and performance of every obligation, covenant, promise and agreement contained in any other written instrument executed by Trustor in favor of Beneficiary if, but only if, the written instrument expressly states that the instrument is secured by this Deed of Trust.

(e) For the purposes of this Deed of Trust, any reference to a Note contained herein shall be deemed to refer to each and every note secured by this Deed of Trust, and any default under any note secured by this Deed of Trust shall constitute a default under every other note so secured, and shall additionally constitute a default under this Deed of Trust.

For the purpose of protecting and preserving the security of this Deed of Trust, Trustor promises and agrees:

2. Obligations of Trustor. Trustor shall promptly pay when due, all installments, payments, charges or other obligations due under the Note; and all other monetary obligations secured by this Deed of Trust.

3. Repair and Maintenance of the Property. Trustor will: (a) keep the Property in good condition and repair; (b) not substantially alter, remove or demolish the Property or any building or other improvements thereon, except (i) when approved in writing by Beneficiary; or (ii) when incident to the replacement of fixtures, equipment, machinery or appliances with items of like kind; (c) restore and repair to the equivalent of its original condition, all or any part of the Property which may be damaged or destroyed, including, but not limited to, damage from termites and dry rot, soil subsidence and construction defects, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair; (d) pay when due all claims for labor performed and materials furnished in connection with the Property and not permit any mechanic's or materialman's lien to arise against the Property or furnish loss or liability under such mechanic's lien claims; (e) comply with all laws affecting the Property or requiring that any alterations, repairs, replacements, or improvements be made thereon; (f) not commit or permit waste on or to the Property, or commit, suffer or permit any act or violation of law to occur upon the Property; (g) not abandon the Property; (h) cultivate, irrigate, fertilize, fumigate and prune; (i) if required by Beneficiary, provide for the management satisfactory to Beneficiary under a management contract approved by Beneficiary; (j) notify the Beneficiary in writing of any condition at or on the Property which may have a significant and measurable effect on its market value; and (k) if the Property is rental Property, generally operate and maintain the Property in such manner as to realize the maximum rental potential thereof and do all other things which the character or use of the Property may reasonably render necessary to maintain the Property in the same condition (reasonable wear and tear expected) as it was at the date of this Deed of Trust.

4. Insurance.

4.1 Property Insurance. Trustor shall provide and maintain insurance as required below covering all buildings, structures and improvements now situated or which hereafter may be erected or placed upon said Property, against loss or damage by fire and other casualties (special broad-form perils) with the valuation clause reflecting replacement costs basis and to carry such and, in the event said Property or any part thereof now lies or hereafter lies in an area designated by the Federal Emergency Management Agency as located within a flood insurance rate map or flood hazard boundary map, or which is designated by the Department of Housing and Urban Development as a flood zone, to carry flood insurance; all as required below or as the Beneficiary may from time to time require. All such insurance shall be in forms, and with companies and in sums (not less than sufficient to avoid any claim on the part of the insurers for co-insurance or other penalties for insufficient limits) satisfactory to the Beneficiary. All insurance policies shall be held by and be for the benefit of Beneficiary, and shall name Beneficiary as loss payee. Beneficiary shall accept as satisfying the requirements of this Section 3.1 any insurance policy in the amount of the replacement cost of buildings, structures,

and improvements located on said Property. At least fifteen (15) days before the expiration of each such policy, Trustor shall deliver to the Beneficiary a new and sufficient policy to take the place of the one so expiring. In the event of a loss, the amount collected, under any policy of insurance on said Property may, at the sole option of the Beneficiary (1) except to the extent expressly limited or prohibited by statutory or case law in effect as of the date of this Deed of Trust, be applied by Beneficiary upon any indebtedness and/or obligation secured hereby whether the same be then matured or unmatured, and in such order as Beneficiary may determine; (2) be used in replacing or restoring the improvements partially or totally destroyed to a condition satisfactory to said Beneficiary; (3) be used by the Beneficiary to fulfill any of the covenants contained herein as the Beneficiary may determine; or (4) be released to the Trustor. In any of the foregoing events neither the Trustee nor the Beneficiary shall be obligated to see to the prior application thereof, nor shall the amount so released or used under clauses (2), (3), or (4) above be deemed a payment on any indebtedness secured hereby. Such application, use, and/or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. The Trustor hereby irrevocably appoints the Beneficiary as its attorney in fact to assign each such policy in the event of the foreclosure of this Deed of Trust or other transfer of the title to the granted Property in extinguishment, in whole or in part, of the debt secured hereby. No insurance shall be required hereunder in excess of that allowed by Civil Code Section 2955.5.

4.2 General Liability Insurance. Trustor shall purchase and continuously maintain comprehensive general liability with terms and conditions that are at least as broad as the Insurance Service Office (ISO) Form 00 01 and with limits not less than \$5,000,000 each occurrence. Such insurance shall include the Beneficiary as an additional insured arising out of the named insured's ongoing and completed operations. Such insurance shall have an endorsement stating that for any claims related to this Property, the Trustor's insurance shall be primary insurance as respects the Beneficiary to the extent the Beneficiary is an additional insured. Such insurance shall also state that any insurance or self-insurance maintained by the Beneficiary shall be in excess of the Trustor's insurance and shall not contribute with it. The Trustor's insurance shall also provide that the Beneficiary shall receive at least thirty (30) days' written notice prior to cancellation, non-renewal, or modification thereof during this Deed of Trust term. Such insurance policies as are required by this Section 4.2 shall be approved and held by Beneficiary.

5. Defense of Deed of Trust; Litigation. Trustor will give Beneficiary immediate written notice of any action or judicial proceeding (including, with limitation, any judicial or non-judicial proceeding to foreclose the lien of a junior or senior mortgage or deed of trust) affecting or purporting to affect the Property, this Deed of Trust, Beneficiary's security for the performance of Trustor's obligations under the Note, or the rights or powers of Beneficiary or Trustee under the Note or this Deed of Trust. Notwithstanding any other provision of this Deed of Trust, Trustor hereby agrees that Beneficiary or Trustee may (but neither is obligated to) commence, appear in, prosecute, defend, compromise and settle, in Beneficiary's or Trustor's name, and as attorney-in-fact for Trustor, any action or proceeding, whether judicial or non-judicial, reasonably necessary to preserve or protect, or affecting or purporting to affect, the Property, this Deed of Trust, Beneficiary's security for the performance of Trustor's obligations under the Note, or this Deed of Trust. If neither Beneficiary nor Trustee elects to do so, Trustor will commence, appear in, prosecute and defend any such action or proceeding. Beneficiary may incur necessary costs and expenses including attorneys' fees, in any such action. Trustor will pay all costs and expenses of Beneficiary and Trustee, including costs of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear or for which legal counsel is sought, whether by virtue of being made a party defendant or

otherwise; and whether or not the interest of Beneficiary or Trustee in the Property is directly questioned in such action or proceeding, including, without limitation, any action of the condemnation or partition of all or any portion of the Property and any action brought by Beneficiary to foreclose this Deed of Trust or to enforce any of its terms or provisions.

6. Use of Property. Unless otherwise required by applicable law or unless Beneficiary otherwise consents in writing, Trustor will not allow changes in the use of the Property from that which is contemplated by Trustor and Beneficiary at the time of execution of this Deed of Trust, as specified in the documents executed by Trustor in connection with obtaining the loan secured hereby, including the Regulatory Agreement ("Loan Documents"). Trustor will not initiate or acquiesce in a change in the zoning classification of the Property without Beneficiary's prior written consent.

7. Taxes and Assessments. Trustor agrees (a) to pay all taxes and assessments affecting the Property, including assessments on appurtenant water stock, and any accrued interest, cost and/or penalty thereon and submit receipts therefor to the Beneficiary, at least ten (10) days before default or delinquency; (b) to pay when due all encumbrances (including any debt secured by deed of trust), ground rents, liens, and/or charges, with interest, on said Property or any part thereof which appear to be prior or superior hereto, and to pay immediately and in full all such encumbrances, liens and/or charges, if any, which may now be due or payable; (c) to pay when due all costs, fees and expenses of these trusts, including cost of evidence of title and Trustee's fees in connection with sale, whether completed or not, which amounts shall become due upon delivery to Trustee of a declaration of default.

8. Assessment Bonds. Trustor agrees to pay any and all assessments against said Property at least ten (10) days before any bond or bonds could or would be issued in connection therewith, unless Beneficiary determines in its sole discretion that its security would not be impaired if the assessments were not paid in full.

9. Assessments on Water Bonds. Trustor agrees to pay before delinquency all assessments upon the stock of any water company which stock may be used in connection with said Property, and all rents, assessments or charges for water appurtenant to or used in connection with said Property and/or for the flumes, ditches, pipes or aqueducts in which such water may be furnished or delivered; and all such stock is hereby expressly made a part of the security hereof.

