



**CITY OF ELK GROVE  
CITY COUNCIL STAFF REPORT**

**AGENDA TITLE:** Adopt a resolution approving a funding commitment up to the amount of nine million seven hundred thousand dollars (\$9,700,000) for the Laguna Ridge Apartments affordable housing development by Ridge Elk Grove, LP

**MEETING DATE:** March 23, 2011

**PREPARED BY:** Laura Gill, City Manager  
Susan Cochran, City Attorney

**DEPARTMENT HEAD:** Taro Echiburú, Planning Director

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**RECOMMENDED ACTION:**

Staff recommends the City Council adopt a resolution approving a funding commitment up to the amount of nine million seven hundred thousand dollars (\$9,700,000) from the City's Affordable Housing Fund ("AHF") and Very Low Income Housing Trust Fund ("VLIHTF") and authorizing the City Manager to execute the implementing loan documents for the Laguna Ridge Apartments affordable housing development by Ridge Elk Grove, LP.

**BACKGROUND INFORMATION:**

Following a recommendation by the Affordable Housing Loan Committee, on November 10, 2010, the City Council approved a Conditional Loan Commitment per the Affordable Housing Loan Program to the developer in the amount of \$9,700,000 to construct 203 family-oriented apartments for low- and very low-income persons, plus one market rate unit for a property manager. On December 8, 2010, the City Council approved a re-zone and

associated project entitlements (e.g., design review) for the development project (Planning file EG-10-053).

**TABLE 1  
 PROJECT UNIT MIX AND AFFORDABILITY**

<b>Maximum Household Income as a Percentage of Area Median Income (AMI)</b>	<b>ONE BEDROOM <i>No. of Units</i></b>	<b>TWO BEDROOM <i>No. of Units</i></b>	<b>THREE BEDROOM <i>No. of Units</i></b>	<b>Total</b>
<b>50% or lower</b>	30	42	30	102
<b>60% or lower</b>	30	41	30	101
<b>TOTAL</b>	60	83	60	203

*Note: The Project includes one (1) two bedroom manager's unit which will not be rent restricted.*

On February 9, 2011, following several months of discussion, the City Council conducted a hearing under the Tax Equity and Fiscal Responsibility Act of 1983 ("TEFRA") to approve the Laguna Ridge Apartments project ("Project"). The Project is being developed by St. Anton Capital LLC and Pacific Housing Inc. on behalf of Ridge Elk Grove, LP, a California limited partnership ("Developer"). The Developer requested financial assistance from the City of Elk Grove to provide a family oriented affordable housing project located at the northwest corner of Big Horn Boulevard and Civic Center Drive in Elk Grove. St. Anton Partners previously developed Geneva Pointe and Montego Falls with the City's financial assistance, in addition to other affordable residential developments in the Sacramento region.

On February 9, February 23, and again on March 9, the Council continued consideration of the documents necessary to complete the City's contribution toward Project financing.

**DISCUSSION:**

A primary purpose of the City's Affordable Housing Program is to assist in the actual production of affordable housing for working families and seniors and persons with disabilities on fixed incomes. The City lends its housing

funds as “gap” financing at below-market interest rates and favorable terms in order to help assure the financial feasibility of such projects. The gap is determined after for-profit and nonprofit affordable housing developers demonstrate their capacity to secure all other private, federal, and state sources of funding.

In order to fund the most units possible, staff works with applicants to provide the greatest number of affordable units for the least amount of City subsidy per unit. For the Laguna Ridge Project, the average subsidy per affordable unit is \$47,783. This is higher than the City’s historical average subsidy per affordable unit of \$36,145.

Staff has worked with the Developer to perform appropriate due diligence and review of the applicant’s funding and capacity to perform under the terms negotiated for their loan. The terms of the proposed loan include a non-amortizing loan that has a schedule of fixed amount repayments and a balloon repayment at the end of the 38-year loan term. Non-amortizing loans bear greater financial risk for the lender as collections on the principal amount of the loan are significantly delayed. This structure is not different from prior loans made for affordable housing projects in the City.

In addition to the non-amortizing nature of the loan, the City will be a junior lender on the project. Again, the City’s affordable housing loans are generally subordinate to other loans on the property. However, in this case, the amount of the senior lien is expected to be \$18.33 million. According to a third party appraisal report prepared by Novogradac and Company LLP on behalf of the City shows that the prospective market value of the project \$14,400,000. This value is based on the project being completed as shown on the existing plans and assuming restricted rents as of June 29, 2010. As a result, there is an unfavorable loan-to-value ratio for the City. Even if the units were unrestricted, the appraised value is only \$22,500,000. Thus, as the junior lienor, the City may not recoup any of the loan amount extended to the Developer in the event of a default.

The following Loan Commitment documents, which describe the terms of the City’s financial assistance and repayment provisions, are attached for City Council review and listed below:

- Affordable Housing Loan Agreement;
- Regulatory Agreement;
- Secured Promissory Note;

- Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing;
- Subordination Agreement;
- Performance and Payment Bonds;
- Completion Guarantee (as an alternate to the Performance and Payment Bonds); and
- Guarantee of Non-Recourse Obligations.

St. Anton Capital LLC (or a replacement entity they select and must be approved by the City) and Pacific Housing Inc., on behalf of Ridge Elk Grove LP, are required, among other things, to maintain good financial standing, provide proof of title insurance, lender policy insurance, submit copies of third party executed loan documents and investment limited partner documents for all lenders to the Project, close the City loan concurrently with the bond financing and tax credit equity commitment, submit organizational documents for the Ridge Elk Grove LP, and provide necessary due diligence documents to the City prior to the disbursement of the City's funds.

After a series of discussions and negotiations between the City, the Developer, and the senior lender, agreement has been reached on all issues involving the loan documents. Minor, non-substantive changes to the loan documents may occur prior to the loan closing, and staff will work with the Developer, lenders, investment limited partners, and their respective counsels to address those changes in the final loan documents.

### **Environmental Analysis:**

The California Environmental Quality Act (Section 21000, et. seq. of the California Public Resources Code, hereafter CEQA) requires analysis of agency approvals of discretionary "projects." A "project," under CEQA, is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The commitment of financial resources is not a "project" subject to the California Environmental Quality Act because it is a funding mechanism having no physical effect on the environment; however, the proposed development project is a project under CEQA.

Staff has reviewed the project to determine the required level of review under CEQA. The underlying development project and this subsequent project (the loan commitment) are exempt from the California Environmental Quality Act pursuant to the California Code of Regulations, Title 14, Chapter 3 (State CEQA Guidelines) Section 15183, because the project is consistent with the Laguna Ridge Specific Plan EIR (SCH 2000082139) and the Laguna Ridge Town Center Subsequent EIR (SCH 2007082169), both of which have been certified. Therefore, no further environmental review is required.

**FISCAL IMPACT:**

The loan to the Project totals \$9,700,000 and will be funded in four installments by the City's AHF and VLIHTF funds. The cost of the loan and staff services associated with this loan were included in the Fiscal Year 2010-11 budget. As stated above, the loan term is thirty-eight years, with annual loan payments commencing in the first year of Project operations. The General Fund will not be impacted by this action.

**ATTACHMENTS:**

1. Resolution
2. Affordable Housing Loan Agreement
3. Subordination Agreement
4. Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing
5. Promissory Note;
6. Regulatory Agreement;
7. Performance and Payment Bonds;
8. Completion Guarantee (as an alternate to the Performance and Payment Bonds); and
9. Guarantee of Non-Recourse Obligations.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE APPROVING A FUNDING COMMITMENT UP TO THE AMOUNT OF NINE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$9,700,000) FROM THE CITY'S AFFORDABLE HOUSING FUND AND VERY LOW INCOME HOUSING TRUST FUND AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE IMPLEMENTING LOAN DOCUMENTS FOR THE LAGUNA RIDGE APARTMENTS AFFORDABLE HOUSING DEVELOPMENT BY RIDGE ELK GROVE, LP**

**WHEREAS**, the City of Elk Grove (the "City") has recognized the need to provide affordable housing to all economic segments of the City; and

**WHEREAS**, the City's affordable housing development impact fee provides financial resources to promote and assist in the development of new affordable housing in the City; and

**WHEREAS**, the Affordable Housing Fund ("AHF") and the Very Low Income Housing Trust Fund ("VLIHTF") must be used to provide assistance with new rental residential development costs for low-income and very low-income housing and may also be used for homeowner down payment assistance for very low- and low-income households; and

**WHEREAS**, Ridge Elk Grove, LP, proposes to develop a two hundred three (203) unit affordable housing project plus one (1) unit for a property manager and has submitted a request for gap financial assistance from the City to help achieve financial feasibility for the project and maximize the affordability of project units; and

**WHEREAS**, the use of the City's housing funds in the manner described below will be of benefit to the City in assisting in the development of affordable housing opportunities for low- and very low-income households; and

**WHEREAS**, the proposed Laguna Ridge Apartments project would provide housing that furthers the goals and policies of the City's General Plan Housing Element in a manner consistent with the state mandated Regional Housing Needs Allocation requirement determined by the Sacramento Area Council of Governments for the City; and

**WHEREAS**, the proposed Laguna Ridge Apartments project is also consistent with the intent of Resolution No. 2004-223 regarding the imposition of the affordable housing fee, and the collection and administration of the fee; and

**WHEREAS**, the commitment of financial resources is not a "project" subject to the California Environmental Quality Act because it is a funding mechanism having no physical effect on the environment. Additionally, the underlying development project and this subsequent project (the loan commitment) are exempt from the California Environmental Quality Act pursuant to the California Code of Regulations, Title 14, Chapter 3 (State CEQA Guidelines) Section 15183, because the project is consistent

with the Laguna Ridge Specific Plan EIR (SCH 2000082139) and the Laguna Ridge Town Center Subsequent EIR (SCH 2007082169), both of which have been certified.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby approves the loan request for the Laguna Ridge Apartments affordable housing development and does hereby determine that:

- 1) The City shall loan up to NINE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$9,700,000) to the Laguna Ridge Apartments Project ("Funding Commitment").
- 2) The Director of Finance is authorized to transfer from the Affordable Housing Fund and Very Low Income Housing Trust Fund up to NINE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$9,700,000) to the Laguna Ridge Affordable Housing Project in Elk Grove based on the disbursement schedule identified in the Loan Agreement.
- 3) The City Manager is authorized to execute any and all documents required for the making of the Funding Commitment, including without limitation, the documents necessary for the use of the allocated funds and the documents necessary to make, reasonably administer, and enforce the affordability requirements of the Funding Commitment, such as an Affordable Housing Loan Agreement, Secured Promissory Note, Deed of Trust, Regulatory Agreement, and Subordination Agreement ( collectively, the "Loan Documents") in the same substantial form as the Loan Documents attached to the March 23, 2011 City Council staff report; provided however, that the Funding Commitment and other agreements shall be made in accordance with all applicable law, regulations, and policies regarding the making of the loan and use of the allocated funds.
- 4) The City Manager is authorized to make technical and other minor non-substantive amendments to the Loan Documents when such amendments are in accordance with the Funding Commitment, with City policy, with this resolution, and with the approval of such amendments by the City Attorney.
- 5) The Funding Commitment is contingent upon Ridge Elk Grove, LP providing or demonstrating to the satisfaction of the City:
  - a. Title Insurance
  - b. An ALTA Loan Extended Coverage Policy of Title Insurance in the amount of the City loan
  - c. Close of bond and equity financing for the project
  - d. Copies of the loan documents and other agreements for every lender and investor associated with the project

- e. Maintenance of good financial standing
- f. Organizational and financial documents of Ridge Elk Grove, LP, the General Partner entities (approved by the City), and the investment limited partners, on behalf of Ridge Elk Grove, LP.
- g. Submittal of the City required due diligence documents at each loan disbursement, including but not limited to CLTA 122 endorsements

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 23<sup>rd</sup> day of March 2011.

\_\_\_\_\_  
STEVEN M. DETRICK, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

\_\_\_\_\_  
SUSAN COCHRAN, CITY ATTORNEY



**AFFORDABLE HOUSING LOAN AGREEMENT**  
**Development Loan for Laguna Ridge Affordable Housing Project**  
**(\$9,700,000)**

This Loan Agreement is made this \_\_\_\_ day of \_\_\_\_ 2011, by and between the CITY OF ELK GROVE, a public body, corporate and politic (“Lender” or “City”), and Ridge Elk Grove L.P., a California limited partnership (“Borrower” or “Owner”).

**RECITALS**

A. Borrower proposes in its own name, to develop a two hundred four (204) unit housing project (the “Project”) at a site located at 8151 Civic Center Drive – APN 132-2110-001, Elk Grove, California, as more particularly described in Exhibit A, attached hereto and incorporated herein (the “Property”). One (1) of the two hundred four (204) units shall be dedicated for the use of the Property manager, and shall not be rent restricted. Two hundred three (203) of the two hundred four (204) rental units (the “Regulated Units”) shall be rent restricted. One hundred one (101) of the two hundred three (203) Regulated Units shall be restricted at rents affordable to low income persons and one hundred two (102) of the Regulated Units shall be restricted at rents affordable to very low income persons, in accordance with the Regulatory Agreement of even date herewith between Borrower and Lender.

B. Borrower wishes to borrow from Lender and Lender wishes to extend to Borrower a loan from the Lender’s Affordable Housing Fund to support development of the Project (the “Loan”). This Loan is being made to help achieve financial feasibility for the Project and maximize the affordability of Project units.

C. A Promissory Note shall be executed by Borrower evidencing this Loan, to be secured by a Deed of Trust, executed by Borrower and recorded against the Property. In addition, a Regulatory Agreement shall be executed by Borrower to secure Lender’s continuing interest in the affordability and habitability of the Project, as well as to secure performance of other covenants contained in these agreements.

NOW, THEREFORE, Borrower and Lender hereby agree as follows:

**DEFINITIONS**

The following terms have the meanings set forth below wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.

1. **Bonds** means Multi-Family Housing Revenue Bonds (The Ridge Apartments Project) 2011 Series \_\_\_, in the aggregate principal amount of EIGHTEEN MILLION THREE HUNDRED THIRTY THOUSAND DOLLARS (\$18,330,000) issued by the California Statewide Communities Development Authority (the “Issuer”). BANC OF AMERICA PUBLIC CAPITAL CORP, (“Bank of America”) is the initial purchaser of the Bonds.

2. **Borrower** means Ridge Elk Grove L.P., a California limited partnership, along with any permitted assigns, transferees, or successors-in-interest. Borrower will also be the owner of the Property and will cause the Project to be constructed.

3. **Certificate of Occupancy** means a final certificate of occupancy issued by the City to Owner for the Project.

4. **City** means the City of Elk Grove, California.

5. **Deed of Trust** means that Deed of Trust, Assignment of Rents, and Security Agreement and Fixture Filing encumbering the Property as security for the Loan in the form attached hereto as Exhibit E, executed and delivered by Borrower as trustor with Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said Deed of Trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

6. **Development Costs** means any costs associated with the acquisition of the Property and the development and construction of the Project that are incurred by the Borrower consistent with the costs described in the Project's applications to the California Tax Credit Allocation Committee and California Debt Limit Allocation Committee.

7. **Events of Default** means of any of the events described in Section 51 of this Agreement.

8. **Hazardous Materials** means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are or hereafter defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulation, including without limitation petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

9. **Investor Limited Partner** means \_\_\_\_\_ L.P., a \_\_\_\_\_ limited partnership, and its successors, affiliates and assigns.

10. **Lender** means the City of Elk Grove, a public body, corporate and politic, and any assigns, transferees, or successors-in-interest.

11. **Loan** means the loan of funds provided by Lender to Borrower made pursuant to the Loan Documents.

12. **Loan Documents** means collectively this Loan Agreement, the Deed of Trust, the Note, the Regulatory Agreement, and the Subordination Agreement. All terms and conditions of the Loan Documents are incorporated into this Agreement by reference. In the event of conflict between terms contained in these Loan Documents, the more specific term shall control;

however, if neither term is more specific, the terms in the exhibits shall govern over conflicting provisions.

13. **Note** means that Promissory Note to be executed by Borrower in favor of Lender evidencing the Loan in the form attached hereto as Exhibit D, which is to be secured by the Deed of Trust, as well as any amendments to, modifications of, or restatements of the Note. The terms of the Note are hereby incorporated into this Agreement by this reference.

14. **Owner** means Ridge Elk Grove L.P., a California partnership. All references in this Agreement and the other Loan Documents to “Owner” shall also be construed as references to “Borrower.”

15. **Project** means the development and operation of the Property according to the terms of the Loan Documents.

16. **Property** means the real property described in the attached Exhibit A, which is incorporated into this Agreement by this reference, and any buildings, structures, or improvements now or hereafter situated on this real property.

17. **Regulatory Agreement** means that Regulatory Agreement to be executed by Owner and Lender and recorded against the Property in the form attached hereto as Exhibit C, as well as any amendments to, modifications of, and restatements of said Regulatory Agreement.

18. **Regulated Units** means (a) the one hundred (102) of the two hundred three(203) rental dwelling units constructed for the Project for residents at or below 50% Area Median Income and having the following composition: thirty (30) one-bedroom units, forty-two (42) two- bedroom units and thirty (30) three-bedroom units, (b) one hundred one (101) of the two hundred three (203) rental dwelling units constructed for the Project for residents at or below 60% Area Median Income and having the following composition: thirty (30) one-bedroom units, forty-one (41) two- bedroom units, and thirty (30) three-bedroom units.

19. **Subordination Agreement** means that certain Subordination Agreement dated as of \_\_\_\_\_ between the Borrower, Lender, and Issuer, and attached hereto as Exhibit F.

### **TERMS OF LOAN**

20. **Loan.** Lender shall provide a loan of funds to Borrower under the terms and conditions of the Loan Documents. The proceeds of this Loan shall be used only to pay for Development Costs. Lender shall deposit the proceeds of this Loan pursuant to that certain Trust Indenture by and between the California Statewide Communities Development Authority, a joint exercise of powers agency organized and existing under the laws of the State of California, and Wells Fargo Bank, National Association, a national banking association, dated March 1, 2011 (the “Trust Indenture”). Disbursements of the proceeds of this Loan shall be pursuant to the Trust Indenture and this Agreement. In the event of default under this Loan, the proceeds of this Loan shall be disbursed if, Lender shall identify the source(s) of funding, and allocate and specifically reserve the funding for this Project. Lender shall disburse the Loan proceeds, irrespective of a default under its loan, if, and only if, the senior lender Bank of America makes its loan proceeds available for disbursement in an amount sufficient to meet the Project’s construction schedule.

21. **Amount of Loan.** Subject to the terms and conditions of the Loan Documents, Lender agrees to make and Borrower agrees to accept a Loan in the amount of NINE MILLION AND SEVEN HUNDRED THOUSAND DOLLARS (\$9,700,000) evidenced by the Note in this amount.

22. **Interest.** The Note shall bear simple interest at the rate of four percent (4%) per annum on the outstanding principal amount, commencing on the date of the first disbursement of loan proceeds under the terms and conditions set forth in the Promissory Note.

23. **Term of Loan.** Payments of principal and interest shall be made as required by the Note. Unless due sooner under the Note, the Loan principal balance and all accrued interest shall be due and payable on the earliest of (a) March 31, 2049, (b) the date the Property is sold or refinanced or the Borrower's interest in the Property is transferred or conveyed (except as specifically contemplated herein or as permitted in Section 29 of the Deed of Trust) or (c) an Event of Default by Borrower which has not been cured as provided for in this Agreement.

24. **Prepayment of Loan.** No prepayment penalty will be charged to Borrower for prepayment of any portion of the Loan amount prior to the end of the Loan term. However, prepayment of the entire outstanding balance of the Loan shall not affect Borrower's obligation under the Regulatory Agreement, which shall remain in full force and effect for the entire term of the Regulatory Agreement.

25. **Prevailing Wage.** It is the responsibility of the Borrower to determine whether state or federal prevailing wages apply to the Project. It is the responsibility of the Borrower to pay any required prevailing wages if and when required by state or federal law. Notwithstanding the foregoing, the City has not imposed, and nothing in this agreement shall be construed as imposing any independent prevailing wage requirements that are different from those imposed by applicable Federal or State law. Borrower shall indemnify, defend and hold harmless the City and Lender and any of their employees, officers or agents against any claim by any party related to compliance with applicable prevailing wage law, and Borrower shall be liable for the payment of all damages, penalties, wages and attorneys' fees and costs arising out of any such claim.