10. Reimbursement of Lender's Expenses. Trustor agrees to pay immediately upon demand after expenditure, all sums expended or expense incurred by Trustee and/or Beneficiary, including reasonable attorney's fees, under any of the terms of this Deed of Trust, with interest from date of demand at the rate of ten per cent (10%) per annum. Without in any way limiting the foregoing, Trustor shall pay to or reimburse Beneficiary for any costs, fees and expenses (including without limitation reasonable attorneys' fees and any administrative fees or overhead or other indirect costs and expenses) incurred or charged by Beneficiary in protecting its security hereunder or the Property or Beneficiary's interest under this instrument, or in responding, processing, reviewing or reviewing or otherwise dealing with the demands or claims or requests of Trustor or third parties who claim an interest in the Property or an interest adverse to Beneficiary's interests under this instrument.

11. Beneficiary Statement. Trustor agrees to pay to the Beneficiary any reasonable amount charged by the Beneficiary, not to exceed the maximum allowed by law, for any statement regarding the obligation secured hereby furnished by the Beneficiary upon demand by the

Trustor, the charge for each such statement to be payable immediately upon furnishing of the statement.

12. Assignment of Rents and Leases.

12.1 Trustor does hereby immediately and absolutely assign, transfer and set over to the Beneficiary all the rents, issues, proceeds and profits which may be or may become due or to which the Trustor may now or hereafter become entitled, arising or issuing out of, under or by virtue of any and all leases and/or rental agreements, and any and all extensions or renewals thereof, now or hereafter entered into for the parking structure located on the Property or any part thereof, or for any improvements located thereon, and all other rents, issues, proceeds and profits due or accruing from the Property or any part thereof or the improvements located thereon. Trustor hereby gives to and confers upon Beneficiary the right, power and authority to collect such rents, issues, proceeds and profits. The assignment herein contained and all rights provided to Beneficiary by this Section are granted without regard to the adequacy of the Property as security for payment of the indebtedness secured by this Deed of Trust. This assignment is delivered as a present, immediate and absolute assignment of the rights contained herein; provided, however, that so long as no default shall exist under this Deed of Trust or the indebtedness secured hereby, the Trustor shall have the right to manage and operate the Property and all improvements thereon, and to collect, receive and apply for its own account all rents, issues and proceeds accruing by virtue of any lease or rental agreement and to execute and deliver proper receipts thereof. Immediately upon the occurrence of any default under this Deed of Trust or the indebtedness secured hereby, and until such default shall have been cured, the right of the Trustor to manage and operate the Property and to collect and receive rents shall cease and terminate and in such event the Beneficiary is hereby expressly and irrevocably authorized to enter into and take possession of the Property and the improvements located thereon by actual physical possession, or by appointment of a receiver or by a competent court or by written notice served personally upon or sent by registered mail to the Trustor, as the Beneficiary may elect, or by any other legal means, and to exclude the Trustor and all other persons therefrom. Following such entry and taking of possession the Beneficiary may operate and manage the Property and rent and lease the same and collect any and all rents, issues, income and profits therefrom, and from time to time apply same or accumulate same for application, in such order and manner as Beneficiary, in its sole discretion shall consider advisable. Beneficiary may apply such amounts to (i) the necessary and proper costs of upkeep, maintenance, repair and/or operation of the Property; (ii) the repayment of any sums theretofore or thereafter advanced pursuant to the terms of this Deed of Trust; (iii) the interest then due or next to become due upon said indebtedness; (iv) the taxes and assessments upon the Property then due or next to become due; (v) the unpaid principal of said indebtedness; and (vi) any other obligations secured by this Deed of Trust. The collection and/or receipt of rents, issues, income and/or profits from the Property by Beneficiary after declaration of default and election to cause the Property to be sold pursuant to the terms of this Deed of Trust shall not affect or impair such default or declaration of default or election to cause the Property to be sold or any sale proceeding predicated thereon, but such proceedings may be conducted and sale effected notwithstanding the receipt and/or collection of any such rents, issues, income and/or profits. Any such rents, issues, income and/or profits in the possession of said Beneficiary at the time of sale and not theretofore applied as herein provided, shall be applied in the same manner and for the same purposes as the proceeds of the sale. In addition to Beneficiary's rights under this Section, Beneficiary shall have all of the rights and remedies to which Beneficiary is entitled under California Civil Code Section 2938, and nothing contained in this Section 12 shall be construed as a limitation or waiver of any such rights or remedies.

12.2 Trustor agrees to assign to the Beneficiary, upon request, as security for the indebtedness secured hereby, the Trustor's interests in any or all leases, and the Trustor's interests in all agreements, contracts, licenses and permits affecting said property, such assignments to be made by instruments in form reasonably satisfactory to the Beneficiary; but no such assignment shall be construed as a consent by the Beneficiary to any lease, agreement, contract, license or permit so assigned, or to impose upon the Beneficiary any obligations with respect thereto.

13. Modification and Termination of Leases and Rent Pre-payment. Except in the ordinary course of business, Trustor agrees not to cancel any of the leases assigned or subject to assignment to Beneficiary pursuant to Section 11.2 hereof, nor terminate or accept a surrender thereof (except in accordance with the terms of the assignment) or reduce the payment of the rent thereunder or modify any of said leases (except in accordance with the terms of the assignment) or accept any prepayment of rent therein without first obtaining, on each occasion, the written approval of the Beneficiary.

14. Performance of Leases. Trustor agrees to faithfully keep and perform all of the obligations of the landlord under all of the leases assigned or subject to assignment to the Beneficiary pursuant to Section 11 above and not to permit to accrue to any tenant under any such lease any right to prepaid rent pursuant to the terms of any lease other than the usual prepayment of rent as would result from the acceptance by the landlord on the first day of each month for the rent for the ensuing month, according to the terms of the various leases.

15. Rent Roll. Trustor agrees to deliver to Beneficiary within ninety days after the expiration of each calendar year, a rent roll of the Property showing the name and street address of all tenants in occupancy, the rent currently owed, the respective lease commencement and expiration dates, the amount of common area or expense contribution, if any, for each tenant, as well as whether there are any concessions, free rent periods or rebates.

16. Use. Trustor agrees to operate such Property at all times in the manner permitted by the Regulatory Agreement.

17. Due on Sale – Consent by Lender. If Trustor shall sell, convey, or alienate the Property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the prior written consent of Beneficiary, Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any note evidencing same, immediately due and payable. To "sell, convey or alienate" means the conveyance of the Property or any right, title or interest in the Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, or by any other method of conveyance of an interest in the Property.

18. Licenses. As of the date of this Deed of Trust and at all times thereafter during the term of the loan Trustor shall have and maintain in full force and effect such certificates, consents, licenses, approvals and permits from the proper authorities as are required to operate the Property for the purpose(s) set forth in Section 15 above. A failure on the part of the Trustor or any subsequent owner to maintain any such required certificate, consent, license, approval, or permit in effect or a failure to obtain renewal thereof prior to expiration, shall constitute a default under the terms of this Deed of Trust for which the Beneficiary shall have the right, as its option,



upon the expiration of any cure periods, to declare the entire indebtedness evidenced by said Note and hereby secured to be immediately due and payable.

19. Security Interest in Personal Property. Trustor hereby grants to Beneficiary a security interest in and to all personal Property described as the Collateral in Exhibit B. This Deed of Trust constitutes a security agreement with respect to all of the Collateral, and Beneficiary shall have all of the rights and remedies of a secured party under the California Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Trustor hereby agrees to execute, acknowledge and deliver on demand, and hereby irrevocably appoints Beneficiary as its attorney-in-fact, with full power of substitution, to execute, acknowledge, deliver and, if appropriate file with the appropriate filing officer or office, such security agreements, financing statements, continuation statements or other instruments as Beneficiary may reasonably require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. The above power of attorney is coupled with an interest and shall survive the death or incapacity of Trustor. Trustor shall pay all costs and expenses in connection with any such documents or of any record searches for financing statements that Beneficiary may require.

20. Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing in the real estate records of the county in which the Real Property is located with respect to any and all fixtures now or hereafter owned by Trustor and used in connection with the operation, occupancy and maintenance of the Property described in this Deed of Trust and with respect to any goods or other personal property owned by Trustor that may now be or hereafter become such fixtures.

21. Foreclosure on Collateral. Without limiting any other rights or remedies which Beneficiary or Trustee may have hereunder or under applicable law, including the right to conduct a unified foreclosure sale of real and personal Property, upon any default not cured within applicable cure periods Beneficiary or Trustee may conduct a public or private sale of the Collateral under the California Uniform Commercial Code pursuant to this Deed of Trust, and Trustor, upon demand by Beneficiary, shall assemble the Collateral and make it available to Beneficiary at the Property, a place which is hereby deemed to be reasonably convenient to Beneficiary and Trustor. Beneficiary shall give Trustor at least twenty (20) days prior written notice of the time and place of any public sale or other disposition of the Collateral, or of the time of or after which any private sale or other disposition of the Collateral is to be made; if such notice is sent to Trustor in accordance with the procedures for the mailing of notices set forth in the last Section of this instrument, it is hereby deemed that such notice shall be and is reasonable notice to Trustor.