## **LOAN DISBURSEMENT**

### **26. Conditions Precedent to Disbursement.**

A. Subject to the provisions of this Agreement, including sections 28, 31, and 53, the Loan shall be disbursed, consistent with the Trust Indenture, as follows:

i. Subject to receipt by Lender of a Requisition, as defined in the Trust Indenture, Lender shall authorize in writing the disbursement of FIVE MILLION ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$5,125,000) on the day in which Owner has satisfied all conditions precedent to the issuance of City building permits, but for the payment of all required fees; provided, however, that Owner provides at least ten (10) business days advance notice regarding the date in which building permits will be obtained.

ii. Subject to receipt by Lender of a Requisition, as defined in the Trust Indenture, Lender shall authorize in writing the disbursement of THREE MILLION

EIGHT HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$3,875,000) when the Project is one hundred percent (100%) complete and all Certificates of Occupancy have been issued for the Project.

iii. Subject to receipt by Lender of a Requisition, as defined in the Trust Indenture, Lender shall authorize in writing the disbursement of SEVEN HUNDRED THOUSAND DOLLARS (\$700,000) within ten (10) business days after (1) submittal to the City of the Project's Cost Certification prepared and signed by a third party Certified Public Accountant which is a requirement to obtain IRS Section 42 tax credits for Project financing, and (2) a final construction inspection by Lender confirming that the Project was constructed and completed in the manner and form, including the design elements, approved by Lender. In the event that Lender determines, following its final inspection, that the Project was not constructed in the manner and form approved by the Lender, then Lender shall notify Borrower and Bank of America of its findings and provide Borrower with a reasonable time to conform the Project to the approved specifications. Should Borrower not conform the Project to the approved specifications to the satisfaction of the Lender, Lender may deduct the reasonable value of the nonconforming specification from its final disbursement.

B. In addition to the foregoing, Lender shall authorize a Requisition, as defined in the Trust Indenture, if and only all of the following conditions are met to the satisfaction of Lender:

i. Borrower has acquired and maintains fee title to the Property prior to the funding of the City Loan Fund, as defined in the Trust Indenture..

ii. Borrower has submitted to Lender evidence reasonably satisfactory to Lender demonstrating the Borrower has obtained all third party financing for the Project and Lender has approved the financing for the Project. Copies of all executed agreements for project financing, and related documentation, must be submitted to the Lender prior to the funding of the City Loan Fund, as defined in the Trust Indenture. .

iii. Borrower has executed and delivered to Lender each of the Loan Documents to be executed by Borrower in a form and substance satisfactory to Lender.

iv. As of the date of requested Requisition, as defined in the Trust Indenture, there exists no Event of Default, as described in Section 51, by Borrower nor any act, failure, omission or condition that with the giving of notice would constitute an Event of Default; and,

v. Borrower has delivered all documents, including evidence of insurance coverage, as described under Section 43, required under the Loan Documents, and other documents, instruments, policies and forms of evidence or other materials reasonably requested by City under the terms of this agreement and any of the Loan Documents.

vi. BORROWER HAS DELIVERED EVIDENCE OF PAYMENT BONDING AND PERFORMANCE BONDING FOR THE FULL VALUE OF THE PROJECT IMPROVEMENTS AS SHOWN IN THE PLANS AND SPECIFICATIONS AND THE BONDING AGENT CONFIRMS THEY ARE EFFECTIVE IN A FORM SUBSTANTIALLY

SIMILAR TO THE PAYMENT AND PERFORMANCE BONDS ATTACHED HERETO AS EXHIBIT G. AS AN ALTERNATIVE TO THE PAYMENT AND PERFORMANCE BONDING REQUIRED HEREIN, BORROWER MAY ELECT TO PROVIDE LENDER WITH A COMPLETION GUARANTY IN THE FORM ATTACHED HERETO AS EXHIBIT H, PROVIDED HOWEVER THAT LENDER, IN ITS SOLE DISCRETION, APPROVES THE PERSON(S) OR ENTITY(ENTITIES) THAT SHALL SERVE AS THE GUARANTOR.

vii. Lender has received, at Borrower's sole cost and expense, an ALTA Loan Extended Coverage Policy of Title Insurance with a liability limit in the amount of the Loan, insuring that the Deed of Trust is a lien on fee title to the Property vested in Borrower, reflects that the Lender is subordinate only to the senior secure debt identified in the Subordination Agreement, and subject only to such exceptions as are accepted in writing by Lender. The Lender must review and approve the pro forma ALTA loan policy to be issued by the title company selected for loan closing.

viii. All of the representations and warranties made by the Borrower in this Agreement and in any of the other Loan Documents are true and correct as of the date of the requested Requisition, as defined in the Trust Indenture.

ix. Prior to the funding of the City Loan Fund as defined in the Trust Indenture, Borrower shall submit to the Lender a certification prepared by an independent third party in a form satisfactory to the City establishing that the Project has sufficient funds to permit the completion of the Project.

C. If no disbursement from the City Loan Fund has occurred on or before October 1, 2011, Lender shall have be entitled to the return of any and all proceeds of the Loan remaining in the City Loan Fund, together with such interest or other investment earnings on the City Loan Fund, and this Agreement and the Loan Documents shall terminate without notice and with no penalty for Lender or Borrower, except that Borrower shall reimburse City for fees and other costs City has expended, or will expend, related to this Loan and Project.

### **DEVELOPMENT AND OPERATION OF PROJECT**

27. **Configuration of the Project.** Borrower shall develop the Project in reasonable conformance with the Plans and Specifications as approved by the City of Elk Grove, Department of Development Services, as a residential project, in accordance with Recital A of this Agreement and the Regulatory Agreement. As stated in the City's Affordable Housing Loan Program Guidelines, and acknowledged by the Borrower during submittal of the loan application, the number of affordable units produced by a Project is a significant characteristic. Should the Borrower determine that any of the affordable units (Regulated units) must be converted to market rate units, a downward adjustment to the total loan amount, equivalent to the City subsidy per affordable unit described at the time of conditional loan commitment shall be applied to the total loan amount at the City Manager's discretion. City loan funds are dedicated to subsidizing affordable housing units. If the total loan amount has been disbursed by the Lender and affordable units are converted to market rate units, Borrower must reimburse City for

the downward adjustment or subsequent loan payments received shall first be utilized toward the downward adjustment of the principal balance of the loan until fully reimbursed.

28. **Changes in Financing.** Borrower must immediately inform Lender of any proposed changes in the amount, terms, or sources of financing or funding for the Project. Lender may, in its reasonable discretion, deny any such proposed changes that involve the senior indebtedness identified in the Subordination Agreement or permit Borrower to use funds provided to Borrower under the senior loan documents for purposes that do not directly benefit the Property, except that Lender may, in its sole and absolute discretion, deny any such proposed changes that adversely affect, or could potentially adversely affect, Lender's subordinate loan position.

A. The City Manager may also approve the application of a downward adjuster to the total Loan amount at any time if (i) the Borrower obtains third party Project financing from Bonds, loans, equity, or other financing at an amount higher than anticipated subsequent to receipt of the conditional loan commitment and loan commitment for the Loan, and (ii) such increase in Project sources exceeds any corresponding increase in Project uses. As described in the City's Affordable Housing Loan Program Guidelines, the Loan is intended to be gap financing. This subsection 28.A. shall only apply if the Lender's Loan is, or will be, subordinate to the third party financing described herein; (i) any reduction in the principal amount of Lender's loan shall be limited to the amount of additional funding procured by Borrower, not including any protective advance by any other lender, and (ii) that third party financing is increased after the date of this Loan Agreement.

29. **Completion of Construction.** Borrower shall commence construction within thirty (30) calendar days following the City's issuance of building permits for the Project and must complete construction not later than December 31, 2012.

30. **Contracts and Subcontracts.** All construction work and professional services for the Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California. Each contractor, subcontractor, and professional service provider doing work on the Project shall have a current City of Elk Grove Business License. Borrower shall insert similar provisions in all subcontracts for work covered by this Agreement. No work on the Project that could result in a mechanic's lien shall commence prior to Recordation of the Deed of Trust, unless prior arrangements satisfactory to both the City and the title insurance company have been made.

31. **Quality of Work.** Borrower shall construct the Project in conformance with general industry standards and shall employ building materials of a quality suitable for the requirements of the Project. Borrower shall develop the Project in compliance with applicable local, state, and federal statutes, regulations, and building and housing codes. Borrower shall ensure that the Project is constructed according to the design requirements established by the City's Development Services Department and as approved by Planning Commission and/or City Council. If the City Manager determines that there have been material changes to the Project design at construction completion when compared to the plans submitted to receive entitlements,

the City Manager may halt the issuance of certificates of occupancy until corrections have been made by the Borrower and/or implement a downward adjustment to the City total loan amount to recognize any cost savings the Borrower obtained due to changes in Project design.

32. **Records.** Borrower shall be accountable to Lender for all funds requested by and disbursed to Borrower pursuant to this Agreement. Borrower shall maintain records that fully and accurately show expenditures for at least three (3) years after completion of the Project as evidenced by the issuance of a Certificate of Occupancy. Borrower shall make records available for review by Lender's representatives prior to any Loan disbursement. Records must be kept accurate and up-to-date. Lender shall notify Borrower of any records it deems insufficient, at which time the Borrower shall have thirty (30) calendar days from such notice to correct any specified deficiency in the records, or, if more than thirty (30) days shall be reasonably necessary to correct the deficiency, Borrower shall begin to correct the deficiency within thirty (30) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

33. **Audits.** Borrower shall make available for examination at reasonable intervals and during normal business hours to Lender's representatives all books, accounts, reports, files, and other papers or property with respect to all matters covered by these Loan Documents, and shall permit these representatives to audit, examine, and make copies, excerpts, or transcripts from such records. Lender's representatives may make audits of any conditions relating to this Loan. Lender must expressly approve of the company, person(s), or firm auditing the financial statements of the Project.

34. **Encumbrance of Property.** Borrower shall not engage in any financing or any other transaction creating any security interest or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or allow any encumbrance or lien to be made on or placed on the Property, except with the prior written consent of Lender or as otherwise specifically authorized under this Agreement. Notwithstanding the foregoing, the following are hereby approved as security interests encumbering the Property (the "Permitted Encumbrances"):

A. a deed of trust in favor of the Issuer securing a loan from the proceeds of the Bonds (the "Senior Loan") for the Project not exceeding EIGHTEEN MILLION THREE HUNDRED THIRTY THOUSAND DOLLARS (\$18,330,000).

B. any regulatory agreement or other documents which California Statewide Communities Development Authority ("Issuer"), or Senior Lender requires to be recorded for the Senior Loan; and

C. The Extended Use Agreement required by the California Tax Credit Allocation Committee; and

D. any other documents approved in writing by Lender.

Until issuance of a Certificate of Occupancy, Borrower shall notify Lender, in writing, in advance of any financing secured by any deed of trust, mortgage, or other similar lien instrument that it proposes to enter into with respect to the Project or Property, or any encumbrance or lien that has been attached to the Property, whether voluntary or involuntary.



Lender further agrees to execute the Subordination Agreement required to effectuate the foregoing in a form and substance acceptable to Lender and Senior Lender. Except as expressly set forth above, this Agreement shall not be subordinated in priority to any other interest in the Property that was not recorded prior the date of recordation of this Agreement, unless City consents, in writing, to the subordination or junior priority of this Agreement and that the City is provided written commitments reasonably designed to protect the City's investment as described above in this Section.

35. **Transfer of Property and Project.** Transfer of the Property and Project shall not occur except as permitted by Section 27 of the Deed of Trust.

36. **Mechanics Liens and Stop Notices.** If any claim of mechanic's lien is filed against the Property or a stop notice affecting the Loan is served on Lender, Borrower shall, within thirty (30) calendar days of such filing or service, either pay and fully discharge the lien or stop notice, obtain a release of the lien or stop notice by delivering to Lender a surety bond in sufficient form and amount, or provide Lender with other assurance satisfactory to Lender that the lien or stop notice shall be paid or discharged.

If Borrower fails to discharge any such lien, encumbrance, charge, or claim, then Lender may, but shall be under no obligation to, discharge the same at Borrower's expense. Alternatively, Lender may require Borrower to immediately deposit with Lender the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. Lender may use such deposit to satisfy any claim or lien that is adversely determined against Borrower.

Borrower shall file for record a valid notice of cessation upon cessation of construction on the Project for a continuous period of thirty (30) days or more and shall file for record a valid notice of completion following completion of the Project. Borrower shall take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes Lender, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that Lender deems necessary or desirable to protect its interest in the Project and Property; provided, however, that Lender shall exercise this right only if and when Borrower fails to take action as required.

37. **Disabled Access.** The Project shall be developed and the Property shall be maintained to comply with all applicable federal, state, and local requirements for access for persons with disabilities.

38. **Reports.** Borrower shall provide the Lender with annual operating reports, including but not limited to third party audited financial statements, rent rolls, state inspection and any other documentation in such form and as may be required by the Lender.

39. **Operation of Project.** Borrower and each of Borrower's agents shall diligently operate and manage the Property after completion in substantial conformance with the covenants contained in the Regulatory Agreement, which are intended to run with the land and bind all successors-in-interest to the Property for the full term of that Regulatory Agreement.

40. **Non-Discrimination.** Borrower shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Property on the

basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, 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, or against any other protected class. Borrower shall otherwise comply with all applicable local, state and federal housing discrimination laws.

41. **Fees, Taxes, and Other Levies.** Borrower shall be responsible for the payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, Borrower shall not be required to discharge any such charge as long as (a) the legality thereof is being contested in good faith and by appropriate proceedings, and (b) Borrower maintains reserves adequate to pay any contested liabilities.

42. **Damage to Property.** Subject to the rights of the Senior Lender, if any buildings or improvements erected by Borrower on the Property are damaged or destroyed, Borrower shall, at its own cost and expense, repair or restore such buildings and improvements consistent with the original Plans and Specifications for the Project. The repair or restoration work shall be commenced within thirty (30) calendar days, or up to one hundred eighty (180) calendar days with written approval of City, after the damage or loss occurs, and must complete within one hundred eighty (180) calendar days thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds are insufficient for such purpose, Borrower shall make up the deficiency.

### **INDEMNITY AND INSURANCE**

43. **Insurance Coverage.** Borrower shall have in full force and effect during development of the Project, the insurance coverage specified in Exhibit B to the Agreement, which is hereby incorporated into this Agreement by this reference. In addition, Borrower shall ensure that the general contractor for the Project maintains the insurance coverage specified in Exhibit B for the duration of the Project construction. All required insurance shall be in effect prior to commencement of construction. The City's insurance policies shall not be contributing.

44. **Non-Liability of Officials, Employees and Agents.** No member, official, director, employee, or agent of Lender shall be personally liable to Borrower for any obligation created under the terms of these Loan Documents.

45. **Indemnity.** Notwithstanding the insurance coverage required herein, Borrower shall indemnify, defend, and hold Lender, its members, officials, directors, employees, and agents harmless from any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys' fees) which Lender may incur as a result of: (a) the making of this Loan to Borrower; (b) Borrower's performance of or failure to perform any obligations as and when required by the Loan Documents; (c) a failure of any of Borrower's representations or warranties under this Agreement to be true and complete in any material respect; (d) any act or omission by Borrower or any of Borrower's contractors, subcontractors, architects, engineers or suppliers with respect to the Project or the Property, except if the loss is caused by the sole negligence or willful misconduct of Lender; or (e) failure of Borrower's management agent, Borrower's contractors, subcontractors, or property manager, to comply with

the covenants, conditions, and restrictions contained in this Agreement, the Loan Documents or to comply with all other laws, rules, regulations, and restrictions related to the use of Lender's funds, except if the loss is caused by the sole negligence or willful misconduct of Lender. Borrower shall pay immediately upon Lender's demand any amounts owing under this indemnity. The duty of Borrower to indemnify includes the duty to defend Lender in any court action, administrative action, or other proceeding brought by any third party arising from the Project, the Loan Documents, or the Property. Borrower's duty to indemnify Lender shall survive the term of this Loan and the reconveyance of the Deed of Trust.

46. **Definitions of Environmental Terms.** For the purposes of this Loan Agreement, the following terms shall have the following meanings:

A. **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 actually incurred by Lender or Trustee at any time as a result of the existence of any Hazardous Material upon, about, or 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 Materials or the violation of Environmental Requirements arose prior to the present ownership or operation of the Property, and including, without limitation:

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

ii. to the extent that the items of Environmental Damages described elsewhere in this subsection A have not yet been incurred as of the time of payment by Borrower of a claim by Lender under this subsection A, diminution in the value of the Property (to the extent such diminution results in the Lender being under-secured);

iii. 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 real property or otherwise expended in connection with such conditions, and including without limitation any

attorneys' fees, costs and expenses incurred in enforcing these Loan Documents or collecting any sums due hereunder; and

iv. liability to any person or entity to indemnify such person or entity for costs expended in connection with the items referenced in subsection iii hereof.

B. **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:

i. 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

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

C. **Hazardous Materials** means any substance:

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

ii. 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 (CERCLA)(42 U.S.C. Section 9601 et seq.) or the Resource Conservation and Recovery Act (CRCRA) (42 U.S.C. Section 6901 et seq.) or

iii. 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

iv. 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

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

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

vii. radon gas.

47. **Environmental Covenants.** Borrower shall at all times comply with the following requirements:

A. **No Use, Disposal or Storage.** Borrower shall not cause, permit or suffer any Hazardous Material (as defined in Section 46) 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 Borrower, its agents, employees, contractors, invitees, tenants, or any other person, except to the extent commonly used in the day to day construction or operation of the Property and then only so long as in compliance with all Environmental Requirements (as defined in Section 46).

B. **Compliance with Environmental Requirements.** Borrower shall not cause, permit or suffer the existence or the commission by Borrower, its agents, employees, or contractors of a violation of any Environmental Requirements upon, about or beneath the Property or any portion thereof and Borrower shall use its best efforts to prevent any such violation of any Environmental Requirements by any invitees, tenants or any other person. Borrower shall notify Lender 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.

C. **Environmental Liens.** Borrower 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 (SARA) (42 U.S.C. Section 9607(1)) or any similar state statute, and Borrower 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.

D. **Mitigation.** Notwithstanding the obligation of Borrower to indemnify pursuant to Section 49, Borrower shall, at its sole cost and expense, promptly take all actions required by any federal, state or local governmental agency or political subdivision or reasonably necessary to mitigate Environmental Damages (as defined in Section 46) and to allow full economic use of the Property (using the use of the Property as a multi-family housing complex as the standard for such full economic use), which requirements of necessity arise from the presence upon, about or beneath the Property, of a Hazardous Material or a violation of Environmental Requirements. Such actions, which, except when required by any federal, state or local government agency or political subdivision, Borrower shall be required to take only when reasonable, shall include, but not be limited to, the investigation of the environmental

condition of the Property, the preparation of and 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. Borrower shall take all actions necessary to restore the Property to the condition existing prior to the introduction of Hazardous Material(s) upon, about or beneath the Property, notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies. Borrower 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. Borrower 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. Borrower shall promptly provide to Lender copies of testing results and reports that are generated in connection with the above activities. Promptly upon completion of such investigation and remediation, Borrower 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.

E. **Notice of Environmental Risks.** If Borrower shall become aware of or receive notice or other communication concerning any actual, alleged, suspected or threatened violation of Environmental Requirements, or liability of Borrower for Environmental Damages in connection with the Property or past or present activities of any person thereon, or that any information supplied to Lender is not or is no longer accurate in any material respect, 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 Borrower shall deliver to Lender, within ten (10) calendar days of the receipt of such notice or communication by Borrower, 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 Lender to defend or otherwise respond to any such notification.

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

G. **Right to Enter and Inspect.** In the event Lender 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 Loan Agreement or under the Note, Lender 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 Borrower, to conduct an inspection of the Property including invasive tests and the activities conducted thereon 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. Borrower hereby grants to Lender, and the agents, employees, consultants and contractors of Lender, 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. Lender shall use its best efforts to minimize interference with the business of Borrower and to restore the condition of the Property, but Lender shall not be liable for any interference caused thereby or failure to restore if Lender determines in its sole discretion that it is not economically practicable.

H. **Reimbursement of Lender.** In the event of any default under this Loan Agreement or any other Loan Document, Borrower shall promptly reimburse Lender for any environmental studies or tests which Lender deems necessary to ascertain the presence and/or level of any Hazardous Materials on the Property.

48. **Environmental Representations.** Borrower hereby represents and warrants as of the date hereof as follows:

A. **Handling of Hazardous Materials.** Neither Borrower nor, to the best knowledge of Borrower, any previous owner, tenant, occupant or user of the Property, nor any other person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials (whether legal or illegal, accidental or intentional) on, under, in or about the Property, except to the extent commonly used in the day to day operation of the Property and then only as long as in compliance with all Environmental Requirements, or transported any Hazardous Materials to, from or across the Property, nor to the best knowledge of Borrower are any Hazardous Materials presently constructed, deposited, stored, or otherwise located on, under, in or about the Property, nor to the best knowledge of Borrower have any Hazardous Materials migrated from the Property upon or beneath other properties, nor to the best knowledge of Borrower have any Hazardous Materials migrated from other properties upon, about or beneath the Property except as set forth in the Phase I Environmental Report provided to the Lender.