22. Maintenance of Fixtures and Collateral. At all times during the term hereof Trustor shall maintain a sufficient level of fixtures and Collateral to properly operate the said Property, which shall in any event not be materially less than that existing on the date hereof. Notwithstanding anything to the contrary in this Deed of Trust, during any time when not in default hereunder, Trustor shall have the right, subject to the prior concurrent satisfaction of the conditions set forth in the next sentence, to substitute and replace Collateral and fixtures in the ordinary course of business. To the extent the replacement Collateral and fixtures are of the same general type and are of at least the same value and upon acquisition of the substitute Collateral and fixtures by Trustor and placement thereof on the said real Property, the replaced Collateral and fixtures shall be deemed released from the lien hereof.

23. Maps and Restrictions. Trustor agrees that it will not without the consent of Beneficiary after the date hereof file or cause to be filed any subdivision or condominium map or plan, or any deed, plan or agreement for cooperative ownership of the Property, or any other covenants or restrictions affecting the Property.

24. Environmental Covenants. Trustor will at all times comply with the following requirements:

24.1 No Use, Disposal or Storage. Trustor shall not cause, permit or suffer any Hazardous Material (as defined in Section 25.3 to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Property or any portion thereof by Trustor, its agents, employees, contractors, invitees, tenants, or any other person, except to the extent commonly used in the day to day operation of the Property and then only so long as in compliance with all Environmental Requirements (as defined in Section 25.2).

24.2 Compliance with Environmental Requirements. Trustor shall not cause, permit or suffer the existence or the commission by Trustor, its agents, employees, or contractors of a violation of any Environmental Requirements upon, about or beneath the Property or any portion thereof and Trustor shall use its best efforts to prevent any such violation of any Environmental Requirements by any invitees, tenants or any other person. Trustor shall notify Beneficiary in writing of any release of Hazardous Materials at, on, under or within the Property in violation of any Environmental Requirements, or of the presence of Hazardous Materials at the Property in violation of any Environmental Requirements, promptly upon discovery of such release or presence.

24.3 Environmental Liens. Trustor shall not create or suffer to exist with respect to the Property, or permit any of its agents to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind, including without limitation, any lien imposed pursuant to Section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 9607(1)) or any similar state statute, and Trustor shall use its best efforts to prevent the creation of any such lien, security interest, charge or encumbrance by any of its tenants and shall not permit any of such tenants to suffer to exist any of such items.

24.4 Mitigation. Notwithstanding the obligation of Trustor to indemnify pursuant to Section 25 Trustor shall, at its sole cost and expense, promptly take all actions required by any federal, state or local governmental agency or political subdivision or which are otherwise reasonably necessary in the sole reasonable discretion of Beneficiary to mitigate Environmental Damages (as defined in Section 25.1) arising from the presence upon, about or beneath the Property of a Hazardous Material, or from a violation of Environmental Requirements. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off of the Property. Trustor shall take all actions necessary to restore the Property to the condition existing prior to the introduction of Hazardous Material upon, about or beneath the Property, notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies. Trustor shall proceed continuously and diligently with such investigatory and remedial actions, provided that in all cases such actions shall be in accordance with all applicable requirements of governmental entities. Any such actions shall be performed in a good, safe and workmanlike manner and shall minimize any impact on the business conducted at the Property. Trustor shall pay all costs in connection

with such investigatory and remedial activities, including but not limited to all power and utility costs, and any and all taxes or fees that may be applicable to such activities. Trustor shall promptly provide to Beneficiary copies of testing results and reports that are generated in connection with the above activities. Promptly upon completion of such investigation and remediation, Trustor shall permanently seal or cap all monitoring wells and test holes to industrial standards in compliance with applicable federal, state and local laws and regulations, remove all associated equipment, and restore the Property to the maximum extent possible, which shall include, without limitation, the repair of any surface damage, including paving, caused by such investigation or remediation hereunder.

24.5 Notice of Environmental Risks. If Trustor shall become aware of or receive notice or other communication concerning any actual, alleged, suspected or threatened violation of Environmental Requirements, or liability of Trustor for Environmental Damages in connection with the Property or past or present activities of any person thereon, including but not limited to notice or other communication concerning any actual or threatened investigation, inquiry, lawsuit, claim, citation, directive, summons, proceeding, complaint, notice, order, writ, or injunction, relating to same, and including without limitation any notice or other communication from any tenant, then Trustor shall deliver to Beneficiary, within ten (10) days of the receipt of such notice of communication by Trustor, a written description of said violation, liability, correcting information or actual or threatened event or condition, together with copies of any documents evidencing same. Receipt of such notice shall not be deemed to create any obligation on the part of beneficiary to defend or otherwise respond to any such notification.

24.6 Notice of Test Results. Trustor shall promptly provide to Beneficiary the results of any tests and copies of all registration permits regarding any underground storage tanks located on the Property and Trustor shall comply with the same.

24.7 Right to Enter and Inspect. In the event Beneficiary reasonably believes that there has been a release or threatened release of a Hazardous Material on the Property or a breach of an Environmental Requirement or in the event of any default under this Deed of Trust or under the Note, Beneficiary shall have the right in its sole and absolute discretion, but not the duty, to enter upon the Property at any reasonable time, at the expense of Trustor, to conduct an inspection of the Property, including invasive tests, to determine compliance with all Environmental Requirements and the existence of any Environmental Damages as a result of the condition of the Property or any surrounding properties and activities thereon. Trustor hereby grants to Beneficiary, and the agents, employees, consultants and contractors of Beneficiary, the right to enter upon the Property and to perform such tests on the Property as are necessary to conduct such reviews and investigations in accordance with the preceding sentence. Beneficiary shall use its best efforts to minimize interference with the business of Trustor and to restore the condition of the Property, but Beneficiary shall not be liable for any interference caused thereby or failure to restore if Beneficiary determines in its sole discretion that it is not economically practicable. Beneficiary shall reimburse Trustor for the cost of repair of any physical injury to the Property caused by the entry and inspection to the extent required by Civil Code Section 2929.5(c).

24.8 Reimbursement of Lender. In the event of any default under this Deed of Trust or under the Note, Trustor shall promptly reimburse Beneficiary for any environmental studies or tests which Beneficiary deems necessary to ascertain the presence and/or level of any Hazardous Materials on the Property.

25. Definitions of Environmental Terms. For the purposes of this Deed of Trust, the following terms shall have the following meanings:

25.1 “Environmental Damages” means all claims, judgments, damages (including without limitation, punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys’ fees and disbursements and consultants’ fees, any of which are incurred at any time as a result of the existence of Hazardous Material upon, about, beneath the Property or migrating or threatening to migrate to or from the Property, or the existence of a violation of Environmental Requirements pertaining to the Property regardless of whether the existence of such Hazardous Material or the violation of Environmental Requirements arose prior to the present ownership or operation of the Property, and including, without limitation:

25.1.1 damages for personal injury, or injury to Property or natural resources occurring upon or off the Property, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest and penalties including but not limited to claims brought by or on behalf of employees of Trustor, with respect to which Trustor waives, for the benefit of Beneficiary only, any immunity to which it may be entitled under any industrial or worker’s compensation laws;

25.1.2 fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation, cleanup or remediation of such Hazardous Materials or violation of Environmental Requirements including but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remedial, removal, abatement, containment, closure, restoration or monitoring work required by any federal state or local governmental agency or political subdivision, or reasonably necessary to make full economic use of the Property or any other Property or otherwise expended in connection with such conditions, and including without limitation any attorneys’ fees, costs and expenses incurred in enforcing this Deed of Trust or collecting any sums due hereunder; and

25.1.3 liability to any person or entity to indemnify such person or entity for costs expended in connection with the items referenced in sub-Section 24 hereof.

25.2 “Environmental Requirements” means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises and similar items, of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:

25.2.1 all requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials, chemical substances, pollutants, contaminants or hazardous or toxic substances, materials or wastes whether solid, liquid or gaseous in nature, into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials,

pollutants, contaminants or hazardous or toxic substances, materials, or wastes, whether solid, liquid or gaseous in nature; and

25.2.2 all requirements pertaining to the protection of the health and safety of employees or the public.

25.3 “Hazardous Materials” means any substance:

25.3.1 the presence of which requires investigation or remediation under any federal, state or local statute, regulation, rule, ordinance, order, action or policy; or

25.3.2 which is or becomes defined as a “hazardous waste” or “hazardous substance” or “pollutant” or “contaminant” under any federal, state or local statute, regulation, rule, or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.); or

25.3.3 which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, any State of the United States, or any political subdivision thereof; or

25.3.4 the presence of which on the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the Property or to the health or safety of persons on or about the Property; or

25.3.5 which contains volatile organic compounds such as gasoline, diesel fuel or other petroleum hydrocarbons; or

25.3.6 which contains polychlorinated biphenyls (PCBs) or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or

25.3.7 radon gas.