B. **Compliance with Environmental Requirements.** Existing uses and activities on the Property, including but not limited to the use, maintenance and operation of the Property, and all activities and conduct of business related thereto, comply with all Environmental Requirements, and no activity on the Property constitutes a nuisance or a tortious condition with respect to any third party.

C. **Permits and Authorizations.** Borrower has obtained any or all permits, licenses and other authorizations which may be required under all Environmental Requirements, including laws relating to emissions, discharges, releases or threatened releases of Hazardous Material into the environment (including ambient air, surface water, ground water or land) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Material. Borrower is in compliance with all terms and conditions of any required permits, licenses and authorizations, and is also in compliance with all other Environmental Requirements.

D. **Notice of Claims or Liability.** Neither Borrower nor, to the best knowledge of Borrower, any prior owner, occupant or user of the Property has received notice or other communication concerning any alleged violation of Environmental Requirements, or notice or other communication concerning alleged liability for Environmental Damages in connection with the Property, and, to the best knowledge of Borrower after due inquiry, there exists no writ, injunction, decree, order or judgment outstanding, nor any lawsuit, claim, proceeding, citation, directive, summons or investigation, pending or threatened, relating to the ownership, use, maintenance or operation of the Property by any person or entity, or from any alleged violation of Environmental Requirements, or from any suspected presence of Hazardous Material thereon, nor, to the best knowledge of Borrower after due inquiry, does there exist any basis for such lawsuit, claim, proceeding, citation, directive, summons or investigation being instituted or filed.

E. **PCBs and Other Materials Disclosed in Questionnaire.** To the best knowledge of Borrower, there is not constructed, placed, deposited, stored, disposed of nor located on the Property any polychlorinated biphenyls (PCBs) nor transformers, capacitors, ballasts, or other equipment which contains dielectric fluid containing PCBs, or any asbestos or asbestos-containing materials or any insulating material containing urea formaldehyde or any radon gas. To the best knowledge of Borrower, except as has been disclosed to Lender in writing, no underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells are or have been located on the Property.

F. The above representations and warranties contained in this Section shall survive the termination and release of this Loan Agreement and the discharge of Borrower's other obligations hereunder.

49. **Environmental Indemnity.** Borrower agrees to indemnify, reimburse, defend, exonerate, pay and hold harmless (a) Lender, its affiliates and their respective successors and assigns who acquire all or any portion of the loan secured by this Loan Agreement 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 Lender under this Loan Agreement and (b) the directors, officers, shareholders, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, affiliates, lessees, mortgagees, trustees, and invitees of Lender 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 prior to or during Borrower's use or ownership of 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 Borrower contained in this Loan Agreement unless and to the extent such Environmental Damages exist solely as a result of the gross negligence or willful misconduct of the otherwise indemnified person. 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 Borrower 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.



50. **Environmental Remedies Cumulative.** Notwithstanding anything to the contrary in this Loan Agreement, the rights of Lender and the obligations of Borrower created under the foregoing Sections 46, 47, 48, 49 and 50 shall be in addition to those other rights and obligations, respectively, created or imposed by statutory, common or case law.

### **DEFAULT AND REMEDIES**

51. **Events of Default.** The occurrence of any of the following events shall be an “Event of Default” under this Loan:

A. **Monetary.** (a) Borrower’s failure to pay when due any sums payable under the Note, including failure to reimburse Lender for any advances made by Lender under the Deed of Trust; (b) Borrower’s use of Loan funds for costs other than Development Costs or for uses inconsistent with the terms and restrictions in the Loan Documents; (c) Borrower’s failure to make any other payment or assessment due under the Loan Documents;

B. **Construction.** (a) Borrower’s or Borrower’s agent’s failure to commence or complete Project construction, without proper justification under Section 58 of this Agreement, according to the construction schedule specified in this Agreement; (b) the cessation of construction prior to Project completion for a period of more than thirty (30) continuous calendar days; (c) any material adverse change in the condition of Borrower or the Project or any other event that gives Lender reasonable cause to believe that the Project cannot be constructed by the scheduled completion date according to the terms of this Agreement; (d) the filing of any claim of lien against the Property or service on Lender of any stop notice relating to the Loan, and the continuance of the claim of lien or stop notice for thirty (30) calendar days after such filing or service without payment, discharge or satisfaction as provided for in this Agreement.

C. **Operation.** (a) Rental of Regulated Units to households whose incomes do not qualify them for occupancy in the Project, or any failure of Borrower or Borrower’s agents to take adequate steps to certify incomes; (b) overcharging in rental of Regulated Units by Borrower or Borrower’s agents; (c) Borrower’s or Borrower’s agent’s failure to materially comply with the management requirements as set forth in the Loan Documents, including but not limited to the requirements in Section 39 above; (d) discrimination by Borrower or Borrower’s agents on the basis of characteristics prohibited by this Agreement or applicable law; (e) the imposition of any encumbrances or liens on the property without the Lender’s prior written approval that are prohibited under this Agreement or that have the effect of reducing the priority of or invalidating the Deed of Trust; (f) the transfer of the Property, the Project, or this Agreement in violation of the Loan Documents; (g) conversion of any Regulated Units to condominium or cooperative ownership without the Lender’s prior written consent, which consent may be withheld for any reason; (h) any material adverse change in the condition of Borrower or the Project or permanent financing or funding for the Project that gives Lender reasonable cause to believe that the Project cannot be operated according to the terms of the Loan Documents; (i) Borrower’s or Borrower’s agent’s failure to comply with any federal, state, or local laws or Lender policies governing the operation and management of housing, including without limitation provisions of this Agreement and the Loan Documents; (j) Borrower’s or Borrower’s agent’s failure to provide records to Lender upon Lender’s request.

D. **General Performance of Loan Obligations.** Any breach by Borrower or Borrower's agents of any obligations of Borrower imposed in the Loan Documents.

E. **Representations and Warranties.** A determination by Lender that any of Borrower's representations or warranties made in the Loan Documents, any statements made to Lender by Borrower, or any certificates, documents, or schedules supplied to Lender by Borrower were untrue in any material respect when made, or that Borrower concealed from Lender or failed to disclose to Lender a material fact.

F. **Damage to Property.** Material damage or destruction to the Property, if Borrower does not take steps to reconstruct the Property as required herein.

G. **Bankruptcy, Dissolution, and Insolvency.** Borrower's (a) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) calendar days after the filing; (b) making a general assignment for the benefit of creditors; (c) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) calendar days after the filing; (d) insolvency, and/or (e) failure, inability or admission in writing of its inability to pay its debts as they become due.

52. **Notice of Borrower's or Owner's Default and Opportunity to Cure.** Lender shall give written notice and opportunity to cure to Borrower and Investor Limited Partner of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Event of Default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days from the mailing of the notice, by which such action to cure must be taken, if an action to cure is possible. If the default is such that it is not capable of being cured within thirty (30) calendar days and Borrower and/or Investor Limited Partner (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Borrower and Investor Limited Partner shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by City; provided, however, that any cure must be completed within one hundred eighty (180) calendar days from the mailing of the notice. Lender hereby agrees that any cure of any default made or tendered by Investor Limited Partner shall (a) be deemed a cure by Borrower and (b) accepted or rejected on the same basis as if made or tendered by Borrower.

53. **Lender's Remedies.** Subject to the terms of the Subordination Agreement and the Regulatory Agreement, upon any Event of Default by the Borrower prior to disbursement of all Loan proceeds, Lender's obligation to disburse the remaining loan proceeds shall cease. As provided for in Section 52 above, Lender shall give written notice to Borrower and Investor Limited Partner of any Event of Default. If an action to cure is specified in the notice, Borrower's failure to cure the deficiency within the time specified in the notice, or failure to commence the cure within thirty (30) calendar days, if cure would take longer than thirty (30) calendar days, Lender may, in addition to other rights and remedies permitted by the Loan Documents or applicable law and subject to the rights of any Senior Lenders, proceed with any

or all of the following remedies in any order or combination Lender may choose in its sole discretion:

A. Terminate this Agreement, in which case Lender may declare the entire principal amount outstanding and all accrued interest under the Note, as well as any other funds advanced to Borrower by Lender under the Loan Documents including administrative costs, immediately due and payable;

B. Bring an action in equitable relief (a) seeking the specific performance by Borrower of the terms and conditions of the Loan Documents, and/or (b) enjoining, abating, or preventing any violation of said terms and conditions, and/or (c) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding and all accrued interest under the Note, as well as any other funds advanced to Borrower by Lender under the Loan Documents;

D. Enter the Property and take any actions necessary in its judgment to complete project construction as permitted including without limitation (a) making changes in the plans and specifications or other work or materials for the Project, (b) entering into, modifying, or terminating any contractual arrangements (subject to Lender's right at any time to discontinue work without liability), or (c) taking any remedial actions with respect to Hazardous Materials that Lender deems necessary to comply with Hazardous Materials Laws or to render the Property suitable for occupancy;

E. Seek appointment from a court of Sacramento County, or an appropriate federal court, of a receiver with the authority to complete construction as needed to preserve Lender's interest in seeing the Project developed in a timely manner, including the authority to take any remedial actions with respect to Hazardous Materials that Lender or the receiver deems necessary to comply with Hazardous Materials Laws or to render the Property suitable for occupancy;

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary default;

H. Enter upon, take possession of, and manage the Property, either in person, by agent, or by a receiver appointed by a court, and collect rents and other amounts specified in the assignment of rents in the Deed of Trust and apply them to operate the Property or to pay off the Loan or any advances made under the Loan Documents, as provided for in the Deed of Trust;

I. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

J. With respect to defaults under Hazardous Materials provisions herein, pursue the rights, and remedies permitted under California Civil Code Section 2929.5, and Code of Civil Procedures Sections 726.5; and 736;

- K. Pursue any other remedy allowed at law or in equity.

### **GENERAL PROVISIONS**

54. **Borrower's Warranties.** Borrower represents and warrants: (a) that Borrower has access to professional advice and support to the extent necessary to enable Borrower to comply with the terms of the Loan Documents, and otherwise carry out the Project; (b) that Borrower is duly organized, validly existing and in good standing under the laws of the State of California and is qualified to do business in California; (c) that Borrower has the full power and authority to undertake the Project and execute the Loan Documents; and (d) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of Borrower.

55. **Project Monitoring and Evaluation.** Except as otherwise provided for in this Agreement, Borrower shall submit available records to Lender within ten (10) business days of Lender's request which reasonably document Borrower's performance under each material requirement of the Loan Documents. Borrower shall comply promptly with all requirements of this Agreement relating to notices, extension, and other events required to be reported or requested. Borrower shall provide, upon Lender's reasonable request, any information or documentation available to Borrower pertaining to the Project and shall cooperate with Lender's representatives on matters related to Project monitoring and evaluation. The City shall have the right to review and approve the management entity chosen by Borrower for the Property and the right to require a change in the management entity for reasonable cause at any time during the term of this Agreement.

56. **Political Activity.** None of the funds, materials, property or services contributed by Lender to Borrower under this Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

57. **Effective Date/Condition Precedent.** AS A CONDITION PRECEDENT TO THIS AGREEMENT BECOMING EFFECTIVE, THE CITY MUST APPROVE, IN WRITING, THE LIMITED PARTNERSHIP AGREEMENTS FOR BORROWER; AFTER WHICH, THIS AGREEMENT SHALL COMMENCE AND BECOME EFFECTIVE UPON THE FULL EXECUTION OF LENDER AND BORROWER AND REMAIN IN FULL FORCE AND EFFECT THROUGHOUT THE TERM OF THIS LOAN.

58. **Unavoidable Delay in Performance.** The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by: war; insurrection; terrorism, strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes shall be deemed granted only if written notice by the party claiming such extension is sent to the other party within thirty (30) calendar days from the commencement of the cause. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any unavoidable delay notwithstanding. Times of performance under this

Agreement may also be extended for any cause for any period of time by the mutual written agreement of Lender and Borrower.

59. **Governing Law and Venue.** The Loan Documents 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. Borrower agrees that all actions or proceedings arising in connection with the Loan Documents 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.

60. **Statutory References.** All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, and the City of Elk Grove, shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

61. **Attorneys’ Fees and Costs.** In the event any legal or administrative action is brought to interpret or enforce the terms of the Loan Documents, the prevailing party shall be entitled to recover all reasonable attorneys’ fees and costs incurred in such action.

62. **Time.** Time is of the essence in these Loan Documents.

63. **Consents and Approvals.** Any consent or approval required under this Agreement shall not be unreasonably withheld.

64. **Lender’s Signatory Authority.** Any provision of the Loan Documents, including this Loan Agreement, requiring the signature, consent, authorizing waiver, and/or approval of the Lender shall mean the signature of the City Manager or his/her designee.

65. **Notices, Demands and Communications.** Formal notices, demands and communications between Borrower and Lender shall be given by registered or certified mail, postage prepaid, return receipt requested, or shall be delivered personally, to the principal offices of Borrower and Lender as follows, or if any such office is relocated, to the new address specified by the relocated party:

LENDER:                      ATTN: City Manager  
                                    City of Elk Grove  
                                    8401 Laguna Palms Way  
                                    Elk Grove, CA 95758

WITH COPY TO:            ATTN: City Attorney  
                                    City of Elk Grove  
                                    8401 Laguna Palms Way  
                                    Elk Grove, CA 95758

BORROWER/OWNER:      ATTN; Steven Eggert  
Ridge Elk Grove, L.P.  
1801 I Street, Suite 200  
Sacramento, CA 95811

WITH COPY TO:            ATTN: Lisa D. Weil, Esq.  
Cox, Castle & Nicholson  
555 California Street, 10<sup>th</sup> Floor  
San Francisco, CA 94104

WITH COPY TO:            ATTN: tax credit investor  
\_\_\_\_\_  
\_\_\_\_\_

WITH COPY TO:            ATTN: Loan Administration Manager  
Bank of America, N.A.  
Community Development Banking//CA4-703-0L29  
1755 Grant Street, 1<sup>st</sup> Floor  
Concord, CA 94520

66.    **Binding Upon Successors.** All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this section does not waive the prohibition on assignment of this Agreement by Borrower without Lender’s consent. The terms “Borrower” and “Owner” as used in these Loan Documents shall include all permitted assigns, successors-in-interest, and transferees of Borrower and Owner.

67.    **Relationship of Parties.** The relationship of Borrower with Lender for this Project is and shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Lender neither undertakes nor assumes any responsibility or duty to Borrower (except as provided for herein) or any third party with respect to the Project, the Property, or the Loan. Except as Lender may specify in writing, Borrower shall have no authority to act as an agent of Lender or to bind Lender to any obligation.

68.    **Waiver.** Any waiver by Lender of an obligation in these Loan Documents must be in writing. No waiver shall be implied from any delay or failure by Lender to take action on any breach or default of Borrower or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to Borrower to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by Lender to any act or omission by Borrower shall not be construed to be a consent to any other act or omission or to waive the requirement for Lender’s written consent to future waivers.

69. **Integration.** The Loan Documents, including exhibits, contain the entire agreement of the parties and supersede any prior negotiations.

70. **Other Agreements.** Borrower represents that Borrower has not entered into any agreements that are inconsistent with the terms of the Loan Documents. Borrower shall not enter into any agreements that are inconsistent with terms of the Loan Documents without an express waiver by Lender in writing.

71. **Amendments and Modification.** Any amendments or modifications to the Loan Documents must be in writing, and shall be effective only if executed by Borrower and Lender.

72. **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.

73. **Counterparts.** This Agreement and all other agreements executed pursuant to this Agreement may be executed in counterpart originals, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

74. **Agreement and Acknowledgement of Contract.** Lender and Borrower acknowledge and agree that this Loan Agreement has been negotiated at arm's length, that each party has been represented by independent counsel and/or has had an opportunity to consult with and be represented by independent counsel, that this Loan Agreement is deemed to be drafted by both parties, that no one party shall be construed as the drafter of this Loan Agreement, and that any rule of construction that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Loan Agreement.

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

**CITY:**

CITY OF ELK GROVE,  
a municipal corporation

By: \_\_\_\_\_  
Laura Gill  
City Manager

Approved as to form:

By: \_\_\_\_\_  
Susan B. Cochran  
City Attorney

Attest:

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

Jason Lindgren

City Clerk



ALL SIGNATURES MUST BE NOTARIZED

**BORROWER:**

Ridge Elk Grove L.P.,  
a California limited partnership

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Mark A. Wiese,  
President

By: Anton Ridge, LLC,  
a California limited liability company,  
its Co-General Partner

By: \_\_\_\_\_  
Steven L. Eggert,  
Manager

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, 201\_ 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 of Notary Public

(Notary Seal)

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, 201\_ 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 of Notary Public

(Notary Seal)

**EXHIBIT A**

**Legal Description**

**[See attached document]**

## EXHIBIT B

### Insurance Coverage

I. Borrower shall maintain a general liability insurance policy in the minimum amount of ONE MILLION DOLLARS (\$1,000,000) to cover any claims arising out of Borrower's performance under this Agreement. Said insurance shall name the City of Elk Grove, its officials, employees, agents, and volunteers as additional insured; said insurance shall provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) calendar days prior written notice to the Lender (ten (10) calendar days written notice to the Lender in the case of nonpayment); the policy shall be evidenced by an original Certificate of Insurance accompanied by an original endorsement, approved as to form and sufficiency by the Lender. If Borrower employs any person it shall carry workers compensation insurance and shall provide a Certificate of Insurance to the lender. Said insurance policy shall provide that all rights of subrogation against the City, its officials, employees, agents, and volunteers be waived; said insurance shall provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) calendar days prior to written notice to the Lender; the policy shall be evidenced by an original Certificate of Insurance accompanied by an original endorsement, approved as to form and sufficiency by the Lender.

General liability and workers compensation insurance shall be maintained for the full term of this agreement.

II. Borrower shall require the contractor selected to construct the Project to procure and maintain, for the duration of the Construction Contract, Course of Construction or Builder's Risk insurance providing coverage for "all risks" of loss in the amount of the completed value of the Project. Said insurance policy shall name the Lender as a loss payee and the insurer shall waive all rights of subrogation against the Lender.

III. Upon Completion of the Project, Borrower shall procure and maintain for the full term of this Agreement, property insurance against the perils of fire, and extended coverage perils for the full replacement cost of the Project. Said policy shall name the Lender as loss payee.

**EXHIBIT C**

**Regulatory Agreement**

**[See attached document]**

**EXHIBIT D**

**Promissory Note**

**[See attached document]**

**EXHIBIT E**

**Deed of Trust**

**[See attached document]**

**EXHIBIT F**

**Subordination Agreement**

**[See attached document]**



**EXHIBIT G**

**Payment Bond and Performance Bond**

**[See attached document]**

**EXHIBIT H**

**Completion Guarantee**

**[See attached document]**

**EXHIBIT I**

**Guarantee of Non-Recourse Obligations**

**[See attached document**

**RECORDING REQUESTED BY:  
WHEN RECORDED MAIL TO:**

Sheppard, Mullin, Richter & Hampton LLP  
333 South Hope Street, 43rd Floor  
Los Angeles, California 90071  
Attention: Carol Wong

THIS SPACE FOR RECORDER'S USE ONLY

**SUBORDINATION AGREEMENT**

THIS SUBORDINATION AGREEMENT (this "**Agreement**") is entered into as of March 1, 2011 by and among (i) **CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY**, a joint exercise of powers agency duly organized and existing under the laws of the State of California ("**Issuer**"), (ii) **BANC OF AMERICA PUBLIC CAPITAL CORP**, in its capacity as the initial purchaser of the hereinbelow described Bonds (the initial "**Majority Owner**"), (iii) **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as trustee under the Indenture (defined below) ("**Bond Trustee**"); and together with Majority Owner and Issuer, sometimes collectively referred to herein as "**Senior Lender**", (iv) the **CITY OF ELK GROVE**, a public body, corporate and politic (the "**Subordinate Lender**"), and (v) **RIDGE ELK GROVE, L.P.**, a California limited partnership (the "**Borrower**").

**Recitals**

A. The Borrower has acquired certain real property located in the City of Elk Grove, Sacramento County, California, more particularly described on Exhibit A attached hereto, and intends to construct certain improvements thereon consisting generally of a 204-unit multifamily apartment facility, together with related amenities (such real property and the improvements described above are collectively referred to herein as the "**Property**").

B. The Property is being constructed and equipped, in part, with the proceeds of those certain California Statewide Communities Development Authority Multifamily Housing Revenue Bonds (The Ridge Apartments Project) 2011 Series F issued by the Issuer in the original principal amount of Eighteen Million Three Hundred Thirty Thousand and No/100 Dollars (\$18,330,000.00) (the "**Bonds**") pursuant to a trust indenture between the Borrower and the Issuer dated as of even date herewith (as amended, modified or supplemented from time to time the "**Indenture**").

C. The proceeds of the Bonds will be fund a loan to the Borrower (the "**Bond Loan**") pursuant to the terms of a Loan Agreement dated as of March 1, 2011 among the Issuer, the bond Trustee and the Borrower (as amended, modified or supplemented from time to time, the "**Loan Agreement**") and the Borrower's obligations under the Loan Agreement are evidenced, in part, by a Promissory Note dated as of March 1, 2011 in the original principal amount of Eighteen Million Three Hundred Thirty Thousand and No/100 Dollars

(\$18,330,000.00) made by the Borrower to the order of the Issuer (as amended, modified or supplemented from time to time, the “**Note**”), and secured by, among other things, a first-priority mortgage lien on the Property granted pursuant to a Deed of Trust, with Assignment of Rents, Security Agreement and Fixture Filing dated as of March 1, 2011 executed by the Borrower as trustor, naming the Issuer as beneficiary (as amended, modified or supplemented from time to time, the “**Senior Mortgage**”).

D. Pursuant to an Assignment of Deed of Trust and Related Documents dated as of March 1, 2011 (the “**Assignment**”), the rights of the Issuer under the Senior Mortgage and other documents related to the Bond Loan (as said terms are defined in said assignment) have been assigned to the Bond Trustee, excluding any right expressly reserved to the Issuer in the Indenture or the Loan Agreement.

E. The Loan Agreement, the Note, the Senior Mortgage, the Assignment and all other agreements contemplated therein evidencing or securing the Borrower’s obligations under the Loan Agreement or executed by the Borrower in connection with the Bond Loan are hereinafter collectively referred to as the “**Bond Documents.**”

F. The Subordinate Lender has agreed to make a construction and permanent loan to the Borrower in the amount of Nine Million Seven Hundred Thousand Dollars (\$9,700,000.00) (the “**Subordinate Loan**”) pursuant to the terms of an Affordable Housing Loan Agreement dated on or about the date hereof between the Subordinate Lender and the Borrower (as the same may be amended, modified or supplemented from time to time, the “**Subordinate Loan Agreement**”).

G. The Borrower’s obligations under the Subordinate Loan Agreement (the “**Subordinate Indebtedness**”) are evidenced by a Promissory Note Secured by Deed of Trust dated on or about the date hereof, made by the Borrower to the order of Subordinate Lender (as the same may be amended, modified or supplemented from time to time, the “**Subordinate Note**”) and are secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated on or about the date hereof, executed by the Borrower as trustor, naming the Subordinate Lender as beneficiary, which is to be recorded concurrently herewith (as the same may be amended, modified or supplemented from time to time, the “**Subordinate Mortgage**”) and a Regulatory Agreement dated on or about the date hereof, which is to be recorded concurrently herewith (as such document may be amended, modified or supplemented from time to time, the “**Regulatory Agreement**”). The Subordinate Loan Agreement, the Subordinate Note, the Subordinate Mortgage, the Regulatory Agreement and all other agreements contemplated therein or evidencing or securing the Subordinate Indebtedness are hereinafter referred to as the “**Subordinate Loan Documents.**”

H. It is a condition precedent to the Issuer’s issuance and the initial purchaser’s purchase of the Bonds that the Senior Mortgage and shall be and remain a lien or charge upon the Property prior and superior to the lien or charge of the Subordinate Loan Documents (subject, as to the Regulatory Agreement, to Section \_\_, below) and that the Subordinate Indebtedness be subordinated in right of payment to the Senior Indebtedness.

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lender to make the Subordinate Loan to the Borrower and to record the Subordinate Mortgage and the Regulatory Agreement against the Property, and in consideration thereof, the Senior Lender, the Subordinate Lender and the Borrower agree as follows:

**1. Definitions.**

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

“**Affiliate**” means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term “control” for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

“**Business Day**” means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

“**Default Notice**” means: (a) a copy of the written notice from the Senior Lender to the Borrower stating that a Loan Default has occurred under the Bond Loan; or (b) a copy of the written notice from the Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under the Subordinate Loan. Each Default Notice shall specify the default upon which such Default Notice is based.

“**Loan Default**” means the occurrence of an “Event of Default” as that term is defined in the Bond Documents.

“**Person**” means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

“**Subordinate Loan Default**” means a default by the Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

“**Subordinate Provisions**” means Sections 18, 21A, 21B, 26, 27, 28, 29, 30D and 30E of the Regulatory Agreement.

## **2. Permission to Place Mortgage Lien Against Property.**

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the Bond Documents and subject to the provisions of this Agreement, to permit the Subordinate Lender to record the Subordinate Mortgage and the Regulatory Agreement against the Property to secure the Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of the Borrower to the Subordinate Lender under and in connection with the Subordinate Loan. Such permission is subject to the condition that each of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to the Borrower. If any of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is not true and correct on both of those dates, the provisions of the Bond Documents applicable to unpermitted liens on the Property shall apply.

## **3. Borrower's and Subordinate Lender's Representations and Warranties.**

The Borrower and the Subordinate Lender each makes the following representations and warranties to the Senior Lender:

**(a) Subordinate Note.** The Subordinate Note contains the following provision:

"The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Note and Loan Agreement dated as of \_\_\_\_\_, 2011 in the original principal amount of \$18,330,000 made by California Statewide Communities Development Authority ("Issuer") to the extent and in the manner provided in that certain Subordination Agreement of even date herewith by and among Issuer, Banc of America Public Capital Corp, Wells Fargo Bank, National Association, as trustee, the City of Elk Grove and Ridge Elk Grove, L.P. (the "Subordination Agreement"). The Deed of Trust securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing securing the Note as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Deed of Trust securing the Borrower's obligations under the Note and Loan Agreement in favor of Issuer as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Deed of Trust securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Subordinate Lender under the Subordination Agreement. Notwithstanding any other provision of this Note, Borrower will not be required to make any payment to Lender in excess of the amount allowed under the Subordination Agreement for service of the Subordinate Loan, as that term is defined in the Subordination Agreement."

**(b) Relationship of Borrower to Subordinate Lender and Senior Lender.**

The Subordinate Lender is not an Affiliate of the Borrower and is not in possession of any facts which would lead it to believe that the Senior Lender is an Affiliate of the Borrower.

**(c) Term.** The term of the Subordinate Note does not end before the term of the Note.

**(d) Subordinate Loan Documents.** The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

**(e) Bond Documents.** The executed Bond Documents are substantially in the same forms as, when applicable, those submitted to, and approved by, Subordinate Lender prior to the date of this Agreement. Upon execution and delivery of the Bond Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Bond Documents, certified to be true, correct and complete.

**4. Terms of Subordination.**

**(a) Agreement to Subordinate.** The Senior Lender and the Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement to the prior payment in full of the indebtedness evidenced by the Bond Documents; and (ii) the Subordinate Mortgage, the Subordinate Provisions of the Regulatory Agreement and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Mortgage and the other Bond Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Mortgage and the other Bond Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Mortgage, curing defaults by the Borrower under the Bond Documents or for any other purpose expressly permitted by the Senior Mortgage, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Property). **Without limitation upon the foregoing, it is agreed that foreclosure of the Senior Mortgage will have the effect of terminating the Subordinated Provisions of the Regulatory Agreement, but the provisions of the Regulatory Agreement other than the Subordinated Provisions are not subordinated to the Senior Mortgage, and will remain in effect following foreclosure of the Senior Mortgage.**

**(b) Subordination of Subrogation Rights.** The Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the Senior Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Mortgage. The foregoing provisions of this Section 4(b) shall not impair or otherwise affect the right of the



Subordinate Lender to exercise remedies available to it by law as a result of non-payment by the Borrower of taxes, assessments or fees payable by the Borrower to the Senior Lender, not in its capacity as a lender to the Borrower, but in its capacity as a municipality having jurisdiction over the Property.

**(c) Payments Before Loan Default.** Until the Subordinate Lender receives a Default Notice of a Loan Default from the Senior Lender, the Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

**(d) Payments After Loan Default.** The Borrower agrees that, after it receives notice (or otherwise acquires actual knowledge) of a Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. The Subordinate Lender agrees that, after it receives a Default Notice from the Senior Lender with written instructions directing the Subordinate Lender not to accept payments from the Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. If the Subordinate Lender receives written notice from the Senior Lender that the Loan Default which gave rise to the Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the Senior Lender, the restrictions on payment to the Subordinate Lender in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to the Subordinate Lender by the Borrower prior to the Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).

**(e) Remitting Subordinate Loan Payments to Senior Lender.** If, after the Subordinate Lender receives a Default Notice from the Senior Lender in accordance with subsection (d) above, the Subordinate Lender receives any payments under the Subordinate Loan Documents, the Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies the Subordinate Lender in writing, will be promptly remitted, in kind to the Senior Lender, properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the Bond Documents in accordance with the provisions of the Bond Documents. By executing this Agreement, the Borrower specifically authorizes the Subordinate Lender to endorse and remit any such payments to the Senior Lender, and specifically waives any and all rights to have such payments returned to the Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by the Subordinate Lender, and remitted to the Senior Lender under this Section 4, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to the Senior Lender waive any Subordinate Loan Default which may arise from the inability of the Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

**(f) Agreement Not to Commence Bankruptcy Proceeding.** The Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the Senior Lender's prior written consent.

## **5. Default Under Subordinate Loan Documents.**

**(a) Notice of Default and Cure Rights.** The Subordinate Lender shall deliver to the Senior Lender a Default Notice within five Business Days in each case where the Subordinate Lender has given a Default Notice to the Borrower. Failure of the Subordinate Lender to send a Default Notice to the Senior Lender shall not prevent the exercise of the Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. The Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within 60 days following the date of such notice; provided, however that the Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents to the extent permitted under Section 5(b). All amounts paid by the Senior Lender in accordance with the Bond Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the Senior Mortgage.

**(b) Subordinate Lender's Agreement to Standstill.** If a Subordinate Loan Default occurs and is continuing, the Subordinate Lender agrees that, without the Senior Lender's prior written consent, it will not accelerate the Subordinate Loan, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action.

**(c) Cross Default.** The Borrower and the Subordinate Lender agree that a Subordinate Loan Default shall constitute a Loan Default under the Bond Documents and the Senior Lender shall have the right to exercise all rights or remedies under the Bond Documents in the same manner as in the case of any other Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the Bond Documents, any Loan Default under the Bond Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Bond Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such Loan Default.

## **6. Default Under Bond Documents.**

**(a) Notice of Default and Cure Rights.** The Senior Lender shall deliver to the Subordinate Lender a Default Notice within five Business Days in each case where the Senior Lender has given a Default Notice to the Borrower. Failure of the Senior Lender to

send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the Bond Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such Loan Default as provided below. Subordinate Lender may have up to 30 days from the date of the Default Notice to cure any monetary default under the Bond Documents; provided, however, that the Senior Lender shall be entitled during such 30-day period to continue to pursue its remedies with respect to the Property. Subordinate Lender may have up to 60 days from the date of the Default Notice to cure a non-monetary default if during such 60-day period Subordinate Lender keeps current all payments required by the Bond Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 60-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

**(b) Cross Default.** The Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Loan Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents until either (i) the Senior Lender has accelerated the maturity of the Bond Loan, or (ii) the Senior Lender has taken affirmative action to exercise its rights under the Senior Mortgage to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Mortgage. At any time after a Loan Default is determined to constitute a default under the Subordinate Loan Documents, the Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior lender to the Subordinate Lender, any default under the Subordinate Loan Documents arising from such Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Loan Default had never occurred.

## **7. Conflict.**

The Borrower, the Senior Lender and the Subordinate Lender each agree that, in the event of any conflict or inconsistency between the terms of the Bond Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the Senior Mortgage and the Subordinate Mortgage, respectively; and (c) solely as between the Senior Lender and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and the Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Loan Default or Subordinate

Loan Default, as the case may be; give the Borrower the right to notice of any Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Bond Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

**8. Rights and Obligations of the Subordinate Lender Under the Subordinate Loan Documents and of the Senior Lender under the Bond Documents.**

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

**(a) Protection of Security Interest.** The Subordinate Lender shall not, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

**(b) Condemnation or Casualty.** In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a “**Taking**”); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a “**Casualty**”), at any time or times when the Senior Mortgage remains a lien on the Property the following provisions shall apply:

(1) The Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender’s rights under the Bond Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Bond Loan) in accordance with the Bond Documents; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Bond Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Bond Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the Senior

Lender agrees to consult with the Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between the Senior Lender and the Subordinate Lender over the application of Casualty proceeds, the provisions of the Bond Documents shall be controlling.

**(c) No Modification of Subordinate Loan Documents.** The Borrower and the Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Bond Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon the Senior Lender under the Bond Documents. The foregoing shall not prohibit reduction of the committed principal amount of the Subordinate Loan, pursuant to Sections 26.A.iii and 28A of the Subordinate Loan Agreement. Any unauthorized amendment of the Subordinate Loan Documents or assignment of the Subordinate Lender's interest in the Subordinate Loan without the Senior Lender's consent shall be void ab initio and of no effect whatsoever and Subordinate Lender agrees that it shall not transfer or assign the Subordinate Loan or the Subordinate Loan Documents without the prior written consent of the Senior Lender.

#### **9. Modification or Refinancing of Bond Loan.**

The Subordinate Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Bond Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Bond Loan (including reasonable and necessary costs associated with the closing and/or the refinancing) so long as such new mortgage debt is not in a principal amount greater than the debt refinanced and, in the event of new mortgage debt, Subordinate Lender shall execute and deliver to Senior Lender a new subordination agreement on the same terms and conditions as this Subordination Agreement.

#### **10. Default by the Subordinate Lender or Senior Lender.**

If the Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

#### **11. Notices.**

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have

been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER: California Statewide Communities Development Authority  
1100 K Street  
Sacramento, CA 95814  
Attention: Treasurer

With a copy to: Wells Fargo Bank, National Association  
333 Market Street, 19<sup>th</sup> Floor  
San Francisco, CA 94105  
Attention: Corporate Trust Services

and a copy to: Banc of America Public Capital Corp  
c/o Bank of America, N.A.  
Loan Administration  
CA4-703-01-29  
1755 Grant Street, 1st Floor  
Concord, CA 94520  
Attention: Loan Administration Manager

SUBORDINATE LENDER: City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758  
Attn: City Manager

with a copy to: City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758  
Attn: City Attorney

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

## **12. General.**

**(a) Assignment/Successors.** This Agreement shall be binding upon the Borrower, the Senior Lender and the Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and the Subordinate Lender.

**(b) No Partnership or Joint Venture.** The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior Lender as a

joint venturer or partner of the Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

**(c) Senior Lender's and Subordinate Lender's Consent.** Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever the Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

**(d) Further Assurances.** The Subordinate Lender, the Senior Lender and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Senior Mortgage, or to further evidence the intent of this Agreement.

**(e) Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.

**(f) Governing Law.** This Agreement shall be governed by the laws of California.

**(g) Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**(h) Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Bond Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which the Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Mortgage; or (iv) the acquisition by the Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

**(i) Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**ISSUER:**

**CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**MAJORITY OWNER:**

**BANC OF AMERICA PUBLIC CAPITAL CORP**

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

**BOND TRUSTEE:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

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

**SUBORDINATE LENDER:**

**CITY OF ELK GROVE,**  
a municipal corporation

By: \_\_\_\_\_  
Laura Gill, City Manager

Approved as to form:

By: \_\_\_\_\_  
Susan B. Cochran, City Attorney

Attest:

By: \_\_\_\_\_  
Jason Lindgren, City Clerk

**BORROWER:**

**RIDGE ELK GROVE L.P.,**  
a California limited partnership

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Mark A. Wiese  
President

By: Anton Ridge, LLC,  
a California limited liability company,  
its Co-General Partner

By: \_\_\_\_\_  
Steven L. Eggert  
Manager

## **EXHIBIT A**

### **Legal Description**

Lot A, as shown on 'The Grove at Laguna Ridge Town Center West, Subdivision No. 04-764 16', filed for record on May 11, 2007, in Book 368 of Maps, Map No. 1, records of Sacramento County.

Excepting therefrom that portion thereof as granted to the Sacramento County Water Agency indeed recorded March 8, 2007, in Book 20070308, Page 1132, Official Records.

Also Excepting Therefrom all oil, gas and other hydrocarbon substances, inert gases, minerals and metals, lying below a depth of 500 feet from the surface of said land and real property, whether now known to exist or hereafter discovered, including but not limited to the rights to explore for, develop, and remove such oil, gas and other hydrocarbon substances, inert gases, minerals and metals without, however any right to use the surface of such land and real property for any purpose whatsoever, as excepted and reserved in the Deed recorded June 15, 2001, in Book 200106015, Page 411, Official Records.

APN: 132-2110-001

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA        )  
  )  
COUNTY OF \_\_\_\_\_    )

On \_\_\_\_\_, 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 \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA        )  
   )  
 COUNTY OF \_\_\_\_\_     )

On \_\_\_\_\_, 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 \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA        )  
   )  
 COUNTY OF \_\_\_\_\_     )

On \_\_\_\_\_, 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.

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WITNESS my hand and official seal.

Signature \_\_\_\_\_



**ACKNOWLEDGMENT**

STATE OF CALIFORNIA        )  
  )  
COUNTY OF \_\_\_\_\_ )

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Signature \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA           )  
  )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 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.

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WITNESS my hand and official seal.

Signature \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA      )  
  )  
COUNTY OF \_\_\_\_\_  )

On \_\_\_\_\_, 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 \_\_\_\_\_

**NO FEE DOCUMENT**

RECORDING REQUESTED BY  
AND WHEN RECORDED, MAIL TO:

City of Elk Grove  
c/o City Clerk  
8401Laguna Palms Way  
Elk Grove, California 95758

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**  
(Securing affordable housing loan of \$9,700,000 for Ridge Elk Grove, L.P.)

**THIS DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT** (“Deed of Trust”) is made this \_\_\_\_th day of \_\_\_\_\_, 2011, by RIDGE ELK GROVE L.P., a California limited partnership (“Trustor”), to Fidelity National Title as trustee (“Trustee”), for the benefit of the CITY OF ELK GROVE, a public body, corporate and politic (“Beneficiary”). Trustor is sometimes referred to herein as “Borrower.” Trustor is granting this Deed of Trust on Trustor’s property located at 8151 Civic Center Drive – APN 132-2110-001, (the “Property”) to provide collateral for, among other things, credit being extended by Beneficiary to Trustor in connection with the development of a two hundred four (204) unit housing project (the “Project”), to be constructed on the Property and governed by a Regulatory Agreement (herein so-called) executed by Beneficiary and Trustor. Two hundred three (203) of the two hundred four (204) units at the Project are rent restricted (the “Regulated Units” as defined in the Regulatory Agreement). One hundred one (101) of the Regulated Units are affordable housing units at sixty percent (60%) of the area median income and one hundred two (102) of the Regulated Units are affordable housing units at fifty percent (50%) of the area median income. One (1) of the two hundred four (204) units shall not be rent restricted and reserved for a property manager’s unit This Deed of Trust is being executed in order to secure Beneficiary’s interest as a governmental agency in ensuring both that public funds loaned for the development at the Project are repaid, and that housing projects assisted by public funds are developed and operated in a manner that is consistent with the public interest.

**GRANT IN TRUST**

1. **Grant.** Trustor, in consideration of the indebtedness referred to below, hereby irrevocably grants and conveys to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, all of Trustor’s interest in the Property, more particularly described in the attached Exhibit A, and incorporated herein by this reference,

**TOGETHER WITH** all interest, estates, or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property; all buildings, structures, fixtures, improvements, signs, and landscaping now or hereafter erected or located on the Property, including all equipment and machinery used for supplying or distributing heating,

cooling, electricity, gas, water, air, and light, all kitchen and laundry appliances such as washers, dryers, refrigerators, garbage disposals, ovens, ranges, dishwashers, all plumbing and bathroom fixtures, all security and access control equipment, fire prevention and extinguishment equipment, elevators, floor coverings, window coverings, paneling, cabinets, (provided, however, that Trustor shall have the right to remove, if necessary, such fixtures, furnishings, and equipment for the purpose of replacement with similar items of the same quality performing the same functions, which replacements shall themselves become part of this grant); all building material and equipment either now or hereafter delivered to the Property and intended to be installed therein or any such material and equipment purchased with Loan proceeds whether or not located on the Property; all reserves, accounts, deferred payments, and refunds relating to development on the Property; all rents and income generated by the property or improvements thereon; all leases, subleases and rental agreements covering the Property or any portion thereof now existing or hereafter entered into, and all interests of Trustor in security deposits, advance rentals, accounts, or payments of similar nature with respect to such leases, subleases, or rental agreements; all easements and rights-of-way appurtenant to the Property, including parking and recreational easements, and all interests of Trustor in any land lying within the right-of-way of any street, sidewalks, and areas of land adjacent to or used in connection with the Property; all development rights and credits, air rights, water rights, and oil, gas, or mineral rights with respect to the Property; all claims or demands with respect to insurance proceeds, and all awards made for a taking by eminent domain; all interests and rights in any private or government grants, subsidies, loans, or other financing with respect to development on the Property; all interests in personal property used in and about the Property (except furniture and other personal property of occupants of dwelling units on the Property); all intangible property and rights relating to the Property or operations on the Property, including trade names, goodwill, trademarks, and service marks; all government permits, approvals, and map rights related to construction on the Property; all architectural, structural, and mechanical plans, specifications, designs, studies, and data with respect to construction of improvements on the Property; all environmental tests, studies and reports with respect to the Property; all current and future claims and rights of action of Trustor against prior owners and operators of the Property, neighboring property owners and operators, tenants and former tenants, consultants, advisors, and other third parties with respect to environmental or Hazardous Materials contamination and cleanup of the Property under any federal, state, or local ordinances, statutes, regulations, or administrative decisions or common law.