26. Environmental Indemnity. Trustor agrees to indemnify, reimburse, defend, exonerate, pay and hold harmless (a) Beneficiary, its affiliates and their respective successors and assigns who acquire all or any portion of the loan secured by this Deed of Trust or the Property in any manner, including but not limited to, purchase at a foreclosure sale, acceptance of a deed in lieu thereof or otherwise through the exercise of the rights and remedies of Beneficiary under this Deed of trust and (b) the directors, officers, shareholders, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, affiliates, lessees, mortgagees, trustees, and invitees of Beneficiary and such other persons or entities, from and against any and all Environmental Damages arising from the presence of Hazardous Materials upon, about or beneath the Property or migrating to or from the Property, or arising in any manner whatsoever out of the violation of any Environmental Requirements pertaining to the Property and the activities thereon, or the breach of any warranty or covenant or the inaccuracy of any representation of Trustor contained in this Deed of Trust unless and to the extent such Environmental Damages exist solely as a result of the gross negligence or willful misconduct of Beneficiary. This obligation shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel chosen by Trustor and reasonably approved by the indemnified parties), even if such claims, suits or proceedings are

groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against such indemnified persons. Trustor's obligations hereunder shall not apply with respect to Environmental Damages caused after Beneficiary has purchased the Property at a foreclosure sale unless caused by Trustor, either solely or jointly with others, including Beneficiary.

27. Environmental Remedies. Notwithstanding anything to the contrary in this Deed of Trust, the rights of Beneficiary and the obligations of Trustor created under the foregoing Sections 23, 25, and 26 shall be in addition to those other rights and obligations, respectively, created or imposed by statutory, common or case law.

28. Provisional Remedies on Default. Should Trustor fail or refuse to make any payment or do any act which it is obligated hereunder to make or do, at the time and in the manner herein provided, or if any representation of Trustor in this Deed of Trust, or other document referred to herein is incorrect, then Trustee and/or Beneficiary, each in its sole discretion, may, without notice to or demand upon Trustor, and without releasing Trustor from any obligation hereof:

28.1 Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, either Trustee or Beneficiary being authorized to enter upon and take possession of said Property for such purposes;

28.2 Commence, appear in and/or defend any action or proceedings purporting to affect the security hereof, and/or any additional or other security therefor, the interest, rights, powers and/or duties of Trustee and/or Beneficiary hereunder, whether brought by or against Trustor, Trustee or Beneficiary;

28.3 Pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which in the judgment of either may affect or appear to affect the security of this Deed of Trust, the interest of Beneficiary or the rights, powers and/or duties of Trustee and/or Beneficiary hereunder;

28.4 Enter into and upon and take and hold possession of any or all Property covered hereby and exclude the Trustor and all other persons therefrom;

28.5 Operate, and manage the said Property and rent and lease the same and collect any and all rents, issues, income and profits therefrom, the same being hereby assigned and transferred to Beneficiary, and from time to time apply same and/or accumulate same for application, in such order and manner as Beneficiary in its sole discretion shall consider advisable, to or upon the following: The necessary and proper costs of upkeep, maintenance, repair, and/or operation of said Property, the repayment of any sums theretofore or thereafter advanced pursuant to the terms of this Deed of Trust, the interest then due or next to become due upon said indebtedness, the taxes and assessments upon said Property then due or next to become due, the unpaid principal of said indebtedness, or any other obligation secured by this Deed of Trust.

28.5.1 The collection and/or receipt of rents, issues, income and/or profits from said Property by Beneficiary after declaration of default and election to cause said Property to be sold under and pursuant to the terms of this Deed of Trust shall not affect or impair such default or declaration of default or election to cause said Property to be sold or any sale proceedings predicated thereon, but such proceedings may be conducted and sale effected

notwithstanding the receipt and/or collection of any such rents, issues, income and/or profits. Any such rents, issues, income and/or profits in the possession of said Beneficiary at the time of sale and not theretofore applied as herein provided, shall be applied in the same manner and for the same purposes as the proceeds of the sale.

28.5.2 Neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts above mentioned, but, upon election of either or both so to do, employment of an attorney is authorized and payment of such reasonable attorneys' fees and of all other necessary expenditures is hereby secured.

29. Condemnation. All moneys and awards payable as damages and/or compensation for the taking of title to or possession of, or for damage to, any portion of the Property subject to this Deed of Trust by reason of any condemnation, eminent domain or other similar proceeding shall be paid to Beneficiary, and such moneys and awards are hereby assigned to Beneficiary, and judgment therefor shall be entered in favor of Beneficiary, and when paid, may, at the option of the Beneficiary, (a) be applied, in whole or in part, by Beneficiary upon any indebtedness or obligation secured hereby, whether the same be matured or unmatured, and in such order as Beneficiary may determine, (b) be used in whole or in part to replace or restore the Property to a condition satisfactory to the Beneficiary, (c) be used in whole or in part to fulfill any of the covenants contained herein as the Beneficiary may determine, or (d) be released to the Trustor; and the Trustor hereby covenants and agrees, upon request by the Beneficiary, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid moneys and awards to the Beneficiary free, clear and discharged of any and all encumbrances of any kind or nature whatsoever.

Notwithstanding the foregoing, in the event of any fire or other casualty to the Property or eminent domain proceedings resulting in condemnation of the Property or any part thereof, Trustor shall have the right to rebuild the Property, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the Loan in balance and rebuild the Property in a manner that provides adequate security to Beneficiary for repayment of the Loan or if such proceeds are insufficient then Trustor shall have funded any deficiency, (b) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the Loan Documents. If the casualty or condemnation affects only part of the Property and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to Beneficiary for repayment of the remaining balance of the Loan.

30. Acceptance of Late Payments. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its rights either to require prompt payment when due of all other sums so secured or to declare default as herein provided for failure so to pay.

31. Waivers and Authorizations. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note or Notes secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of said Property, Trustee may reconvey any part of said Property; consent in writing to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof. Trustor, for itself and its successors and assigns (including without limitation any

subsequent or other junior creditor of any part or all of the Property), waives any right to object to such reconveyance, mapping, easement or agreement with respect to such Property and waives any right to require that the value of such Property be applied upon the debt secured hereby (other than the amount, if any, actually received by Beneficiary in connection with any such transaction).

32. Release, Modification and Reconveyance, Waiver of Marshalling. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any property not then or theretofore released as security, for the full amount of all unpaid obligations, Beneficiary may from time to time, and without notice release any person so liable, extend the maturity or alter any of the terms of any such obligation, or grant other indulgences, release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel or portion or all of the Real Property described herein, take or release any other or additional security for any obligation herein mentioned, and/or make composition or other arrangements with debtors in relation thereto. Trustor waives any right to object to the release or reconveyance of such Property and waives any right to require that the value of any Property so released or reconveyed be applied upon the debt secured hereby (other than the amount, if any, actually received by Beneficiary in connection with any such release). Trustor agrees that if the Beneficiary at any time holds any additional security for any obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same at its option, either before or concurrently therewith or after a sale is made hereunder.

33. Substitution of Trustee. Beneficiary hereunder may, from time to time, appoint another trustee or trustees to execute the trusts hereby created; and upon the recordation of such appointment in the Office of the County Recorder of the County where such Property is situated, the new trustee or trustees shall be vested with all the title, interest, powers, duties, and trusts in the premises hereby vested in the Trustee first above named.

34. Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender to Trustee of this Deed of Trust and the Note or Notes secured hereby for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled hereto."

35. Right of Entry. The Beneficiary is authorized by itself, its agents or workmen, to enter at any time upon any part of said Property and the improvements thereon situated for the purpose of inspecting the same, and for the purpose of performing any of the acts it is authorized to perform under the terms of this Deed of Trust. Beneficiary shall reimburse Trustor for the cost of repair of any physical injury to the Property caused by Beneficiary's gross negligence or willful misconduct during the entry, inspection, and acting on the Property pursuant to this Section.

36. Default, Acceleration and Private Sale.

36.1 Notice of Default. Should breach or default be made by Trustor in payment of any indebtedness secured hereby or in performance of any obligations, covenant, promise or agreement hereunder which breach or default is not cured within and applicable cure periods set forth below, or any representation of Trustor in this Deed of Trust, or other document



referred to herein is incorrect, Beneficiary may declare all sums secured hereby immediately due and payable, and in such case, shall execute and deliver to Trustee a written declaration of default and demand for sale and written notice of default and election to cause to be sold said Property, and shall surrender to Trustee this Deed of Trust, the Note or Notes secured hereby and all documents evidencing any expenditures hereunder. Thereafter such notice of default and election to cause said Property to be sold to satisfy the obligations hereof shall be duly filed for recordation. The applicable cure periods for breach or default shall be as follows: (i) if a breach or default results from Trustor's non-payment of any sums due to Beneficiary, Trustor shall cure the breach or default within ten (10) days following receipt of notice of default from Beneficiary, and (ii) for any other default, Trustor shall cure the default within thirty (30) days following receipt of notice of default from Beneficiary; provided, that if the default cannot reasonably be cured within said thirty (30) day period, Trustor shall commence curing the default within said period and complete curing the default within the time period reasonably necessary to cure said default, not to exceed ninety (90) days, unless extended by Beneficiary in its sole discretion.