All of the foregoing, together with the Property, is herein referred to as the “Security.”

### **OBLIGATIONS SECURED**

2. Trustor makes this grant for the purpose of securing the following obligations:

A. Repayment of the indebtedness of Borrower to Beneficiary in the principal sum of NINE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$9,700,000) with interest thereon (the “Loan”) evidenced by a promissory note executed by Borrower (the “Note”), on file at the offices of Beneficiary, which is hereby incorporated into this Deed of Trust by this reference, or as much as has been disbursed to Trustor therewith, along with any extensions, amendments, modifications, or renewals to the Note; and

B. Payment of any sums advanced by Beneficiary to protect the security and priority of this Deed of Trust; and

C. Payment of any sums advanced by Beneficiary following a breach of Trustor's obligation to advance such sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

D. Performance of every obligation, condition, covenant, or agreement of Trustor contained in the Loan Documents, including the Deed of Trust, the Loan Agreement executed between Borrower, Trustor and Beneficiary for the Loan (the "Loan Agreement" on file at the offices of Beneficiary, which is hereby incorporated into this Deed of Trust by this reference) and the Regulatory Agreement, together with performance of every obligation, condition, covenant, or agreement of Borrower contained in the Note and the Loan Agreement, including all modifications, extensions, and renewals of these obligations; and

E. Performance of any other obligation or repayment of any other indebtedness of Trustor or Borrower to Beneficiary, where such evidence of obligation or indebtedness specifically recites that it is secured by this Deed of Trust; and the Security, whether or not Beneficiary is a party to such agreements.

### **ABSOLUTE ASSIGNMENT OF RENTS AND RIGHT TO POSSESSION**

3. **Assignment.** Subject to the rights of the Senior Lender, Trustor hereby assigns to Beneficiary: (a) all of the rents, revenues, profits, and income from the Security, any deposits now or hereafter in Trustor's possession which have been collected with respect to the Security, and any reserve or capital funds now or hereafter held by Trustor with respect to construction or operation of the Security (collectively, the "Rents"); and (b) the right to enter, take possession of and manage the Security; provided however that Trustor shall have, before an Event of Default, the exclusive right to possess the Security and to collect Rents and use them in accordance with the Loan Documents. This assignment is intended to be an absolute and present transfer of Trustor's interest in existing and future Rents, effective as of the date of this Deed of Trust.

4. **Enforcement.** Subject to the rights of the Senior Lender, upon the happening of an Event of Default which has not been cured in the manner and time provided in the Loan Documents, including the Loan Agreement or Regulatory Agreement as applicable, Beneficiary may, in addition to other rights and remedies permitted by the Loan Documents, including the Loan Agreement, this Deed of Trust, or applicable law: (a) enter upon, take possession of, and manage the Security, either in person as a mortgagee-in-possession, by agent, or by a receiver appointed by a court, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Security; (b) collect all Rents, including those past due and unpaid, and apply the same to pay for the costs and expenses of operation of the Security, including attorneys' fees, and pay off any indebtedness secured by this Deed of Trust, all in such order as Beneficiary may determine; and/or (c) enter upon and take possession of the Security, and complete construction of any improvements on the Security as provided for in the Plans and Specifications approved under the Loan Agreement or any modifications to the Plans and Specifications or the Project that Beneficiary, in its sole discretion, believes is appropriate. Beneficiary may make, cancel, enforce, and modify leases and rental agreements, obtain and

evict tenants, set and modify rent terms, sue for rents due, enter into, modify, or terminate any contracts or agreements, or take any legal action, as it deems necessary with respect to the Rents or to development or operation of the Security in compliance with the Regulatory Agreement.

5. **Appointment of A Receiver.** In any action to enforce this assignment, Beneficiary may apply, at its discretion, for the appointment of a receiver to take possession of the Security and take whatever measures are necessary to preserve and manage the Security for the benefit of Beneficiary and the public interest. Trustor hereby consents to the appointment of a receiver. The receiver shall have all of the authority over the Security that Beneficiary would have if Beneficiary took possession of the Security under this assignment as mortgagee-in-possession, including the right to collect and apply Rents and the right to complete construction of improvements.

6. **No Waiver of Power of Sale.** The entering upon and taking possession of the Security and the collection of Rents shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or notice of default and, notwithstanding the continuance in possession of the Security or the collection and application of Rents, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon occurrence of any Event of Default, including the right to exercise the power of sale.

#### **COMMERCIAL CODE SECURITY AGREEMENT**

7. **Grant.** This Deed of Trust is intended to be a security agreement and financing statement pursuant to the California Commercial Code for any of the items specified above as part of the Security which under applicable law may be subject to a security interest pursuant to the Commercial Code, and Trustor hereby grants Beneficiary a security interest in said items. Beneficiary may file a copy of this Deed of Trust in the real estate records or other appropriate index as a financing statement for any of the items specified as part of the Security. Trustor shall execute and deliver to Beneficiary, at Beneficiary's request, any financing statements, as well as extensions, renewals, and amendments thereof, and copies of this instrument in such form as Beneficiary may require to perfect a security interest with respect to said items. Trustor shall pay all costs of filing such financing statements and shall pay all reasonable costs of any record searches for financing statements and releases. Without the prior written consent of Beneficiary, Trustor shall not create or permit any other security interest in said items. This Deed of Trust constitutes a fixture filing under Sections 9313 and 9402(6) of the California Commercial Code. Trustor is the record owner in the Property.

8. **Remedies.** Upon Trustor's breach of any obligation or agreement in any of the Loan Documents, Beneficiary shall have the remedies of a secured party under the Commercial Code and at Beneficiary's option, may also invoke the remedies provided for elsewhere in this Deed of Trust with respect to said items. Beneficiary may proceed against the items of real property and personal property specified above, separately or together, and in any order whatsoever.

## **RIGHTS AND OBLIGATIONS OF TRUSTOR**

9. **Performance of Secured Obligation.** Trustor shall perform each obligation secured by this Deed of Trust in a manner consistent with industry standards.

10. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest on the indebtedness evidenced by the Note. Upon assignment of the Note, the assignee shall assume all of Borrower's obligations under the Loan Documents, including the Loan Agreement, this Deed of Trust, and Regulatory Agreement.

11. **Maintenance of the Security.** Trustor shall, at the Trustor's own expense, maintain, and preserve the Security or cause the Security to be maintained and preserved in good condition, in good repair, and in a decent, safe, sanitary, habitable, and tenantable condition. Trustor shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitude as they pertain to improvements, alterations, maintenance or demolition on the Security. Trustor shall not commit or permit waste on or to the Security. Trustor shall not abandon the Security. Beneficiary shall have no responsibility over maintenance of the Security. In the event Trustor fails to maintain the Security in accordance with the standards in this Deed of Trust, the Loan Agreement, or the Regulatory Agreement, Beneficiary, after at least thirty (30) calendar days prior notice to Trustor, may, but shall be under no obligation to, make such repairs or replacements as are necessary and provide for payment thereof. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

12. **Inspection of The Security.** Trustor shall permit Beneficiary to enter and inspect the Security for compliance with these obligations upon a reasonable advance notice of such visit by Beneficiary to Trustor or Trustor's management agent.

13. **Liens, Encumbrances, and Charges.** Trustor shall discharge any lien or encumbrance not approved by Trustor in writing that may attain priority over this Deed of Trust, as provided for in the Loan Agreement.

14. **Defense and Notice of Claims and Actions.** Trustor shall appear in, indemnify and defend, at its own expense, any action or proceeding purporting to affect the Security and/or the rights of Beneficiary. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, and of any condemnation offer or action with respect to the Security.

15. **Suits to Protect the Security.** Beneficiary shall have power to institute and maintain such suits and proceedings as it may deem expedient: (a) to prevent any impairment of the Security or the rights of Beneficiary; (b) to preserve or protect its interest in the Security and in the Rents; and (c) to restrain the enforcement of or compliance with any governmental legislation, regulation, or order, if the enforcement of or compliance with such legislation, regulation, or order would impair the Security or be prejudicial to the interest of Beneficiary.



16. **Damage To Security.** Trustor shall give Beneficiary and Trustee prompt notice in writing of any damage to the Security. If any building or improvements erected on the Property is damaged or destroyed, Trustor shall, at its own cost, repair or restore said buildings and improvements consistent with the original plans and specifications. Such work shall be commenced within thirty (30) calendar days after the damage or loss occurs and shall be completed no later than one hundred eighty (180) calendar days thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds are insufficient for such purpose, Trustor shall make up the deficiency.

17. **Title.** Trustor warrants that upon or contemporaneously with funding of the Loan and the sale of the Property to Trustor, Trustor lawfully has legal title to the Security without any limitation on the right to encumber.

18. **Granting of Easements.** Trustor may not grant easements, licenses, rights-of-way or other rights in the nature of easements with respect to the Security, without the prior written approval of Beneficiary, except those needed for installation and maintenance of roadways, landscape corridors and utilities including water, gas, electricity, sewer, cable television, telephone, or those required by law, which may be granted by Trustor without the approval of Beneficiary.

19. **Taxes and Levies.** Trustor shall pay prior to delinquency, all taxes, fees, assessments, charges, and levies imposed by any public authority or utility company which are, or may become, a lien affecting the Security. However, Trustor shall not be required to pay any tax, assessment, charge, or levy as long as: (a) the legality thereof shall be promptly and actively contested in good faith and by the appropriate proceedings; and (b) Trustor maintains reserves adequate to pay any contested liabilities. In the event that Trustor fails to pay any of the foregoing items, Beneficiary may, but shall be under no obligation to, pay the same, after Beneficiary has notified Trustor of such failure to pay and Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of interest specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which case interest shall accrue at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

20. **Insurance.** Trustor shall provide such insurance as required under the Loan Documents including the Loan Agreement and the Regulatory Agreement. In the event Trustor fails to maintain the full insurance coverage required by this Deed of Trust, Beneficiary, after at least seven (7) business days prior notice to Trustor, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of interest specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which case interest shall accrue at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

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

A. **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 actually incurred by City or Trustee at any time as a result of the existence of any Hazardous Material upon, about, or 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 Materials or the violation of Environmental Requirements arose prior to the present ownership or operation of the Property, and including, without limitation:

i. damages for personal injury, or injury to Property or natural resources occurring upon or off of the Property, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on 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 City only, any immunity to which it may be entitled under any industrial or worker's compensation laws;

ii. to the extent that the items of Environmental Damages described elsewhere in this subsection A have not yet been incurred as of the time of payment by Trustor of a claim by City under this subsection A, diminution in the value of the Property (to the extent such diminution results in the City being under-secured);

iii. 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 real property or otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing these Loan Documents or collecting any sums due hereunder; and

iv. liability to any person or entity to indemnify such person or entity for costs expended in connection with the items referenced in subsection iii hereof.

B. **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:

i. 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

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

C. **Hazardous Materials** means any substance:

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

ii. 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 (CERCLA) (42 U.S.C. Section 9601 et seq. or the Resource Conservation and Recovery Act (CERCLA) (42 U.S.C. Section 6901 et seq.); or

iii. 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

iv. 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

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

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

vii. radon gas.

22. **Environmental Covenants.** Trustor shall at all times comply with the following requirements:

A. **No Use, Disposal or Storage.** Trustor shall not cause, permit or suffer any Hazardous Material (as defined in Section 21) 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 construction or operation of the Property and then only so long as in compliance with all Environmental Requirements including these requirements (as defined in Section 21).

B. **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 City 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.

C. **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 (SARA) 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.

D. **Mitigation.** Notwithstanding the obligation of Trustor to indemnify pursuant to Section 24, 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 reasonably necessary to mitigate Environmental Damages (as defined in Section 21.A) and to allow full economic use of the Property (using the use of the Property as a multi-family housing complex as the standard for such full economic use), which requirements of necessity arise from the presence upon, about or beneath the Property, of a Hazardous Material or a violation of Environmental Requirements. Such actions, which, except when required by any federal, state or local government agency or political subdivision, Trustor shall be required to take only when reasonable, shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of and 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(s) 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 City 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.

E. **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, or that any information supplied to City is not or is no longer accurate in any material respect, 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 City, within ten (10) calendar days of the receipt of such notice or 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 City to defend or otherwise respond to any such notification.

F. **Notice of Test Results.** Trustor shall promptly provide to City 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.

G. **Right to Enter and Inspect.** In the event City 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, City 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 and the activities conducted thereon 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 City, and the agents, employees, consultants and contractors of City, 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. City shall use its best efforts to minimize interference with the business of Trustor and to restore the condition of the Property, but City shall not be liable for any interference caused thereby or failure to restore if City determines in its sole discretion that it is not economically practicable.

H. **Reimbursement of City.** In the event of any default under the Loan Documents, including the Deed of Trust or under the note, Trustor shall promptly reimburse City for any environmental studies or tests which City deems necessary to ascertain the presence and/or level of any Hazardous Materials on the Property.

23. **Environmental Representations.** Trustor hereby represents and warrants as of the date hereof as follows:

A. **Handling of Hazardous Materials.** Neither Trustor nor, to the best knowledge of Trustor, any previous trustor, tenant, occupant or user of the Property, nor any other person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials (whether legal or illegal, accidental or intentional) on, under, in or about the Property, except to the extent commonly used in the day to day operation of the Property and then only as long as in compliance with all Environmental Requirements, or transported any Hazardous Materials to, from or across the Property, nor to the best knowledge of Trustor are any Hazardous Materials presently constructed, deposited, stored, or otherwise located on, under, in or about the Property, nor to the best knowledge of Trustor have any Hazardous Materials migrated from the Property upon or beneath other properties, nor to the best knowledge of Trustor have any Hazardous Materials migrated from other properties upon, about or beneath the Property except as set forth in the Phase I Environmental Report provided to the City.

B. **Compliance with Environmental Requirements.** Existing uses and activities on the Property, including but not limited to the use, maintenance and operation of the Property, and all activities and conduct of business related thereto, comply with all Environmental Requirements, and no activity on the Property constitutes a nuisance or a tortious condition with respect to any third party.

C. **Permits and Authorizations.** Trustor has obtained any or all permits, licenses and other authorizations which may be required under all Environmental Requirements, including laws relating to emissions, discharges, releases or threatened releases of Hazardous Material into the environment (including ambient air, surface water, ground water or land) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Material. Trustor is in compliance with all terms and conditions of any required permits, licenses and authorizations, and is also in compliance with all other Environmental Requirements.

D. **Notice of Claims or Liability.** Neither Trustor nor, to the best knowledge of Trustor, any prior trustor, occupant or user of the Property has received notice or other communication concerning any alleged violation of Environmental Requirements, or notice or other communication concerning alleged liability for Environmental Damages in connection with the Property, and, to the best knowledge of Trustor after due inquiry, there exists no writ, injunction, decree, order or judgment outstanding, nor any lawsuit, claim, proceeding, citation, directive, summons or investigation, pending or threatened, relating to the ownership, use, maintenance or operation of the Property by any person or entity, or from any alleged violation of Environmental Requirements, or from any suspected presence of Hazardous Material thereon, nor, to the best knowledge of Trustor after due inquiry, does there exist any basis for such lawsuit, claim, proceeding, citation, directive, summons or investigation being instituted or filed.

E. **PCBs and Other Materials Disclosed in Questionnaire.** To the best knowledge of Trustor, there is not constructed, placed, deposited, stored, disposed of nor located on the Property any polychlorinated biphenyls (PCBs) nor transformers, capacitors, ballasts, or other equipment which contains dielectric fluid containing PCBs, or any asbestos or asbestos-containing materials or any insulating material containing urea formaldehyde or any radon gas. To the best knowledge of Trustor, except as has been disclosed to City in writing, no underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells are or have been located on the Property.

F. The above representations and warranties contained in this Section shall survive the termination and release of this Deed of Trust and the discharge of Trustor's other obligations hereunder.

24. **Environmental Indemnity.** Trustor agrees to indemnify, reimburse, defend, exonerate, pay and hold harmless (a) City, 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 City 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 City 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 prior to or during Trustor's use or ownership of 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 the otherwise indemnified person. 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.

25. **Environmental Remedies Cumulative.** Notwithstanding anything to the contrary in this Deed of Trust, the rights of City and the obligations of Trustor created under the foregoing Sections 21, 22, 23, and 24 shall be in addition to those other rights and obligations, respectively, created or imposed by statutory, common or case law.

26. **Condemnation.** Subject to the rights of any Senior Lender, all judgments, awards of damages, settlements, and compensation made in connection with or in lieu of taking any part of or interest in the Security under assertion of the power of eminent domain ("Funds") are hereby assigned to and shall be paid to Beneficiary. Beneficiary is authorized (but not required) to receive any funds and is authorized to apply any such Funds to any indebtedness or obligation secured hereby, in such order and manner as Beneficiary determines. Any part of the Funds may be released to Trustor upon such conditions as Beneficiary may impose for its

disposition. Application or release of any Funds shall not cure or waive any default under this Deed of Trust.

27. **Acceleration On Transfer of Security.** In the event that Trustor, without the prior written consent of Beneficiary, sells, agrees to sell, transfers, or conveys its interest in the Security or any part thereof, Beneficiary may at its option declare all sums secured by this Deed of Trust to be immediately due and payable. This option shall not apply in case of:

A. the grant of leaseholds to qualifying households who will occupy Project units as provided for under the Loan Documents, including the Regulatory Agreement;

B. the sale or transfer of fixtures or personal property pursuant to the grant provisions in this Deed of Trust or any Senior Deed of Trust, defined below;

C. the transfer of a limited partnership interest to a tax credit investor or the subsequent transfer by such tax credit investor to a successor tax credit investor in which \_\_\_\_\_ or an affiliate thereof, or its successor, is the general partner or managing member;

D. the acquisition of the Property by any Senior Lender, defined below, pursuant to foreclosure or deed in lieu of foreclosure; or

E. the removal by the Investor Limited Partner of the General Partner of Trustor as general partner of the Trustor and its replacement as general partner by the Investor Limited Partner, which removal shall be in accordance with the terms of the organizational documents of the Trustor, or the transfer of the Limited Partner's Interest or the Project under any option or right of first refusal granted to a general partner of the Trustor; provided that (a) Trustor must provide Beneficiary with advance written notice of the identity of any entity replacing the Trustor General Partner and (b) upon request by Beneficiary and/or Trustee from time to time, the Trustor shall provide Beneficiary and/or Trustee Lender with the names of all owners of interests in Trustor.

F. consent to one (1) sale or transfer shall not be deemed to be a waiver of the right to require such consent to future or successive transactions.

28. **Reconveyance By Trustee.** This Deed of Trust is intended to continue for the entire term of the Loan. Upon written request of Beneficiary stating that all sums secured by this Deed of Trust have been paid and all other obligations cured by this Deed of Trust have been discharged, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

### **DEFAULT AND REMEDIES**

29. **Events Of Default.** Any of the events listed in any of the Loan Documents, including the Loan Agreement and the Regulatory Agreement as an Event of Default shall also constitute an Event of Default under this Deed of Trust, including, but not limited to, (a) Trustor's failure to pay when due any sums payable or perform any of its other covenants,



agreements or obligations under the Note, or the Loan Agreement; (b) Trustor's failure to observe or to perform any of its covenants, agreements, or obligations under this Deed of Trust or the Regulatory Agreement (after expiration of applicable cure periods); or (c) Trustor's failure to make any payment or perform any of its other covenants, agreements, or obligations under any other agreement with respect to financing for the Project or the Security, whether or not Beneficiary is a party to such agreement.

30. **Acceleration Of Maturity.** Upon the happening of an Event of Default which has not been cured within the times and in the manner provided in the Loan Agreement, the Note and/or the Regulatory Agreement, Beneficiary may declare all sums advanced to Trustor under the Note and this Deed of Trust immediately due and payable.