If a monetary event of default occurs under the terms of any of the Loan Documents, prior to exercising any remedies thereunder Lender shall give Trustor and each of the general and limited partners of the Trustor simultaneous written notice of such default at the addresses set forth below in the Request for Notice of Default section. Trustor shall have a period of ten (10) days after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary under the Loan Documents.

If a non-monetary event of default occurs under the terms of any of the Loan Documents, prior to exercising any remedies thereunder Beneficiary shall give Trustor and each of the general and limited partners of the Trustor simultaneous written notice of such default at the addresses set forth below in the Request for Notice of Default section. If the default is reasonably capable of being cured within thirty (30) days, Trustor shall have such period to effect a cure prior to exercise of remedies by Beneficiary under the Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and if Trustor (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given.

Beneficiary hereby agrees that any cure made or tendered by any of Trustor's limited partners shall be deemed a cure by Trustor, and shall be accepted or rejected on the same basis as if made or tendered by Trustor.

36.2 Right to Rescind. Beneficiary, from time to time before Trustee's sale, may rescind any such notice of breach or default and of election to cause to be sold said Property by executing and delivering to Trustee a written notice of such rescission, which notice, when recorded, shall also constitute a cancellation of any prior declaration of default and demand for sale. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other declarations of default and demand for sale, and notices of breach or default, and of election to cause to be sold said Property to satisfy the obligations hereof, nor otherwise affect any provision, covenant or condition of said Note or

Notes and/or of this Deed of Trust or any of the rights, obligations, or remedies of the parties thereunder.

36.3 Private Sale. At least three (3) months having elapsed after recordation of notice of default, without demand on Trustor, said Trustee, having first given notice of sale as then required by law, shall sell said Property at the time and place of sale fixed by it in the notice of sale at public auction to the highest bidder for cash, payable at time of sale. The whole of the trust estate shall be sold in a single lot or parcel and as an entirety unless the Beneficiary shall, in writing, direct the Trustee to sell said trust estate in separate parcels and shall direct the Trustee as to the parcels into which the trust estate shall be divided for purposes of sale and the order in which said parcels shall be offered for sale. Trustor, for itself and its successors and assigns (including without limitation any subsequent or other junior creditor of any part or all of the Property), waives any right to marshalling of assets or any right to require any part of the Property to be sold prior to any other part of the Property or any right to require the Property to be sold in parcels rather than as a whole. Trustee may postpone sale of all or any portion of said Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Without further notice Trustee may make such sale at the time to which same shall be so postponed. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied, and the recitals in such deed or deeds of any matters or facts affecting the regularity or validity of said sale shall be conclusive (except as against the parties hereto) proof of the truthfulness thereof; also such deed or deeds shall be conclusive (except as against the parties hereto) against all persons as to all matters or facts therein recited. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

36.4 Application of Sale Proceeds. Trustee shall apply the proceeds of any such sale to payment of:

36.4.1 All costs, fees, charges and expenses of Trustee and of these trusts, reasonable fees of any attorneys employed by Trustee and/or Beneficiary pursuant to the provisions hereof, Trustee's fees in connection with sale, and all expenses of sale, including cost of procuring guarantee or evidence of title in connection with the sale proceedings and other costs associated with the Trustee's Deed;

36.4.2 All other sums then secured hereby, including indebtedness described herein, all sums advanced or expended under the terms hereof and not then repaid, the interest on each of the foregoing items, all in such manner and order of priority or preference as the Beneficiary may in its sole and absolute discretion determine;

36.4.3 The remainder, if any, to the person or persons legally entitled thereto, upon proof satisfactory to the Trustee of such right.

37. Successors and Assigns. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder, including Pledgees, of the Note secured hereby, whether or not named as Beneficiary herein.

38. Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Deed of Trust.

39. Acceptance by Trustee. Trustee accepts these trusts when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

40. No Notice by Trustee. Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which Trustor, Beneficiary and/or Trustee shall be a party, unless brought by Trustee, or of any pending sale under any other Deed of Trust.

41. Number and Gender. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

42. Waiver of Statute of Limitations. The right to plead any and all statutes of limitations as a defense to any demand secured by this Deed of Trust is hereby waived to the full extent permissible by law.

43. Trust Irrevocable. The Trust created hereby is irrevocable by the Trustor.

44. Interpretation. The term "and/or" as used herein means one or the other or both, or any one or all, of the things or persons in connection with which the words are used. Section headings are for reference only and shall not be considered in the interpretation of this Deed of Trust.

45. Maximum Interest Rate. Notwithstanding any provision herein or in said Note, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the usury laws of the State of California.

46. Request for Notice of Default. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the following address:

1901 8<sup>th</sup> Street Investors Limited Partnership

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

47. Materiality. Each and every provision, covenant, term and condition, representation and warranty herein contained is agreed to be a material provision hereof, and any breach thereof shall constitute a sufficient ground for acceleration of the due date of the indebtedness secured hereby and a sufficient ground for foreclosure in the event of failure of Trustor either to cure said breach within the time periods, if any, herein provided or to pay in full the indebtedness hereby secured.

48. Subordination to Extended Use Agreement. Notwithstanding anything to the contrary contained in this Deed of Trust or in the Loan Documents, the lien of this Deed of Trust shall at all times be subordinate to any “extended low-income housing commitment” (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) recorded against the Property in accordance with Section 42(h)(6)(E) of the Internal Revenue Code.

49. Lender Forbearance. Notwithstanding anything contained herein or in the Loan Documents to the contrary, until the later to occur of (a) the end of the Compliance Period (as defined in the Partnership Agreement) and (b) the date that the Investor Limited Partner (as defined in the Partnership Agreement) or its affiliate is no longer a partner of Trustor (the later of (a) and (b) being referred to as the “Standstill Period”), Lender will not declare a default or event of default, or commence default proceedings under any of the Loan Documents, including but not limited to accelerating the loan, collecting rents, appointing or seeking appointment of a receiver or exercising any other rights or remedies hereunder or under the Loan Documents; provided, however, that if any other Project lender declares a default and/or commences default proceedings against Borrower under its loan documents, then the Standstill Period described herein shall not apply to Lender if Borrower is also in default under the terms of this Note, and Lender shall have the right to declare a default and/or commence default proceedings under this Note (subject to any applicable subordination agreement). Lender waives no rights or remedies it may have hereunder or under the Loan Documents, but, except as allowed above, merely agrees not to enforce those rights or remedies until the end of the Standstill Period.

**IN WITNESS WHEREOF**, Trustor has executed this Deed of Trust as of the date first above written.

**TRUSTOR:**

**1901 8<sup>th</sup> Street Investors Limited Partnership,**  
a California limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: General Partner

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

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

**EXHIBIT A**

**Legal Description of the Property**

**EXHIBIT B**

**PERSONAL PROPERTY COLLATERAL**

**PAGE 1 OF 2**

The Property which is covered by this Deed of Trust specified in Exhibit "A" and the Collateral are together sometimes referred to in this instrument as the "Property".

The Collateral shall consist of:

1. All Trustor's interest in and to all existing and future goods located on or about the real property described above in Exhibit "A" (the "Real Property") which are used in the operation or occupancy of the Real Property or in any development of or construction on the Real Property, including but not limited to all apparatus, fixtures and articles of personal property now or any time hereafter attached to, placed in or upon or used in any way in connection with the Real Property, and including but not limited to all furniture, refrigerators, freezers, stoves, ovens, ranges, hoods, vents and fans, disposals, dishwashers, washing machines, dryers, air conditioners, cabinets, carpeting, drapes, screens, awnings, storm windows and doors, window shades, blinds, floor coverings, boilers, tanks, furnaces, radiators, fire alarm and other security systems, music systems, machinery, motors, compressors, and all heating lighting, plumbing, gas electric, ventilating refrigerating, air-conditioning, sprinkler and incinerating equipment, transformers, water wells, storage tanks, landscaping, pool equipment and furniture, dumpsters (or, to the extent leased, Trustor's leasehold interest therein) and parking lot and other common area sweeping and cleaning equipment, and equipment and furnishings in or for the recreation room, halls, entry rooms and all other common areas; and including inventory, construction tools and equipment, appliances, furniture and furnishings, building service equipment, and building materials, supplies and equipment of any kind.
2. All general intangibles, chattel paper, instruments, documents and accounts owned by Trustor and relating to the development, use or occupancy of or construction on the Real Property, including but not limited to all governmental licenses, map rights, approvals and permits, all materials prepared for filing or filed with any public or quasi-public governmental entities or any public utilities and all of Trustor's rights under any contract whether or not otherwise specifically assigned to Beneficiary.
3. All of the right, title and interest of Trustor in and to (i) all sales contracts applicable to any portion of the Real Property, together with any and all modifications thereof, and also together with all deposits or other payments made in connection therewith; (ii) all refundable or returnable fees, bonds, securities or other Property held by any public or quasi-public governmental entities, utility companies or others; (iii) all leases of any part or all of the Real Property now or hereafter entered into and all right, title and interest of Trustor thereunder, including (to the extent permitted by law) but not limited to cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of said leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of said terms; (iv) all advance payments of insurance premiums made by Trustor with respect to any part of the

**EXHIBIT B**

**PAGE 2 OF 2**

Real Property and claims or demands relating to insurance; (v) all advance payments by Trustor of any kind for the benefit of the Real Property including but not limited to those under maintenance or service contracts, property taxes, advertising expenses and commissions; (vi) all funds deposited by Trustor with Beneficiary under this Note; and (vii) all take out or similar agreements or commitments in connection with the loan to Trustor or the Real Property.

4. All rights of Trustor in and to all furniture, furnishings, fixtures and equipment now or hereafter located upon or used in connection with the above-described Real Property.

5. All refunds, proceeds of financing and other payments, and all rights thereto, received by Trustor or to which it is entitled as a result of any assessment bonds issued in connection with the secured Property or property adjacent thereto.

6. The products and proceeds of all of the above.



## 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, \_\_\_\_\_, (here 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)

## 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, \_\_\_\_\_, (here 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)

**[THIS DOCUMENT IS EXEMPT FROM  
RECORDING FEES PURSUANT TO § 27383  
OF THE CALIFORNIA GOVERNMENT CODE]**

RECORDING REQUESTED BY  
AND WHEN RECORDED, MAIL TO:

Capitol Area Development Authority  
c/o Executive Director  
1522 14<sup>th</sup> Street  
Sacramento, CA 95814

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**REGULATORY AGREEMENT**  
(Project Name - Address)

This Regulatory Agreement ("Agreement") is made \_\_\_\_\_, 2024 (the "Effective Date"), by and among between \_\_\_\_\_, LP, a California limited partnership ("Owner"), and **Capitol Area Development Authority**, a California joint powers agency ("Authority") (collectively, the "Parties").

**RECITALS**

A. Owner is development a \_\_\_\_\_-unit multifamily rental housing development (the "Project") located at \_\_\_\_\_, Sacramento, California, as legally described in Exhibit A (the "Property"), of which \_\_\_\_\_ units shall be rented at rents affordable to Qualified Households according to the schedule contained in Exhibit B (the "Regulated Units").

B. The Authority is providing a permanent loan to Owner for acquisition and operation of the Project pursuant to the terms of a Promissory Note secured by a Deed of Trust Assignment of Rents, Security Agreement and Fixture Filing dated the same date herewith (the "Authority Loan").

C. As further consideration for the Authority's funding and to further the public interests of Authority in seeing the Project maintained as affordable housing, Owner has agreed to enter into and record this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership, and management of the Project for the benefit of Project occupants and the surrounding neighborhood. The covenants in this Agreement are intended to run with the land and be binding on Owner and Owner's successors-in-interest to the land for the full term of this Agreement.

**NOW, THEREFORE**, Owner and Authority hereby agree as follows:

1. **DEFINITIONS**

The following terms have the meanings set forth in this section wherever used in this Agreement or attached exhibits.

1.1 **"AFFORDABLE RENTS"** shall mean the following:

1.1.1 For all \_\_\_\_\_ of the units, the monthly charge for occupancy and use of a Regulated Unit shall not exceed the product of thirty percent (30%) times eighty percent (80%) of the Area Median Income or thirty percent (30%) times one-hundred twenty percent (120%) of the Area Median Income, adjusted for family size appropriate for the Unit, as shown in Exhibit B.

1.1.1.1 If Owner requires occupants of Regulated Units to reimburse Owner for utilities pursuant to this Agreement, the tenants of those units shall receive a utility allowance based on the then-current allowance established by a Utility Letter as defined within. If a Utility Letter is not available, the utility allowance shall be based on the Sacramento Housing Authority (or its successor) for units of a comparable size and type.

1.1.1.2 For purposes of this definition, "adjusted for family size appropriate for the Unit" shall mean the adjustments required in order to comply with state and federal laws and regulations governing projects receiving low income housing tax credits (which at the time of execution of this Agreement presume a household size of number of bedrooms plus one. This would mean one person for a studio, two for a one-bedroom, three for a two-bedroom, etc.)

1.2 **"AUTHORITY"** means the Capitol Area Development Authority, a California joint powers agency.

1.3 **"AREA MEDIAN INCOME"** ("AMI") means the median income for the Metropolitan Statistical Area which includes the City of Sacramento ("MSA"), with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development ("HUD") pursuant to Section 8(f)(3) of the United States Housing Act of 1937 as amended, and the California Department of Housing and Community Development ("HCD"), or such other method of median income calculation applicable to the City of Sacramento that HUD or HCD may hereafter adopt in connection with said Act. If HUD should cease making such determination, Authority may designate another fair method of calculation of AMI used by any federal or state agency and applicable to the City of Sacramento.

1.4 **"DEED OF TRUST"** means the Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing placed on the Property as security for the Loans with Owner as Trustor and Authority as Beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust.

1.5 **"LIMITED PARTNERSHIP AGREEMENT"** means that certain Partnership Agreement of Owner dated \_\_\_\_\_, 2024.

1.6 **"LOAN"** means the loan of funds provided by Authority to Owner pursuant to the Note and Deed of Trust.

1.7 **"LOAN DOCUMENTS"** means collectively this Agreement, the Note, and Deed of Trust for the Project, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 **"NOTE"** means the Promissory Note in the amount of \$25,000, executed by Owner in favor of Authority evidencing the Loan for acquisition and construction of the Project, as well as any amendments to, modifications of, or restatements of said Note. The Note is on file with Authority.

1.9 **“OWNER”** means \_\_\_\_\_, LP, a California limited partnership, and all assigns, successors-in-interest, and transferees.

1.10 **“PROJECT”** means the development and operation of the Property for residential use according to the terms of the Limited Partnership Agreement and this Agreement.

1.11 **“PROPERTY”** means the real property described in the attached Exhibit A, which is hereby incorporated into this Agreement by this reference, and any buildings or improvements now or hereafter situated on such real property.

1.12 **“QUALIFIED HOUSEHOLD”** means a household in which household income does not exceed the percentage of AMI prescribed for the applicable housing unit by Exhibit B to this Agreement.

1.13 **“REGULATED UNITS”** means the \_\_\_\_\_ rental dwelling units constructed for the Project, having the composition and affordability breakdown shown in Exhibit B.

1.14 **“SENIOR DEED OF TRUST”** means the first position Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing, for the benefit of [insert senior lender].

1.15 **“SENIOR LENDER”** means [insert senior lender], a \_\_\_\_\_.

1.16 **“SUBORDINATION AGREEMENT”** means that certain Subordination Agreement by and between Owner, Authority, and [insert senior lender], dated the same date herewith.

1.17 **“UTILITY ALLOWANCE”** means the local Utility Allowance for this type of housing, adjusted for unit size, as released regularly by the local Housing Authority, or a similar Authority-approved, third-party method for determining the appropriate utility allowance so that the combination of rent and utility allowance costs do not exceed thirty percent of the target household income.

## 2. **OWNER’S GENERAL OBLIGATIONS**

2.1 **COMPLIANCE WITH LOAN DOCUMENTS.** Owner’s actions with respect to the Property and the use of Loan funds shall at all times be in full conformity with the requirements of the Loan Documents.

2.2 **TERM OF AGREEMENT.** This Agreement shall commence upon execution and shall remain in full force and effect for fifty-five (55) years. The obligations in this Agreement shall remain effective and fully binding on Owner for this full term regardless of any expiration of the term of any Loan, any payment or prepayment of any loan, any assignment of a Note, any reconveyance of a Deed of Trust, or any sale, assignment, transfer, or conveyance of the Property, unless terminated earlier by Authority in a recorded writing or extended by mutual consent of the Parties or unless terminated due to foreclosure as provided in the Subordination Agreement; provided however, that the obligations in this Agreement are and shall be subordinate in all respects to the liens, terms, covenants, and conditions of the Senior Deeds of Trust, as more fully set forth to the extent and in the manner provided in the Subordination Agreement. If, due to changes in State law, the Welfare Tax Exemption from the State of

California is no longer available or the Project no longer qualifies for the Welfare Tax Exemption, and there is no similar successor program or replacement State tax subsidy, then Authority agrees to remove the Regulatory Agreement from title upon Owner's full repayment of the Authority Loan.

### 3. **PROJECT OCCUPANCY AND RENTS**

3.1 **OCCUPANCY OF REGULATED UNITS.** Regulated Units shall be made available to and occupied by Qualified Households at Affordable Rents according to the schedule contained in Exhibit B herein and the following requirements:

3.1.1 Initial Occupancy of Regulated Units. The income levels and other qualifications of applicants required by this Agreement shall be confirmed by Owner or its manager prior to such person's initial occupancy in conformance with Owner's management procedures manual, the Authority's rules and Tax Credit Allocation Committee (TCAC) rules governing income certification, as these rules may be amended from time to time, unless otherwise approved by Authority.