31. **Beneficiary's Remedies.** Upon the happening of an Event of Default which has not been cured within the times and in the manner provided in the Loan Agreement, the Note or the Regulatory Agreement, Beneficiary may, in addition to other rights and remedies permitted by the Loan Documents, including the Loan Agreement, the Note, the Regulatory Agreement or applicable law, proceed with any of the following remedies:

A. Enforce the assignment of rents and right to possession as provided for in this Deed of Trust, and/or seek appointment of a receiver to take over possession of the Security and collect rents;

B. Enter the Security and take any actions necessary in its judgment to complete construction on the Security as permitted under assignment of rents and right to possession in this Deed of Trust, either in person or through a receiver appointed by a court;

C. Disburse from Loan proceeds any amount necessary to cure any Monetary Default under this Deed of Trust, the Loan Agreement, or the Note;

D. Commence an action to foreclose this Deed of Trust pursuant to California Code of Civil Procedure Sections 725a, et seq., and/or seek appointment of a receiver from a court of competent jurisdiction with the authority to protect Beneficiary's interests in the Security, including the authority to complete construction of improvements;

E. Deliver to Trustee a written declaration of Default and demand for sale, and a written Notice of Default and election to cause Trustor's interest in the Security to be sold, which notice Trustee or Beneficiary shall duly file for record in the official records of Sacramento County, and exercise its power of sale as provided for below; or

F. Pursue any other rights and remedies allowed at law or in equity.

32. **Foreclosure by Power of Sale.** Should Beneficiary elect to foreclose by exercise of the power of sale contained in this Deed of Trust, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust (the deposit of which shall be deemed to constitute evidence that the unpaid sums disbursed under the Note are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in the notice of Sale. The sale of the Security shall be as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by Trustor, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to the purchaser its deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee, or Beneficiary, may purchase at the sale.

Trustee may postpone sale of the Security by public announcement at such time and place of sale, and from time to time may postpone the sale by public announcement at the time and place fixed by the preceding postponement or may, in its discretion, give a new Notice of Sale.

After deducting all reasonable costs and fees of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale as follows: (a) first, to payment of all sums then secured by this Deed of Trust, in such order and amounts as Beneficiary in its sole discretion determines; and (b) the remainder, if any, to the person or persons legally entitled thereto.

33. **Remedies Cumulative.** No right, power, or remedy conferred upon Beneficiary by this Deed of Trust is intended to be exclusive of any other rights, powers, or remedies, but each such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or existing at law or in equity.

### **GENERAL PROVISIONS**

34. **Governing Law.** This Deed of Trust 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. Borrower agrees that all actions or proceedings arising in connection with this Deed of Trust 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.

35. **Attorneys' Fees And Costs.** In the event of any Event of Default, or any legal or administrative action is commenced to interpret or enforce the terms of this Deed of Trust, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action. Any such amounts paid by Beneficiary, if it is the prevailing party, shall be added to the indebtedness secured by the lien of this Deed of Trust.

36. **Statement Of Obligation.** Beneficiary may collect a fee not to exceed the maximum allowable under applicable law for furnishing a statement of obligations as provided in the California Civil Code.

37. **Time.** Time is of the essence in this Deed of Trust.

38. **Notices, Demands, and Communications.** Formal notices, demands, and communications between Trustor and Beneficiary shall be given by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Trustor and Beneficiary as follows, or if any such office is relocated, to the new address specified by the relocated party:

- |                   |  |
|-------------------|--|
| LENDER:           | ATTN: City Manager<br>City of Elk Grove<br>8401 Laguna Palms Way<br>Elk Grove, CA 95758  |
| WITH COPY TO:     | ATTN: City Attorney<br>City of Elk Grove<br>8401 Laguna Palms Way<br>Elk Grove, CA 95758   |
| BORROWER/TRUSTOR: | ATTN; Steven Eggert<br>Ridge Elk Grove L.P.<br>1801 I Street, Suite 200<br>Sacramento, CA 95811  |
| WITH COPY TO:     | ATTN: Lisa D. Weil<br>Cox, Castle & Nicholson<br>555 California Street, 10 <sup>th</sup> Floor<br>San Francisco, CA 94104                                      |
| WITH COPY TO:     | ATTN: Loan Administration Manager<br>Bank of America, N.A.<br>Community Development Banking//CA4-703-0L29<br>1755 Grant Street, 1st Floor<br>Concord, CA 94520 |

39. **Binding Upon Successors.** All provisions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Trustor, Trustee, and Beneficiary.

40. **Waiver.** Any waiver by Beneficiary of any obligation of Trustor in this Deed of Trust must be in writing. No waiver shall be implied from any delay or failure by Beneficiary to take action on any breach or default of Trustor or to pursue any remedy allowed under this Deed of Trust or applicable law. Any extension of time granted to Trustor to perform any obligation

under this Deed of Trust shall not operate as a waiver or release from any of its obligations under this Deed of Trust. Consent by Beneficiary to any act or omission by Trustor shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's written consent to future waivers.

41. **Amendments and Modifications.** Any amendments or modifications to this Deed of Trust must be in writing, and shall be made only if agreed upon by Trustor and Beneficiary.

42. **Loan Agreement Controls.** If there is any contradiction between this instrument and the Loan Agreement, the terms of the Loan Agreement shall control, except that Trustor shall have no defense or claim that this instrument does not establish a valid lien on the Property or the Security.

43. **Definitions.** Capitalized terms not otherwise defined in this Deed of Trust shall have the same meaning as defined in the Loan Agreement or other pertinent Loan Documents.

44. **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, recomposition, or other proceedings affecting Trustor, its creditors or its property, Trustee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

45. **Severability.** Every provision of this Deed of Trust is intended to be severable. If any provision of this Deed of Trust is declared to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt or the Security, the unsecured or partially secured portion of the debt and all payments made on the debt (whether voluntary or under foreclosure or other enforcement action or procedure) shall be considered to have been first applied to the payment of that portion of the debt which is not secured by the lien of this Deed of Trust.

46. **Substitution of Trustees.** Beneficiary may, from time to time, appoint another trustee to act in the place of Trustee or any successor. Upon such appointment and without conveyance, the successor trustee shall be vested with all title, powers, and duties conferred upon Trustee. Each such appointment and substitution, shall be made by a written instrument executed by Beneficiary containing reference to this Deed of Trust and its place of record, which, when duly recorded in the Sacramento County Office of the Recorder shall be conclusive proof of proper appointment of the successor trustee.

47. **Acceptance by Trustee.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Except as otherwise provided by law, Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

48. **Subordination.** This Deed of Trust is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing dated as of \_\_\_\_\_, 2011 (the "Senior Deed of Trust"), securing Trustor's obligations under that certain loan agreement dated \_\_\_\_\_, 2011, in the original principal amount of EIGHTEEN MILLION THREE HUNDRED THIRTY THOUSAND DOLLARS (\$18,330,000) executed by Trustor the "Senior Deed of Trust" in favor of the California Statewide Communities Development Authority (the "Issuer") in its capacity as issuer of those certain Multi-Family Housing Revenue Bonds (The Ridge Apartments Project) 2011 Series \_\_, in the aggregate principal amount of EIGHTEEN MILLION THREE HUNDRED THIRTY THOUSAND DOLLARS (\$18,330,000), Banc of America Public Capital Corp, in its capacity as the initial purchaser of the hereinbelow described Bonds (the initial "Majority Owner") along with that certain promissory note dated \_\_\_\_\_, 2011 made by Borrower to the order of the Issuer to evidence its obligation to repay the loan funded by the proceeds of the bonds, and \_\_\_\_\_ (together with any successor trustee and their respective successors and assigns, "Bond Trustee"; and together with Majority Owner and Issuer, sometimes collectively referred to herein as "Senior Lender"), or order, to the extent and in the manner provided in that certain Subordination Agreement, dated as of \_\_\_\_\_, 2011, between the Beneficiary, the Senior Lender and the Trustor.

Notwithstanding anything to the contrary contained in the Loan Documents, Beneficiary further agrees that the lien created under the Loan Documents shall be subordinate to any "extended low-income housing commitment" (as defined in Section 42(h)(6)(B) of the Internal Revenue Code) recorded against the Property, but only to the extent required by such Section, which Section, as of the date hereof, provides for termination upon foreclosure of the extended low-income housing commitment, subject to certain limitations upon evictions, terminations of tenancies and increases in gross rents of tenants of low-income units as specified in that Section.

49. **Counterparts.** This Deed of Trust and all other agreements executed pursuant to this Agreement may be executed in counterpart originals, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

50. **Lender's Signatory Authority.** Any provision of the Loan Documents, including this Deed of Trust, requiring the signature, consent, authorizing waiver, and/or approval of the Lender shall mean the signature of the City Manager or his/her designee.

51. **Agreement and Acknowledgement of Contract.** Trustor and Beneficiary acknowledge and agree that this Deed of Trust has been negotiated at arms length, that each party has been represented by independent counsel and/or has had an opportunity to consult with and be represented by independent counsel, that this Deed of Trust is deemed to be drafted by both parties, that no one party shall be construed as the drafter of this Deed of Trust, and that any rule of construction that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Deed of Trust.

[Remainder of Page Intentionally Left Blank.]

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

**TRUSTOR:**

Ridge Elk Grove, L.P.,  
a California limited partnership

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Mark A. Wiese,  
President

By: Anton Ridge, LLC,  
a California limited liability company,  
its Co-General Partner

By: \_\_\_\_\_  
Steven L. Eggert,  
Manager

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, 201\_ 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 of Notary Public

(Notary Seal)

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, 201\_ 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 of Notary Public

(Notary Seal)



## ACKNOWLEDGMENTS

**EXHIBIT A**

**Legal Description of Property**

**PROMISSORY NOTE SECURED BY DEED OF TRUST**

Laguna Ridge Affordable Housing Project  
 Affordable Housing Loan Note  
 (\$9,700,000)

\_\_\_\_\_, 2011

**FOR VALUE RECEIVED**, Ridge Elk Grove L.P., a California limited partnership, with its principal office at 1801 I Street, Suite 200, Sacramento, California, 95811, (“Borrower”), hereby promises to pay to the order of the CITY OF ELK GROVE, a public body, corporate and politic, whose address is 8401 Laguna Palms Way, Elk Grove, California, 95758 (“Lender” or “City”), a principal amount equal to NINE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$9,700,000), or so much, not to exceed this amount, as may be advanced by Lender to Borrower pursuant to that certain Affordable Housing Loan Agreement dated the date hereof, by and between Borrower and Lender (the “Loan Agreement”). The obligation of Borrower and Lender with respect to all such advances is subject to the terms of: (a) the Loan Agreement; (b) this Note, (c) the Subordination Agreement, as defined in the Loan Agreement, (d) the Deed of Trust, Assignment of Rents, and Security Agreement and Fixture Filing recorded on the real property located at 8151 Civic Center Drive – APN 132-2110-001, Elk Grove, California (the “Property”) by Borrower as Trustor, for the benefit of Lender, as beneficiary, which secures payment of this Loan (the “Deed of Trust”) and (e) that certain Regulatory Agreement by and between Borrower and Lender to be recorded on the Property as contemplated in the Loan Agreement (the “Regulatory Agreement”) (the above documents are collectively referred to as the “Loan Documents”); Borrower also promises to pay to the order of Lender accrued simple interest on the principal balance at the rate of four percent (4%) per annum in accordance with the payment terms stipulated below.

1. **Borrower’s Obligation.** This Note evidences the obligation of Borrower to Lender for the repayment of funds loaned to Borrower by Lender to finance, in part, the development of two hundred four (204) units of rental housing in the City of Elk Grove, of which two hundred three (203) are rent restricted (collectively, the “Regulated Units” as described in the Regulatory Agreement). One hundred one (101) of the Regulated Units are rent restricted at sixty percent (60%) of the area median income and one hundred two (102) of the Regulated units are rent restricted and at fifty percent (50%) of the area median income.

2. **Fiscal Year.** The fiscal year for Ridge Elk Grove L.P. which will be the twelve (12) month period beginning January 1 and ending December 31.

3. **Amount and Time of Payment.** Simple interest will accrue on the loan beginning on the date of the first disbursement of loan proceeds. Repayment of principal and accrued interest shall be made in the manner set forth in this Section. Within ninety (90) calendar days of Fiscal Year-end, Borrower shall provide to Lender audited financial statements for the Project, together with such other documents as the Lender may reasonably require.

A. Subject to Section 22 of this Note, Borrower shall make annual payments to Lender in the amounts set forth in Exhibit A, commencing ninety (90) calendar days after the end of the Fiscal Year in which the first payment is due and continuing annually thereafter until the loan termination date, as provided in Section 4.A, at which time all unpaid principal and accrued interest will be due. For purposes of this agreement, “Year One” means the Fiscal Year in which the City issued its final certificates of occupancy for the Project.

B. Failure to make any annual payment within ninety (90) calendar days of the Fiscal Year end shall be an Event of Default, as described in Section 51 of the Loan Agreement.

C. All payments shall be applied first to accrued interest, and then to principal.

4. **Maturity Date.** The full amount of the outstanding principal advanced under this Note, together with all accrued but unpaid interest thereon, shall be due and payable in full on the earliest of:

A. March 31, 2049;

B. The date the Project is sold or refinanced or the Borrower’s interest in the Property is transferred or conveyed (except as specifically contemplated herein or as permitted in Section 27 of the Deed of Trust); or

C. An Event of Default:

i. by Borrower as defined in the Loan Agreement which has not been cured in the manner and time provided in the Loan Agreement; or

ii. by Owner as defined under the Regulatory Agreement; which has not been cured in the manner and time provided in the Loan Agreement or Regulatory Agreement, as applicable.

5. **Place and Manner of Payment.** All amounts due and payable under this Note and any Loan Document are payable at the office of Lender as set forth above, or at such other place as Lender may designate to Borrower in writing from time to time, in any currency of the United States which on the date of payment is legal tender for the payment of public and private debts.

6. **Prepayment of Loan.** No prepayment penalty will be charged to Borrower for payment of any portion of this Note prior to the end of the Loan term.

7. **Waivers By Borrower.** Presentment, notice of dishonor, and protest are waived by all makers, sureties, guarantors, and endorsers of this Note.

8. **Default And Acceleration.** This Note is secured by the Deed of Trust. All provisions in the Deed of Trust and the Loan Agreement are hereby incorporated by reference. Borrower agrees that the unpaid balance of the principal amount of this Note, together with all

accrued interest thereon and charges owing, shall, at the option of Lender, become immediately due and payable upon any Event of Default as defined in the Loan Agreement or the Regulatory Agreement which has not been cured pursuant to the applicable Agreement, including without limitation the failure of Borrower to make any payment when due. Upon any Event of Default, Lender may exercise any other right or remedy permitted under the Loan Documents.

9. **Nonrecourse.** This Loan is a nonrecourse obligation of Borrower. Neither Borrower nor any of its officers, directors or general and limited partners shall have any personal liability for repaying the principal or interest of the Loan. The sole recourse of Lender for repayment of the principal and interest shall be the exercise of Lender's rights against the Property and/or Project under the Deed of Trust. The foregoing limitation shall not apply to any loss, damage, liability, action, cause of action, cost or expense incurred by Lender as a result, and to the extent of, (a) fraud or material gross misrepresentation under the Loan Document (any of them); (b) intentional bad faith waste of the Property; (c) losses resulting from Borrower's failure to properly maintain insurance as required under the Loan Agreement; or (d) gross misappropriation of any of the rents, security deposits, loan proceeds, insurance proceeds, condemnation awards or any other proceeds derived from the collateral security. In the event of any of the foregoing events (a) through and including (d) occur, Lender shall have the right to proceed directly against Borrower, including its general partners, to recover any loss, damage, liability, action, cause of action, cost or expense (including without limitation, reasonable attorneys' fees and expenses) incurred by Lender to the extent directly caused by events (a) through and including (d). St. Anton Capital, LLC shall execute a Guarantee of Non-Recourse Obligations, in the form attached hereto as Exhibit I, guaranteeing the Lender against the foregoing events (a) through and including (d).

10. **Consents and Approvals.** Any consent or approval required under this Note shall not be unreasonably withheld by Lender or Borrower.

11. **Notices.** Any notices, communications, or demands shall be in writing and may be communicated to Lender or Borrower at the addresses set forth in the Loan Agreement.

12. **Binding Upon Successors.** All provisions of this Note shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees and assigns of Borrower and Lender; provided, however, that this section does not waive the prohibition in the Loan Agreement on assignment of the Loan by Borrower without Lender's consent, which shall not be unreasonably withheld.

13. **Assignment and Assumption.** Borrower shall not assign any of its interests under this Note to any other party, except as specifically permitted under the terms of the Loan Documents, without the prior written consent of Lender, which shall not be unreasonably withheld.

14. **Definitions.** Capitalized terms not defined in this Note shall have the same meaning as defined in the Loan Agreement.

15. **Governing Law.** The Loan Documents 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. Borrower agrees that all actions or proceedings arising in connection with the Loan Documents 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.

16. **Conflicts.** In the event of a conflict between terms contained in this Note and the Loan Agreement, the more specific term shall control; however, if neither term is more specific, the terms in this Note shall govern over conflicting provisions in the Loan Agreement.

17. **Severability.** Every provision of this Note is intended to be severable. If any provision of this Note 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.

18. **Time.** Time is of the essence in this Note.

19. **Attorneys' Fees and Costs.** In the event of any Event of Default, or any legal action is commenced to interpret or to enforce the terms of this Note, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action. In addition, Borrower agrees to pay Lender all reasonable costs incurred in collection of amounts due under this Note which are not paid by the due date as specified herein, whether or not a legal action has been filed.

20. **Waiver.** Any waiver by Lender of any obligation in this Note must be in writing. No waiver shall be implied from any delay or failure by Lender to take action on any breach or default by Borrower or to pursue any remedy allowed under this Note or applicable law. Any extension of time granted to Borrower to perform any obligation under this Note must be in writing, signed by Lender and shall not operate as a waiver or release from any of Borrower's obligations under the Note. Consent by Lender to any act or omission by Borrower shall not be construed to be a consent to any other act or omission or to waive the requirement for Lender's written consent to future waivers.

21. **Amendments and Modifications.** Any amendments or modifications to this Note must be in writing, and shall be effective only if executed by both Borrower and Lender.

22. **Subordination.** The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Note and Loan Agreement dated as of \_\_\_\_\_, 2011 in the original principal amount of \$18,330,000 made by California Statewide Communities Development Authority ("Issuer") to the extent and in the manner provided in that certain Subordination Agreement of even date herewith by and among Issuer, Banc of America Public Capital Corp, Wells Fargo Bank, National Association, as trustee, the City of Elk Grove and Ridge Elk Grove, L.P. (the "Subordination Agreement"). The Deed of Trust securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing securing the Note as more fully set

forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Deed of Trust securing the Borrower's obligations under the Note and Loan Agreement in favor of Issuer as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Deed of Trust securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Subordinate Lender under the Subordination Agreement. Notwithstanding any other provision of this Note, Borrower will not be required to make any payment to Lender in excess of the amount allowed under the Subordination Agreement for service of the Subordinate Loan, as that term is defined in the Subordination Agreement.

23. **Counterparts.** This Agreement and all other agreements executed pursuant to this Agreement may be executed in counterpart originals, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

24. **Lender's Signatory Authority.** Any provision of the Loan Documents, including this Note, requiring the signature, consent, authorizing waiver, and/or approval of the Lender shall mean the signature of the City Manager or his/her designee.

25. **Agreement and Acknowledgement of Note.** Borrower and Lender acknowledge and agree that this Note has been negotiated at arms length, that each party has been represented by independent counsel and/or has had an opportunity to consult with and be represented by independent counsel, that this Note is deemed to be drafted by both parties, that no one party shall be construed as the drafter of this Note, and that any rule of construction that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Note.

[Remainder of Page Intentionally Left Blank.]