3.1.2 Transition of Units from Market to Affordable Regulated Units. The Authority acknowledges that at the time of execution of this Agreement some of the Regulated Units may be pre-leased to households not qualifying for incomes identified for the Regulated Units. By no later than the end of the first year of occupancy, upon the conclusion of the initial 1-year lease terms, Owner shall ensure all non-qualifying units convert to income-qualified households and corresponding rents for Regulated Units. Owner will certify to Authority the actual number of compliant Regulated Units upon initial acquisition of Property and will ensure full conversion and compliance to Regulated Units requirements no later than September 1, 2024. Prior to transition to a Regulated Unit, the monthly charge for occupancy and use of non-qualifying units occupied by households with incomes over 80% of Area Median Income or 120% of Area Median Income, respectively, may be limited to thirty percent (30%) of the gross household income.

3.1.3 Households That Exceed Income Qualification after Initial Occupancy. Households that initially qualify as Qualified Households for Regulated Units and whose incomes exceed the qualifying income after initial occupancy will have one year to transition to other housing and may be charged at market rate rents for occupancy and use of the unit until their transition to other housing.

3.2 **RENTS FOR REGULATED UNITS.** Rents for Regulated Units shall not exceed Affordable Rents.

3.3 **CONVERSION OF PROJECT FROM RENTAL TO CONDOMINIUM.** Owner shall not convert Regulated Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Regulated Units during the term of this Agreement without the prior written consent of Authority, which consent may be withheld for any reason.

3.4 **NONDISCRIMINATION.** Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Project units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age (except to the extent necessary to qualify the tenant as a senior citizen), marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-

related conditions (ARC), or any other arbitrary basis. Owner shall include a statement in all advertisements, notices, and signs for the availability of Project units for rent to the effect that Owner is an Equal Housing Opportunity Provider.

**3.5 MANAGEMENT RESPONSIBILITIES.** Owner is specifically responsible, subject to its obligations herein, for all management functions with respect to the Property, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Authority shall have no responsibility over management of the Property.

**3.6 MANAGEMENT ENTITY.** Authority shall have the right to review and approve the management entity chosen by Owner for the Property and subject to the rights of the Senior Lenders and the equity investors, the right to require a change in the management agent for reasonable cause at any time during the term of this Agreement. Any contracting of management services by Owner shall not relieve Owner of its primary responsibilities for proper performance of management duties.

**3.7 FINAL MANAGEMENT PLAN.** Within thirty (30) business days of filing this Agreement, Owner shall submit final management plan ("Final Management Plan") and marketing plans (collectively "Final Plans" or "Plans") to Authority for its review and approval, which shall not be unreasonably withheld. The Plans shall include but are not limited to provisions as set forth directly below:

3.7.1 Annual inspections of individual units to ensure continued compliance with state and local housing codes. Results of the inspections, including corrective actions, must be documented in a report, and copies may be requested by the Authority. The Authority may also independently schedule during a calendar year, one or more property inspections;

3.7.2 Audited annual financial statements prepared by a certified public accountant, approved in advance, in writing, by Lender, which reflect the status of the reserve fund for maintenance and replacement activities. Copies of audited annual financial statements must be provided to the Authority within ninety (90) days of the fiscal year-end date;

3.7.3 A maintenance and replacement schedule for the common areas and housing units;

3.7.4 A marketing strategy to outline methods to be used to achieve full and continuing lease up of the housing units on the Property and conformance with any applicable state and federal affirmative fair housing marketing guidelines;

3.7.5 A plan for certifying the eligibility of the households, including annual verification of tenant income and measures to take in the event a tenant exceeds the maximum income;

3.7.6 A tenant selection process that includes but is not limited to the following:

3.7.6.1 Review of the following criteria in tenant selection:

3.7.6.1.1 history of habitual rent delinquencies or evictions;

3.7.6.1.2 history of drug or alcohol abuse;

3.7.6.1.3 history of criminal or drug-related offenses, including but not limited to assault, battery, abuse, destructive or violent behavior;

3.7.6.2 Prospective tenants will be required to fill out an application form, verify income/employment, attend a private interview with the property management firm, consent to a credit check and agree to abide by property management rules for Property;

3.7.6.3 Selected tenants will be given a set of “rules and regulations” for the Property, and

3.7.6.4 Leases with tenants will provide that non-compliance with building rules shall be an Event of Default on the lease and grounds for eviction;

3.7.7 On-site management of the Project;

3.7.8 The duties of the manager regarding operation of the Project;

3.7.9 Tenant occupancy rules and regulations; and

3.7.10 A sample lease form.

3.7.11 Authority shall have the right to review and approve any changes to the management company, any new management contracts, and any substantive changes in the Final Management Plan during the term of this Agreement. Authority may also require the Owner to update the Final Management Plan not more than once every three (3) years. If Authority has not responded to any submission of the Final Management Plan or management contract (including amendments) by Owner within thirty (30) days of receipt of such Plan or contract by Authority, the Plan or contract (including amendments) shall be deemed approved by Authority.

#### 4. **PROJECT OPERATIONS**

##### 4.1 **MAINTENANCE AND SECURITY.**

4.1.1 Owner shall at its own expense maintain the Property in good condition, in good repair, and in decent, safe, sanitary, habitable, and tenantable living condition for the benefit of Project occupants. Owner shall not commit or permit any waste on or to the Property, and shall prevent and/or rectify any physical deterioration of the Property. Owner shall provide adequate ongoing security equipment and services for Project occupants. Owner shall maintain the Property in conformance with all applicable state, federal, and local laws, ordinances, codes, and regulations and the Final Management Plan; but Owner’s maintenance obligations shall not be limited only to the standards contained in these laws or the Plan.

4.1.2 In the event Owner fails to maintain the Property in accordance with these standards and after thirty (30) days’ prior written notice to Owner, and subject to the rights of the Senior Lenders and equity partners, Authority or its agent may, but shall be under no obligation to, enter upon the Property, make such repairs or replacements as are deemed necessary in Authority’s reasonable discretion, and provide for payment thereof. Any amount advanced by Authority to make such repairs, together with interest thereon from the date of such advance at



the same rate of interest as specified in the Note for the Project (unless payment of such an interest rate would be contrary to applicable law, in which case interest shall accrue at the rate then allowed by applicable law), shall become an additional obligation of Owner to Authority and shall be secured by the Deed of Trust.

4.2 **UNIT VACANCIES.** Owner shall use its best efforts to fill vacancies in the Regulated Units as quickly as possible.

4.3 **INSPECTION AND RECORDS.** Owner shall maintain records which clearly document Owner's performance of its obligations to operate the Property under the terms of this Agreement. Owner shall submit any records to Authority within twenty (20) business days of Authority's request. Owner shall permit Authority to enter and inspect the Property for compliance with obligations under this Agreement upon seven (7) days' prior written notice of such visit by Authority to Owner or Owner's management agent and to tenants of any inspected Project units, subject to the provisions of the lease regarding inspection and entry rights.

4.4 **ANNUAL REPORT.**

4.4.1 Owner shall submit an annual report to Authority, which shall include at a minimum for each Regulated Unit the initial and current rental rates and the income and household size of the occupants at the time such occupants initially take occupancy. The income information required under this report shall be supplied by the tenant in a certified statement on a form provided by Authority. Owner shall complete any additional monitoring or other form provided by Authority, and shall provide Authority a copy of the annual reports submitted to the County Assessor's office.

4.4.2 Owner shall pay to Authority an annual monitoring fee of thirty-five dollars per unit, or \$\_\_\_\_\_ (the "Monitoring Fee"), which amount shall be due and payable in advance commencing on the Effective Date and on each **[ May 1 ]** thereafter. This fee will be escalated by 3% annually.

4.5 **FEES, TAXES, AND OTHER LEVIES.** Without limiting its right to require the same to be reimbursed by tenants (but subject to Owner's obligation to provide tenants of Regulated Units the utility allowance referred to in Section 1.1.1.1 Owner requires reimbursement by tenants), Owner shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) the legality thereof is being contested in good faith and by appropriate proceedings, and (b) Owner maintains reserves adequate to pay any contested liabilities.

4.6 **INSURANCE COVERAGE.** Owner shall cause to have in full force and effect during the term of this Agreement insurance coverage as required in the Deed of Trust.

4.7 **PROPERTY DAMAGE OR DESTRUCTION.** Subject to the terms and conditions of the Senior Deed of Trust, and subject to the availability of insurance proceeds, if any building or improvements erected by Owner on the Property is damaged or destroyed, Owner shall, at its own cost and expense, repair or restore the Property consistent with the original Plans and Specifications for the Project. Also, subject to the terms and conditions of the Senior Deed of Trust, such work shall commence within thirty (30) days, or up to one hundred eighty (180) days with written approval of Authority, after the damage or loss occurs and shall be completed within

a timely manner thereafter, as agreed to with the Authority. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration.

## 5. **GENERAL PROVISIONS**

### 5.1 **RESTRICTIONS ON TRANSFER.**

5.1.1 **Transfer of Property.** Prior to completion of the Project by Owner, Owner shall not, either voluntarily or by operation of law, sell, assign or otherwise transfer the Property, or any interest therein, without the express written consent of Authority. Any attempted sale, assignment or other transfer in violation of this Section shall constitute a material default of the terms of this Agreement. Notwithstanding, the foregoing, neither the withdrawal, removal, replacement, and/or addition of a general partner of the Owner pursuant to the terms of the Limited Partnership Agreement, nor the withdrawal, replacement, and/or addition of any of its limited partners or its limited partner's general partners or members, shall constitute a default under this Agreement, provided that any required substitute general partner is reasonably acceptable to the Authority and is selected with reasonable promptness.

5.1.2 **Authority Approval.** Any approvals or consents of Authority provided for herein are subject to the sole discretion of Authority, and must be in writing, and approved by the Board of Authority in the manner provided for by law, as required.

5.1.3 **Request for Consent.** In evaluating any request for consent or approval as contemplated herein, Authority may consider, among other factors it deems relevant, the operational and financial qualifications of any proposed assignee or transferee. If Authority approves a request for consent or approval, it may impose such conditions as it deems reasonably necessary to protect Authority's interest and the Project.

5.1.4 **Assumption by Transferee.** Upon any assignment or transfer approved by Authority, such approved assignee or transferee shall be required to expressly assume in writing the provisions of this Agreement in a form acceptable to Authority and its counsel.

5.2 **DEFAULT AND REMEDIES.** In the event of any breach or violation of any agreement, obligation, or warranty under this Agreement, Authority shall give written notice to Owner by specifying: (a) the nature of the breach or violation; (b) the action required to cure the breach or violation, if an action to cure is possible; and (c) a date, which shall not be less than ninety (90) calendar days from the mailing of the notice, by which such action to cure must be taken, if an action to cure is possible. Prior to exercising any remedies hereunder, Authority shall give Senior Lenders and equity investors of Owner simultaneous written notice of such default and they shall have the same cure rights as the Owner. If Owner fails to cure the breach or violation within the time frame specified in the notice, or if a cure is not possible, Authority may proceed with any of the following remedies:

5.2.1 Bring an action for equitable relief seeking the specific performance by Owner of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;

5.2.2 Enter upon, take possession of, and manage the Property, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Property, and continue in possession until such time

as Authority determines that Owner is in a position to operate the Property in compliance with this Agreement;

5.2.3 After notice provided for herein, make such repairs or replacements to the Property as are necessary and provide for payment thereof; or

5.2.4 For violations of Owner's obligations with respect to occupancy restrictions, Project maintenance, impose as liquidated damages a charge upon Owner in an amount of five hundred dollars (\$500) per day for each Project unit that is not operated in compliance with this Agreement; or

5.2.5 For violations of Owner's obligations with respect to Project rents, impose as liquidated damages a charge upon Owner in an amount equal to three times the actual amount Owner has collected from any Qualified Household in excess of the Affordable Rent; or

5.2.6 Pursue any other remedy allowed at law or in equity.

The Parties agree that the sums and formulas designated herein as liquidated damages represent a reasonable approximation of the damages Authority is likely to suffer from violations of the respective terms. Owner agrees to pay in full any accrued liquidated damages to Authority within thirty (30) business days of a written demand by Authority for such payment.

5.3 **NON-LIABILITY OF OFFICIALS, EMPLOYEES, AND AGENTS.** No member, official, director, employee, or agent of Authority shall be personally liable to Owner or third-party beneficiaries for any obligation created under the terms of this Agreement.

5.4 **INDEMNITY.** Notwithstanding the insurance coverage required herein, Owner shall indemnify and hold Authority, its members, officials, directors, employees, and agents harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys' fees) which Authority may incur as a result of (a) Owner's failure to reasonably perform any material obligations as required by this Agreement; (b) a failure of any of Owner's representations or warranties under this Agreement to be true and complete in any material respect; or (c) any material breach, act or omission by Owner, management agent, Owner's contractors, subcontractors, or suppliers with respect to the Project or the Property, except if the loss is caused by the sole negligence or willful misconduct of Authority. Owner shall pay immediately upon Authority's demand any amounts owing under this indemnity. The duty of the Owner to indemnify includes the duty to defend Authority in any court action, administrative action, or other proceeding brought by any third party arising from the Project or the Property. Owner's duty to indemnify Authority shall survive the term of this Agreement.

5.5 **GOVERNING LAW.** This Agreement shall be interpreted under and governed by the laws of the State of California, except for those provisions preempted by federal law. However, the laws of the State of California shall not be applied to the extent that they would require or allow the court to use the laws of another state or jurisdiction. Owner agrees that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts located in the State of California, except that Lender, in its sole discretion, may elect that all such actions or proceedings be tried and litigated in the County of Sacramento or the United States District Court for the Eastern District of California.

5.6 **ATTORNEYS' FEES AND COSTS.** In the event that a legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

5.7 **TIME.** Time is of the essence in this Agreement.

5.8 **CONSENTS AND APPROVALS.** Unless otherwise stated to the contrary herein, any consent or approval required under this Agreement shall not be unreasonably withheld.

5.9 **NOTICES, DEMANDS, AND COMMUNICATIONS.** Formal notices, demands, and communications between Owner and Authority shall be given by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Owner and Authority as follows, or if any such office is relocated, to the new address specified by the relocated party:

Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

With a copy to:

Urban Capital LLC  
1017 L St. #738  
Sacramento, CA 95816  
Attn: John Vignocchi  
John@UrbanCapitalCA.com  
(415) 735-6228

Authority: Capitol Area Development Authority  
1522 14<sup>th</sup> Street  
Sacramento, CA 95818  
Attn: Executive Director

5.10 **BINDING UPON SUCCESSORS.** Except as set forth in the Subordination Agreement, all provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Owner and Authority, and shall run with the land for the full term of this Agreement, regardless of any assignment, payment, prepayment, expiration, extinguishment of the Loan or Note, any reconveyance of the Deed of Trust, or any conveyance or transfer of the Property. Any successor-in-interest to Owner and any purchaser or transferee of the Property shall be subject to all the duties and obligations imposed on Owner under this Agreement for the full term of this Agreement.

5.11 **RELATIONSHIP OF PARTIES.** The relationship of Owner and Authority for this Project during the term of this Agreement shall not be construed as a joint venture, equity venture, or partnership. Authority neither undertakes nor assumes any responsibility or duty to Owner or to any third party with respect to the operation of the Property or the actions of Owner.

Except as Authority may specify in writing, Owner shall have no authority to act as an agent of Authority or to bind Authority to any obligation.

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

5.13 **OTHER AGREEMENTS.** Owner represents that it has not entered into any agreements that would restrict or compromise its ability to comply with the terms of this Agreement. Owner shall not enter into any agreements that are inconsistent with the terms of this Agreement without a written waiver by Authority, which shall not be unreasonably withheld.

5.14 **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Agreement must be in writing, and shall be effective only if executed by both Owner and Authority.

5.15 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Agreement as of the date first above written.

**OWNER:**

\_\_\_\_\_, LP,  
a California limited partnership

By: \_\_\_\_\_, LLC,  
a California limited liability company  
its Administrative General Partner

By: \_\_\_\_\_  
(name, title)

By: **Pacific Housing, Inc.**,  
a California non-profit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Mark Wiese, Chairman

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.

ACKNOWLEDGEMENT

STATE OF CALIFORNIA                    )  
                                                          )ss  
COUNTY OF SACRAMENTO            )

On \_\_\_\_\_, 202\_, before me, \_\_\_\_\_, a Notary Public, 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)

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.

ACKNOWLEDGEMENT

STATE OF CALIFORNIA            )  
                                                          )ss  
COUNTY OF SACRAMENTO        )

On \_\_\_\_\_, 202\_, before me, \_\_\_\_\_, a Notary Public, 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)



**AUTHORITY:**

**Capitol Area Development Authority,**  
a California joint powers agency

By: \_\_\_\_\_  
Danielle Foster, Executive Director

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Jeffrey Mitchell, legal counsel

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.

ACKNOWLEDGEMENT

STATE OF CALIFORNIA                     )  
                                                                              )ss  
COUNTY OF SACRAMENTO               )

On \_\_\_\_\_, 202\_, before me, \_\_\_\_\_, a Notary Public, 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  
TO THE REGULATORY AGREEMENT**

**LEGAL DESCRIPTION**

The land herein in the City of Sacramento, County of Sacramento, State of California, described as follows:

**EXHIBIT B  
TO REGULATORY AGREEMENT**

**OCCUPANCY AND RENT RESTRICTIONS  
\_\_\_\_\_ Apartments**

Unit Mix and Affordability				
	Studio	1-Bedroom	2-Bedroom	Total Units
Less than 80% AMI				
Less than 120% AMI				
<b>Total</b>				

\*Rather than having a manager's unit, one unit's resident will receive a stipend for after-hours management company response.