Executed on \_\_\_\_\_, 2011

**BORROWER:**

Ridge Elk Grove L.P.,  
a California limited partnership

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Mark A. Wiese,  
Executive Director President

By: Anton Ridge, LLC,  
a California limited liability company,  
its Co-General Partner

By: \_\_\_\_\_  
Steven L. Eggert,  
Manager



**EXHIBIT A**

**Laguna Ridge Apartments Minimum Annual Payments**

<b>Year</b>	<b>Minimum Payment</b>	<b>Year</b>	<b>Minimum Payment</b>
<b>1</b>	<b>\$15,000</b>	<b>21</b>	<b>\$375,000</b>
<b>2</b>	<b>\$15,000</b>	<b>22</b>	<b>\$375,000</b>
<b>3</b>	<b>\$15,000</b>	<b>23</b>	<b>\$375,000</b>
<b>4</b>	<b>\$15,000</b>	<b>24</b>	<b>\$375,000</b>
<b>5</b>	<b>\$15,000</b>	<b>25</b>	<b>\$375,000</b>
<b>6</b>	<b>\$25,000</b>	<b>26</b>	<b>\$475,000</b>
<b>7</b>	<b>\$25,000</b>	<b>27</b>	<b>\$475,000</b>
<b>8</b>	<b>\$25,000</b>	<b>28</b>	<b>\$475,000</b>
<b>9</b>	<b>\$25,000</b>	<b>29</b>	<b>\$475,000</b>
<b>10</b>	<b>\$25,000</b>	<b>30</b>	<b>\$475,000</b>
<b>11</b>	<b>\$50,000</b>	<b>31</b>	<b>\$625,000</b>
<b>12</b>	<b>\$50,000</b>	<b>32</b>	<b>\$625,000</b>
<b>13</b>	<b>\$50,000</b>	<b>33</b>	<b>\$625,000</b>
<b>14</b>	<b>\$50,000</b>	<b>34</b>	<b>\$625,000</b>
<b>15</b>	<b>\$50,000</b>	<b>35</b>	<b>\$625,000</b>
<b>16</b>	<b>\$275,000</b>	<b>36</b>	<b>\$625,000</b>
<b>17</b>	<b>\$275,000</b>	<b>37</b>	<b>\$625,000</b>
<b>18</b>	<b>\$275,000</b>	<b>38</b>	<b>Final balloon payment</b>
<b>19</b>	<b>\$275,000</b>		
<b>20</b>	<b>\$275,000</b>		

NO FEE DOCUMENT

RECORDING REQUESTED BY:  
AND WHEN RECORDED, MAIL TO:

City of Elk Grove  
c/o City Clerk  
8401 Laguna Palms Way  
Elk Grove, CA 95758

**REGULATORY AGREEMENT  
(Laguna Ridge Affordable Housing Project)**

This Regulatory Agreement is made as of \_\_\_\_\_ 2011, by and between the CITY OF ELK GROVE, a public body, corporate and politic (“City”), and RIDGE ELK GROVE L.P., a California limited partnership (“Owner”), pursuant to that certain Affordable Housing Loan Agreement dated, \_\_\_\_\_, 2011, between City and Owner.

**RECITALS**

A. Owner proposes to develop two hundred and four (204) units of rental housing (the “Project”) at a site located in Elk Grove, California at 8151 Civic Center Drive – APN 132-2110-001, (as more particularly described in Exhibit A, attached hereto and incorporated herein by reference) (the “Property”), which units shall be rented at rents affordable to Qualifying Households according to the schedule contained in Exhibit B (the “Regulated Units”), attached hereto and incorporated by reference herein.

B. The Project shall serve as a community resource by providing decent, safe, and sanitary housing for households who would otherwise be unable to afford such housing. The City has agreed to provide Owner with financial assistance in the form of a loan in the amount of NINE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$9,700,000) (the “Affordable Housing Loan”), to support development of the Project. These funds are being provided in order to help achieve financial feasibility for the Project and maximize the affordability of Project units. An Affordable Housing Loan Agreement and Promissory Note have been executed by Owner evidencing and regulating certain aspects of the Affordable Housing Loan. In addition, a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing has been recorded to secure this Loan; these documents, as well as a Subordination Agreement, as defined in the Loan Agreement, and this Regulatory Agreement are collectively referred to as the “Loan Documents.”

C. As further consideration for this funding and to further the public interests of the City in seeing the Project maintained as affordable housing, Owner has agreed to enter into and record this Regulatory Agreement. The purpose of this Regulatory Agreement is to regulate and restrict the occupancy, rents, operation, ownership, and management of the Project for the benefit of Project occupants and the people of the City of Elk Grove. The covenants in this Regulatory Agreement shall run with the land and be binding on Owner and Owner’s successors to the land for the full term of this Regulatory Agreement.

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NOW, THEREFORE, Owner and the City hereby agree as follows:

### **DEFINITIONS**

The following terms have the meanings set forth in this section wherever used in this Regulatory Agreement or attached exhibits. Capitalized terms not defined in this Regulatory Agreement shall have the same meaning as defined in the Loan Documents.

1. **Area Median Income** (referred to herein as “AMI”) means the median income for the Metropolitan Statistical Area which includes the City of Elk Grove (“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, or such other method of median income calculation applicable to the City of Elk Grove that HUD may hereafter adopt in connection with said Act. If HUD should cease making such determination, the City may designate another fair method of calculation of area median income used by any federal or state agency and applicable to the City of Elk Grove.
2. **City** means the City of Elk Grove, a public body, corporate and politic.
3. **Deed of Trust** means the Deed of Trust, Assignment of Rents and Security Agreement and Fixture Filing placed on the Property as security for the Loan with Owner as trustor and the City as beneficiary, as well as any amendments to, modifications of, and restatements of said Deed of Trust.
4. **Loan** means the loan of funds provided by the City to Owner pursuant to the Loan Agreement.
5. **Loan Agreement** means the Affordable Housing Loan Agreement, executed contemporaneous with this Regulatory Agreement by Owner and the City which governs the Loan, as well as any amendments to, modifications of, or restatements of said Loan Agreement. The Loan Agreement is on file with the City of Elk Grove.
6. **Loan Documents** means collectively this Regulatory Agreement, the Loan Agreement, Deed of Trust, Subordination Agreement, and Promissory Note for the Project, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.
7. **Note** means the promissory note or notes executed by Owner in favor of the City evidencing the Loan, which is secured by the Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory note. The Note is on file with the City of Elk Grove.
8. **Owner** means Ridge Elk Grove L.P., a California Limited Partnership.
9. **Project** means the development and operation of the Property for residential use according to the terms of the Loan Agreement and this Regulatory Agreement.

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

11. **Qualifying Household** means a household in which household income does not exceed the percentage of Area Median Income prescribed for the applicable housing unit by the terms of this Regulatory Agreement.

12. **Qualifying Rent** means: a) during the period a regulatory agreement governing the allocation and award of federal tax credits is in effect, the maximum rent charged to and paid by a tenant for the occupancy of a Regulated Unit in the Project determined in accordance with such regulatory agreement and 26 U.S.C. Section 42 (“Tax Credit Law”) or b) during any other period, the “affordable rent,” charged to and paid by a tenant for the occupancy of a Regulated Unit in the Project including a reasonable allowance for tenant-paid utilities, for the applicable household pursuant to Section 50053 of the California Health and Safety Code, as amended, or any successor statute thereto. Qualifying Rent may be adjusted annually to coincide with the increases in the California Debt Limit Allocation Committee or California Tax Credit Allocation Committee schedule of rents for the Sacramento region, whichever prevails. If Owner does not agree with the adjustment factors provided herein, Owner may, within thirty (30) calendar days of notification by City of that year’s adjustment, present to City information on which it wishes to base its annual rent adjustment. The City will review this information and decide on which adjustment factor Owner shall base its annual rent increase. The decision of the City shall be final. Notwithstanding the above, during the period a regulatory agreement governing the allocation and award of federal tax credits is in effect, the annual rent increase shall not exceed the annual rent increase allowed by Tax Credit Law. Unless stated otherwise in this agreement, the utility allowances permitted for use shall be consistent with those allowed in Sacramento County and published annually by the Sacramento Housing and Redevelopment Agency.

13. **Regulated Units** means two hundred three (203) of the two hundred four (204) rental dwelling units constructed for the Project, affordable to the income levels and having the composition, as set forth in Exhibit B.

### **OWNER’S OBLIGATIONS**

14. **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.

15. **Term of Agreement**. This Regulatory Agreement shall commence upon execution and shall remain in full force and effect until the later of: (a) thirty-eight (38) years after the date Owner obtains a Certificate of Occupancy from the City of Elk Grove for the Project, or (b) when the Owner has repaid the entire Loan to the City. The obligations in this Regulatory 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 the City in a recorded writing or extended by mutual consent of the parties; provided however, that the obligations in this Regulatory Agreement are and shall be

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subordinate in all respects to the liens, terms, covenants and conditions of the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of \_\_\_\_\_, 2011 in favor of \_\_\_\_\_, as Trustee, and \_\_\_\_\_, as beneficiary in its capacity as Agent, as more fully set forth to the extent and in the manner provided in that certain Subordination Agreement, dated as of \_\_\_\_\_ 2011, among the City, the California Statewide Communities Development Authority (the "Issuer") in its capacity as issuer of those certain Multi-Family Housing Revenue Bonds (The Ridge Apartments Project) 2011 Series \_\_, in the aggregate principal amount of EIGHTEEN MILLION THREE HUNDRED THIRTY THOUSAND DOLLARS (\$18,330,000), Banc of America Public Capital Corp, in its capacity as the initial purchaser of the hereinbelow described Bonds (the initial "Majority Owner"), and \_\_\_\_\_ (together with any successor trustee and their respective successors and assigns, "Bond Trustee"; and together with Majority Owner and Issuer, sometimes collectively referred to herein as the "Senior Lender") and the Owner (the "Subordination Agreement").

### **PROJECT OCCUPANCY AND RENTS**

16. **Occupancy of Project.** Owner shall limit for the full term of this Regulatory Agreement the rental of Regulated Units to Qualifying Households according to the schedule contained in Exhibit B. The income levels and other qualifications of applicants shall be certified prior to initial occupancy in conformance with the Final Management Plan and the City's rules governing income certification, as these rules may be amended from time to time.

The Project shall be owned, managed and operated as a residential rental project comprised of several buildings and structures, each consisting of more than one residential dwelling unit, together with facilities functionally related and subordinate thereto, in accordance with the applicable provisions of the Internal Revenue Code and applicable California law, as the same may be amended from time to time. All of the residential dwelling units in the Project will be similarly constructed and shall contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or family, including sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink. None of the residential dwelling units shall at any time be utilized on a transient basis. Neither the Project, nor any portion thereof shall ever be used as hotel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park or court.

17. **Project Rents.** Rents for Regulated Units shall be limited to Qualifying Rents. If Owner proposes rents lower than Qualifying Rents, Owner shall present to the City information upon which it bases the lower proposed rents. The City will review this information and decide, in its sole discretion, whether the lower rents will be used. The decision of the City shall be final.

18. **Lead-Based Paint.** Owner and its contractors and subcontractors shall not use lead-based paint in the construction, design, or maintenance of the Property. Owner shall insert this provision in all contracts and subcontracts for work performed on the Project which involves the application of paint.

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19. **Condominium Conversion.** 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 Regulatory Agreement, without the prior written consent of City, which consent may be withheld for any reason.

20. **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, as that term is defined by State and Federal law.

21. **Operation and Management of Project.** Owner and each of Owner's agents shall diligently operate and manage the Property after completion in substantial conformance with the covenants contained in this Agreement, which shall run with the land and bind all successors-in-interest to the Property, and with the terms of the Final Management Plan as defined below.

A. **Management Entity.**

City and Owner agree that Owner shall manage the Property upon completion of construction. If Owner desires to seek the services of an outside property management firm to manage the Property, Owner may contract with an experienced property management firm subject to the prior written approval of City. The City shall have the right to review and approve the management entity chosen by Owner for the Property and the right to require a change in the management agent for reasonable cause at any time during the term of this Regulatory Agreement. Any contracting of management services by Owner shall not relieve Owner of its primary responsibilities for proper performance of management duties.

Owner has contracted, and City approves, St. Anton Management, Inc., (the "Property Manager") to manage the Property and the Management Agreement dated January 1, 2011, as amended by the First Amendment to Property Management Agreement dated as of March 1, 2011, executed by and between Owner and Property Manager. The City shall have the right to review and approve any proposed amendments to Owner's contract with its management firm, any new management contracts, and any substantive changes in the Management Plan during the term of this Agreement.

B. **Management Plan.**

At least thirty (30) calendar days prior to the anticipated completion of construction of the Project, Owner shall submit to the City for review and approval which shall not be unreasonably withheld, a draft management plan for marketing and managing the Property. Prior to issuance of the final Certificate of Occupancy for the Project, Owner shall submit a Final Management Plan to the City for its review and approval, which shall not be unreasonably withheld. If the City has not responded to any submission of the Final Management Plan or management contract

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(including amendments) by Owner within thirty (30) days of receipt of such Plan or contract by the City, the Plan or contract (including amendments) shall be deemed approved by the City; provided, however, that each submission of a material amendment to the Final Management Plan triggers a new thirty (30) day period in which the City may review and approve such plan and amendment.

The City shall review and Owner shall update, if City deems necessary, the Management Plan at least once every three (3) years. The Final Management Plan shall be the plan addressing how the Property will be managed following construction and upon occupancy, and shall include, but not be limited to, provisions set forth in the Management Responsibilities.

C. Management Responsibilities. The Owner shall perform and provide the following:

i. A major maintenance schedule, prepared by Owner and the management firm, which specifies maintenance work to be performed on a periodic basis over the estimated lifetime of the housing units on the Property. The annual schedule must be submitted to the City by March 31 of each calendar year and shall be consistent in content with any similar reports provided to other lenders and investors in the Property.

ii. Establishment of a replacement reserve account identifying the manner in which the maintenance schedule described in item C.i. above, and projected replacement activities will be funded from monthly project income. The schedule for deposits and withdrawals from the replacement reserve account shall be submitted to the City by March 31 of each calendar year and shall be consistent in content with any similar reports provided to other lenders and investors in the Property.

iii. Annual inspections of individual units to ensure continued compliance with state and local housing codes. Results of the inspections must be documented in a report, and copies may be requested by the City. The City may also independently schedule during a calendar year, one or more property inspections upon 5 business day advance written notice by City to Owner.

iv. Annual reporting to the City regarding compliance with the deferred maintenance schedule and the results, findings and any corrective measures taken or to be undertaken arising from the annual inspections of units.

v. Audited annual financial statements prepared by a certified public accountant, approved in advance, in writing, by City, which reflect the status of the reserve fund for maintenance and replacement activities. Copies of audited annual financial statements must be provided to the City within ninety (90) calendar days of the fiscal year-end date. The accountants acceptable to the Senior Lender and the Borrower's tax credit investor shall be deemed acceptable to the City. Copies of quarterly unaudited financial statements must be provided to the City within thirty (30) calendar days of the quarter-end date.

vi. Maintenance of outdoor landscaping, outdoor lighting, parking area paving, stops/curbs, striping, laundry room facilities, garbage and recycling receptacles, as well as overall cleanliness of Property.

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vii. A marketing strategy to outline methods to be used to achieve full and continuing lease up of the housing units on the Property until Project stabilization and in conformance with any applicable state and federal affirmative fair housing marketing guidelines.

viii. 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.

ix. A tenant selection process that includes, but is not limited to, the following:

a. Review of the following criteria:

i. history of habitual rent delinquencies or evictions;

ii. history of drug or alcohol abuse;

iii. history of criminal or drug related offenses, including, but not limited to: assault, battery, abuse, destructive or violent behavior.

b. Prospective tenants must be required to fill out an application form, verify income/employment, attend a private interview with Owner or a selected property management firm, consent to a credit check and agree to abide by property management rules for Property.

c. Selected tenants must be given a set of “rules and regulations” for the Property, and

d. Leases with tenants must provide that non-compliance with building rules shall be an event of default on the lease and grounds for eviction.

x. On-site management of the Property.

xi. The duties of the manager regarding operation of the Property.

xii. A sample lease form.

Owner shall provide and maintain safe and sanitary rental housing units on the Property and shall comply with all State and local housing codes, licensing requirements, and other requirements regarding the condition of the Property and the operation of rental housing units in the City of Elk Grove.

Owner shall be 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. The City shall have no responsibility over management of the Property.



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22. **Maintenance And Security.** Owner shall, at its own expense, maintain the Property in good condition, in good repair, and in a safe, sanitary, and habitable, 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; however, Owner's maintenance obligations shall not be limited only to the standards contained in these laws or the plan.

In the event the Owner fails to maintain the Property in accordance with these standards and after thirty (30) calendar days prior written notice to Owner, and subject to the rights of the Senior Lenders and the tax credit investor, the City 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 City's reasonable discretion, and provide for payment thereof. Any amount advanced by City 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 City and shall be secured by the Deed of Trust.

Nothing contained in this Section shall be interpreted to place any restriction or limitation on the City's right to take such actions as it deems necessary or proper to protect the health and safety of the public in the proper exercise of the City's authority under federal, state, and local laws.

23. **Unit Vacancies.** Owner shall use its best efforts to fill vacancies in Regulated Units as quickly as possible.

24. **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 Regulatory Agreement. Owner shall submit any records to the City within ten (10) business days of City's request. Owner shall permit City to enter and inspect the Property for compliance with obligations under this Regulatory Agreement upon seven (7) days advance written notice of such visit by City 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.

25. **Annual Report.** Owner shall submit an annual report to City, 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 City. City may require additional information to be included in the annual report. Owner shall provide City a copy of the annual reports submitted to the California Tax Credit Allocation Committee and California Debt Limit Allocation Committee.

26. **Fees, Taxes, And Other Levies.** 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

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shall not be required to pay any such charge as 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.

27. **Insurance Coverage.** Owner shall cause to have in full force and effect during the term of this Regulatory Agreement insurance coverage as required in Exhibit C of the Loan Agreement.

28. **Property Damage Or Destruction.** Subject to the terms and conditions of the Senior Deed of Trust, 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. Such work shall be commenced within thirty (30) calendar days, or up to one hundred eighty (180) calendar days with written approval of City, after the damage or loss occurs and shall be completed within one hundred eighty (180) calendar days thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if insurance proceeds are insufficient for such purpose, Owner shall make up the deficiency.

### **GENERAL PROVISIONS**

29. **Transfer And Encumbrance of Property.** Until the Note is paid in full, transfer of the Property and Project shall not occur except as permitted by Section 27 of the Deed of Trust. Thereafter, the Owner shall not Transfer the Project, in whole or in part, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed if the following conditions are satisfied: (A) the receipt by the City of evidence acceptable to the City that (1) the Owner shall not be in default hereunder or the transferee undertakes to cure any defaults of the Owner to the reasonable satisfaction of the City; (2) the continued operation of the Project shall comply with the provisions of this Regulatory Agreement; (3) either (a) the transferee or its property manager has at least three (3) years' experience in the ownership, operation and management of similar size rental housing projects, and at least five (5) years' experience in the ownership, operation and management of rental housing projects containing below-market-rate units, without any record of material violations of discrimination restrictions or other state or federal laws or regulations or local government requirements applicable to such projects, or (b) the transferee agrees to retain a property management firm with the experience and record described in subclause (a) above, or (c) the transferring Owner or its management company will continue to manage the Project, or another management company reasonably acceptable to the City will manage, for at least one (1) year following such Transfer and, if applicable, during such period the transferring Owner or its management company will provide training to the transferee and its manager in the responsibilities relating to the Regulated Units; and (4) the person or entity that is to acquire the Project does not have pending against it, and does not have a history of significant and material building code violations or complaints concerning the maintenance, upkeep, operation, and regulatory agreement compliance of any of its projects as identified by any local, state or federal regulatory agencies; (B) the execution by the transferee of any document reasonably requested by the City to evidence the assumption of the Owner's obligations under this Regulatory Agreement.

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30. **Default And Remedies.** In the event of any breach or violation of any agreement, obligation, or warranty under this Regulatory Agreement, City 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. If Owner fails to cure the breach or violation within the timeframe specified in the notice, or if a cure is not possible, City may proceed with any of the following remedies:

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

B. 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 City determines that Owner is in a position to operate the Property in compliance with this Regulatory Agreement;

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

D. For violations of Owner's obligations with respect to occupancy restrictions, Project maintenance, and unit vacancies, there shall be imposed, 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 Regulatory Agreement. The parties to this Regulatory Agreement expressly agree that this charge of FIVE HUNDRED DOLLARS (\$500) per day is reasonable under the circumstances existing at the time of this Regulatory Agreement was entered into and represents a reasonable attempt by the parties to estimate the damaged to be suffered by the City in the event of Owner's breach; these damages include, but are not limited to, the City's loss of use of funds that were loaned to Owner pursuant to the Loan Documents, including this Regulatory Agreement, and that could have been used to support other projects but for City's commitment to fund Owner's Project pursuant to the Loan Documents.

Initials: Owner \_\_\_\_\_, City Manager \_\_\_\_\_.

E. 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 (3) times the actual amount Owner has collected from any Qualifying Household in excess of the Qualifying Rent; or

F. 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 City is likely to suffer from violations of the respective terms. Owner agrees to pay in full any accrued liquidated damages to City within ten (10) business days of a written demand by City for such payment.

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31. **Non-Liability of Officials, Employees, and Agents.** No member, official, director, employee, or agent of City shall be personally liable to Owner or third party beneficiaries for any obligation created under the terms of this Regulatory Agreement.

32. **Indemnity.** Notwithstanding the insurance coverage required herein, Owner shall defend, indemnify and hold City, 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 attorney's fees) which City may incur as a result of (a) Owner's failure to reasonably perform any material obligations as required by this Regulatory 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 the City. Owner shall pay immediately upon City's demand any amounts owing under this indemnity. The duty of the Owner to indemnify includes the duty to defend City 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 City shall survive the term of this Regulatory Agreement.

33. **Governing Law.** This Regulatory 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 Regulatory Agreement shall be tried and litigated only in the state and federal courts located in the State of California, except that City, 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.

34. **Regulatory Agreement Controls.** In the event that any provisions of this Regulatory Agreement and the Loan Agreement conflict, the terms of the Regulatory Agreement shall control.

35. **Attorneys' Fees And Costs.** In the event that a legal or administrative action is brought to interpret or enforce the terms of this Regulatory Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

36. **Time.** Time is of the essence in this Regulatory Agreement.

37. **Consents And Approvals.** Any consent or approval required under the Regulatory Agreement shall not be unreasonably withheld.

38. **Notices, Demands, And Communications.** Formal notices, demands, and communications between Owner and City shall be given by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Owner and City as follows, or if any such office is relocated, to the new address specified by the relocated party:

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LENDER/CITY:	ATTN: City Manager City of Elk Grove 8401 Laguna Palms Way Elk Grove, California 95758
WITH A COPY TO:	ATTN: City Attorney City of Elk Grove 8401 Laguna Palms Way Elk Grove, California 95758
BORROWER/OWNER:	ATTN: Steven Eggert Ridge Elk Grove L.P. 1801 I Street, Suite 200 Sacramento, CA 95811
WITH COPY TO:	ATTN: Lisa D. Weil Cox, Castle, & Nicholson 555 California Street, 10 <sup>th</sup> Floor San Francisco, CA 94104

39. **Binding Upon Successors.** All provisions of this Regulatory Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Owner and City, and shall run with the land for the full term of this Regulatory 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 of the duties and obligations imposed on Owner under this Regulatory Agreement for the full term of this Regulatory Agreement. The term “Owner” as used in this Regulatory Agreement shall include all such assigns, successors-in-interest, and transferees.

40. **Relationship Of Parties.** The relationship of Owner and City for this Project during the term of this Regulatory Agreement shall not be construed as a joint venture, equity venture, or partnership. City 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 City may specify in writing, Owner shall have no authority to act as an agent of City or to bind City to any obligation.

41. **Waiver.** Any waiver by City of any obligation in this Regulatory Agreement must be in writing. No waiver will be implied from any delay or failure by City to take action on any breach or default of Owner or to pursue any remedy allowed under this Regulatory Agreement or applicable law. Any extension of time granted to Owner to perform any obligation under this Regulatory Agreement shall not operate as a waiver or release from any of its obligations under this Regulatory Agreement. Consent by City 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 City’s written consent to future waivers.

[Type text]

42. **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 Regulatory Agreement. Owner shall not enter into any agreements that are inconsistent with the terms of this Regulatory Agreement without a written waiver by City, which shall not be unreasonably withheld.

43. **Amendments And Modifications.** Any amendments or modifications to this Regulatory Agreement must be in writing, and shall be effective only if executed by both Owner and City.

44. **Severability.** Every provision of this Regulatory 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.

### **SPECIAL PROVISIONS**

45. **Participation In Section 8 Program.** During the term of this Agreement, Owner agrees to accept tenants who qualify under the Housing Choice Voucher program, formerly referred to as the Section 8 program (the "HCV" or "Section 8"), administered by the Sacramento Housing and Redevelopment Agency (the "Agency"). The rents for units rented to HCV tenants shall be as determined by the Agency, based on the payment standard. Owner shall participate to the extent reasonably possible.

46. **Counterparts.** This Agreement and all other agreements executed pursuant to this Agreement may be executed in counterpart originals, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

47. **Lender's Signatory Authority.** Any provision of the Loan Documents, including this Agreement, requiring the signature, consent, authorizing waiver, and/or approval of the Lender shall mean the signature of the City Manager or his/her designee.

48. **Agreement and Acknowledgement of Agreement.** City and Owner acknowledge and agree that this Agreement has been negotiated at arms length, that each party has been represented by independent counsel and/or has had an opportunity to consult with and be represented by independent counsel, that this Agreement is deemed to be drafted by both parties, that no one party shall be construed as the drafter of this Agreement, and that any rule of construction that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Agreement.

[Remainder of Page Intentionally Left Blank.]

[Type text]

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

\_\_\_\_\_,2011

**CITY:**

CITY OF ELK GROVE,  
a municipal corporation

By: \_\_\_\_\_  
Laura Gill  
City Manager

Approved as to form:

By: \_\_\_\_\_  
Susan B. Cochran  
City Attorney

Attest:

By: \_\_\_\_\_  
Jason Lindgren  
City Clerk

[Type text]

ALL SIGNATURES MUST BE NOTARIZED

**OWNER:**

Ridge Elk Grove L.P.,  
a California limited partnership

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Mark A. Wiese,  
President

By: Anton Ridge, LLC,  
a California limited liability company,  
its Co-General Partner

By: \_\_\_\_\_  
Steven L. Eggert,  
Manager



[Type text]

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, 201\_ 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 of Notary Public

(Notary Seal)

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, 201\_ 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 of Notary Public

(Notary Seal)

[Type text]

**EXHIBIT A**  
**Legal Description**

See attached document

[Type text]

**EXHIBIT B**

**Laguna Ridge**

**Regulated Units**

**PROJECT UNIT MIX AND AFFORDABILITY**

<b>Maximum Household Income as a Percentage of Area Median Income (AMI)</b>	<b>ONE BEDROOM No. of Units</b>	<b>TWO BEDROOM No. of Units</b>	<b>THREE BEDROOM No. of Units</b>	<b>Total</b>
<b>50% or lower</b>	30	42	30	102
<b>60% or lower</b>	30	41	30	101
<b>TOTAL</b>	60	83	60	203

*Note: The Project includes one (1) two bedroom manager's units which will not be rent restricted.*

Bond Number: \_\_\_\_\_  
Premium: \_\_\_\_\_

**FAITHFUL PERFORMANCE BOND**

**WHEREAS**, the City Council of the City of Elk Grove, State of California, and Ridge Elk Grove L.P., a California limited partnership (hereinafter designated as “principal”) have entered into an agreement whereby principal agrees to install and complete certain designated improvements, which said agreement identified as Affordable Housing Loan Agreement, Development Loan for Laguna Ridge Affordable Housing Project (\$9,700,000), and is hereby referred to and made a part hereof; and

**WHEREAS**, said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

**NOW, THEREFORE**, we, the principal and \_\_\_\_\_, as surety, are held and firmly bound unto the City of Elk Grove hereinafter called (“City”), in the penal sum of \$ ( \_\_\_\_\_ **and No/100 Dollars**) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney’s fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

Bond Number: \_\_\_\_\_  
Premium: \_\_\_\_\_

**IN WITNESS WHEREOF**, this Faithful Performance Bond has been duly executed by the principal and surety above named, on this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

_____	Principal:
Name of Surety	_____
_____	_____
_____	Contact: _____
_____	Phone: _____
Address of Surety	By: _____
_____	_____
Telephone No. of Surety	(Print Name & Title)
_____	And
_____	By: _____
Attorney-in-Fact	_____
_____	(Print Name & Title)

**NOTE:** If principal is a partnership, all partners should execute the bond.

**IMPORTANT:** Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.

**NOTICE:** The signature of the Surety on this bond must be acknowledged before a notary public, and this bond must be accompanied by evidence that the appointment as attorney in fact has been recorded in Sacramento County.

**MANDATORY:** The Surety shall be authorized and licensed by the California Insurance Commissioner as an "admitted surety insurer."

**APPROVAL:** Bonds must be approved by City.

**REQUEST TO INSURER TO SUBMIT DOCUMENTS:** Execution of this document shall constitute the City's formal request to the insurer to provide the City with evidence of authorization as an admitted surety in the State of California from the California Department of Insurance and that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended.

**POWER OF ATTORNEY REQUIRED.** The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond that it covers.

## PAYMENT BOND

**WHEREAS**, the City Council of the City of Elk Grove, State of California, and Ridge Elk Grove L.P., a California limited partnership (hereinafter designated as "principal") have entered into an agreement whereby principal agrees to install and complete certain designated improvements, which said agreement identified as Affordable Housing Loan Agreement, Development Loan for Laguna Ridge Affordable Housing Project (\$9,700,000), and is hereby referred to and made a part hereof; and

**WHEREAS**, under the terms of said agreement, principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Elk Grove to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

**NOW, THEREFORE**, said principal and the undersigned as corporate surety, are held firmly bound unto the City of Elk Grove and all contractors, subcontractors, laborers, materialmen and other persons employed in the performance of the aforesaid agreement and referred to in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code in the sum of **\$ (      and No/100 Dollars )**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney fees, incurred by City in successfully enforcing the obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

Bond Number: \_\_\_\_\_  
Premium: \_\_\_\_\_

**IN WITNESS WHEREOF**, this Payment Bond has been duly executed by the principal and surety above named, on this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

_____	Principal:
Name of Surety	_____
_____	_____
_____	Contact: _____
Address of Surety	Phone: _____
_____	By: _____
_____	_____
Telephone No. of Surety	(Print Name & Title)
_____	And
_____	By: _____
Attorney-in-Fact	_____
	(Print Name & Title)

**NOTE:** If principal is a partnership, all partners should execute the bond.

**IMPORTANT:** Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.

**NOTICE:** The signature of the Surety on this bond must be acknowledged before a notary public, and this bond must be accompanied by evidence that the appointment as attorney in fact has been recorded in Sacramento County.

**MANDATORY:** The Surety shall be authorized and licensed by the California Insurance Commissioner as an "admitted surety insurer."

**APPROVAL:** Bonds must be approved by City.

**REQUEST TO INSURER TO SUBMIT DOCUMENTS:** Execution of this document shall constitute the City's formal request to the insurer to provide the City with evidence of authorization as an admitted surety in the State of California from the California Department of Insurance and that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended.

**POWER OF ATTORNEY REQUIRED.** The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond that it covers.

## EXHIBIT H

## COMPLETION AGREEMENT

This Completion Agreement (the "**Guaranty**") is dated for reference purposes as of March 1, 2011 by ST. ANTON CAPITAL, LLC, a California limited liability company ("**Guarantor**") in favor of the CITY OF ELK GROVE, a public body, corporate and politic ("**Lender**").

Factual Background

A. Pursuant to that certain Affordable Housing Loan Agreement dated as of even date herewith (the "**Loan Agreement**") executed by and between Ridge Elk Grove, L.P., a California limited partnership ("**Borrower**") and Lender, Lender has agreed to make a loan (the "**Loan**") to Borrower in the principal amount of up to \$9,700,000.

B. The obligations of Borrower to repay the Loan are evidenced by a Promissory Note Secured by Deed of Trust (the "**Note**") dated as of even date herewith made by Borrower to the order of Lender in the principal amount of the Loan. The obligations of Borrower under the Note and the Loan Agreement are secured by a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing (the "**Mortgage**") covering certain real and personal property, as therein described (all collectively, the "**Property**"). The obligations of Borrower under the Note and the Loan Agreement may also be secured by other collateral, as more fully explained in the Loan Agreement.

C. Capitalized terms used in this Guaranty and not expressly otherwise defined herein shall have the meanings set forth for those terms in the Loan Agreement.

Guaranty

1. **Completion Guaranty and Agreement.** Guarantor unconditionally guarantees the full performance by Borrower of, and agrees to perform, all of Borrower's obligations under the Loan Documents which pertain to construction of the Improvements. Guarantor unconditionally guarantees the lien-free completion of the Improvements in accordance with the requirements of the Loan Documents. Guarantor shall assume responsibility for and shall fully perform all of such obligations, at Guarantor's sole cost and expense, promptly on receiving written notice from Lender that Borrower has failed to perform any of such obligations in accordance with the Loan Documents.

2. **Availability of Loan Funds.** If Lender has sent Guarantor written notice to perform its obligations under **Section 1** above, Lender shall make undisbursed Loan funds available to Guarantor for the purposes of completing the Improvements and fulfilling its other obligations under this Guaranty, so long as:

2.1 Guarantor is not in default under this Guaranty;



**2.2** Guarantor cures any outstanding Event of Default under the Loan Documents and thereafter performs all obligations assumed by Guarantor under this Guaranty up to the time of the lien-free completion of the Improvements; and

**2.3** All conditions of the Loan Documents to the disbursement of Loan funds are satisfied, other than the requirement that Borrower not be in default.

**3. Lender's Remedies.** If Guarantor fails promptly to perform its obligations under Section 1 above, Lender shall have the following remedies:

**3.1** If Lender in its sole discretion chooses to do so, Lender may perform any or all of Guarantor's obligations under **Section 1** above on Guarantor's behalf. If this happens, Guarantor shall reimburse Lender immediately on demand for all costs and expenses, including any attorneys' fees, that Lender may incur in performing those obligations, together with interest on those sums from and after the date(s) they are incurred at the rate of [REDACTED] (the "**Alternate Rate**").

**3.2** In addition, Lender may bring any action at law or in equity or both, or commence any reference or arbitration proceeding to compel Guarantor to perform its obligations under **Section 1** above, and to collect compensation for all loss, cost, damage, injury and expense which may be sustained or incurred by Lender as a direct or indirect consequence of Guarantor's failure to perform those obligations, including interest at the Alternate Rate. Lender from time to time may bring such an action or commence such a reference or arbitration proceeding, regardless of whether Lender has first required performance by Borrower, or whether Lender has exhausted any or all security for the Loan.

**4. Rights of Lender.** Guarantor authorizes Lender to perform any or all of the following acts at any time in its sole and absolute discretion, all without notice to Guarantor and without affecting Guarantor's obligations under this Guaranty:

**4.1** Lender may alter any terms of the Loan or any part of it, including renewing, compromising, extending or accelerating, or otherwise changing the time for payment of, or increasing or decreasing the rate of interest on, the Loan or any part of it.

**4.2** Lender may take and hold security for the Loan or this Guaranty, accept additional or substituted security for either, and subordinate, exchange, enforce, waive, release, compromise, fail to perfect, and sell or otherwise dispose of any such security.

**4.3** Lender may direct the order and manner of any sale of all or any part of any security now or later to be held for the Loan or this Guaranty, and Lender may also bid at any such sale.

**4.4** Lender may apply any payments or recoveries from Borrower, Guarantor or any other source, and any proceeds of any security, to Borrower's obligations under the Loan Documents in such manner, order and priority as Lender may elect, whether or not those obligations are guaranteed by this Guaranty or secured at the time of the application.

**4.5** Lender may release Borrower of its liability for the Loan or any part of it.

**4.6** Lender may substitute, add, or release any one or more guarantors or endorsers.

**4.7** In addition to the Loan, Lender may extend other credit to Borrower, and may take and hold security for the credit so extended, all without affecting Guarantor's liability under this Guaranty.

**4.8** Lender may approve modifications to the Plans and Specifications.

**4.9** Lender may change the terms or conditions of disbursement of the Loan.

**4.10** Lender may advance additional funds to Borrower for purposes related to those of the Loan Documents.

**5. Guaranty to be Absolute.** Guarantor expressly agrees that until the Improvements are fully completed in accordance with the Loan Documents and each and every term, covenant, and condition of this Guaranty is fully performed, Guarantor shall not be released by or because of:

**5.1** Any act or event which might otherwise discharge, reduce, limit, or modify Guarantor's obligations under this Guaranty;

**5.2** Any waiver, extension, modification, forbearance, delay, or other act or omission of Lender, or its failure to proceed promptly or otherwise as against Borrower, Guarantor or any security;

**5.3** Any action, omission or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of Guarantor as against Borrower;

**5.4** Any dealings occurring at any time between Borrower and Lender, whether relating to the Loan or otherwise; or

**5.5** Any action of Lender described in **Section 4** above.

Guarantor hereby acknowledges that absent this **Section 5**, Guarantor might have a defense to the enforcement of this Guaranty as a result of one or more of the foregoing acts, omissions, agreements, waivers, or matters. Guarantor hereby expressly waives and surrenders any defense to any liability under this Guaranty based upon any of such acts, omissions, agreements, waivers, or matters. It is the express intent of Guarantor that Guarantor's obligations under this Guaranty are and shall be absolute, unconditional, and irrevocable.

**6. Guarantor's Waivers.** Guarantor waives:

**6.1** All statutes of limitations as a defense to any action or proceeding brought against Guarantor by Lender, to the fullest extent permitted by law;

**6.2** Any right it may have to require Lender to proceed against Borrower, proceed against or exhaust any security held from Borrower, or pursue any other remedy in Lender's power to pursue;

**6.3** Any defense based on any claim that Guarantor's obligations exceed or are more burdensome than those of Borrower;

**6.4** Any defense based on: (a) any legal disability of Borrower, (b) any release, discharge, modification, impairment or limitation of the liability of Borrower to Lender from any cause, whether consented to by Lender or arising by operation of law or from any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, including any proceeding under the Bankruptcy Reform Act of 1978, as amended or recodified (the "**Bankruptcy Code**"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (any such proceeding referred to as an "**Insolvency Proceeding**"), or (c) any rejection or disaffirmance of the Loan, or any part of it, or any security held for it, in any such Insolvency Proceeding;

**6.5** Any defense based on any action taken or omitted by Lender in any Insolvency Proceeding involving Borrower, including any election to have Lender's claim allowed as being secured, partially secured or unsecured, any extension of credit by Lender to Borrower in any Insolvency Proceeding, and the taking and holding by Lender of any security for any such extension of credit;

**6.6** All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of intention to accelerate, notices of acceleration, notices of default, notices of dishonor, notices of acceptance of this Guaranty and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind, except for any demand or notice by Lender to Guarantor expressly provided for in **Section 1** above;

**6.7** Any defense based on or arising out of any defense that Borrower may have to the payment or performance of the Loan or any part of it; and

**6.8** Any defense based on any lack of authority of the officers, directors, partners, members, or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; and

**6.9** Any defense based on or arising out of any action of Lender described in **Section 4** or **Section 5** above.

## **7. Waivers of Subrogation and Other Rights and Defenses.**

**7.1** Upon a default by Borrower, Lender in its sole and absolute discretion, without prior notice to or consent of Guarantor, may elect to: (a) foreclose either judicially or nonjudicially (as allowed by applicable law) against any real or personal property security it may hold for the Loan, (b) accept a transfer of any such security in lieu of foreclosure, (c) compromise or adjust the Loan or any part of it or make any other accommodation with Borrower or Guarantor, or (d) exercise any other remedy against Borrower or any security. No such action by Lender shall release or limit the liability of Guarantor, who shall remain liable under this Guaranty after the action, even if the effect of the action is to deprive Guarantor of any subrogation rights, rights of indemnity, or other rights to collect reimbursement from Borrower for any sums paid or performance rendered to Lender, whether contractual or arising by

operation of law or otherwise. Guarantor expressly agrees that under no circumstances shall it be deemed to have any right, title, interest or claim in or to any real or personal property to be held by Lender or any third party after any foreclosure or transfer in lieu of foreclosure of any security for the Loan.

**7.2** Regardless of whether Guarantor may have made any payments to Lender, Guarantor hereby waives: (a) all rights of subrogation, indemnification, contribution, and any other rights to collect reimbursement from Borrower or any other party for any sums paid or performance rendered to Lender, whether contractual or arising by operation of law (including, without limitation, under any provisions of the Bankruptcy Code, or any successor or similar statutes) or otherwise, (b) all rights to enforce any remedy that Lender may have against Borrower, and (c) all rights to participate in any security now or later to be held by Lender for the Loan. Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification, and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement, indemnification, and contribution Guarantor may have against Borrower or against any collateral or security, shall be junior and subordinate to any rights Lender may have against Borrower, and to all right, title, and interest Lender may have in any such collateral or security. If any amount shall be paid to Guarantor on account of any such subrogation, reimbursement, indemnification, or contribution rights at any time when all obligations under the Loan have not been paid in full, such amount shall be held in trust for Lender and shall forthwith be paid over to Lender to be credited and applied against the Loan, whether matured or unmatured, in accordance with the terms of the Loan Documents. The covenants and waivers of Guarantor contained in this **Section 7.2** shall be effective until the Loan has been paid and performed in full, and are made for the benefit of Lender, Borrower, and any other person against whom Guarantor shall at any time have any rights of subrogation, reimbursement, indemnification, or contribution with respect to Guarantor's obligations under this Guaranty.

**7.3** Guarantor understands and acknowledges that if Lender forecloses judicially or nonjudicially against any real property security for the Loan, that foreclosure could impair or destroy any ability that Guarantor may have to seek reimbursement, contribution or indemnification from Borrower or others based on any right Guarantor may have of subrogation, reimbursement, contribution or indemnification for any amounts paid or any performance rendered by Guarantor under this Guaranty. Guarantor further understands and acknowledges that in the absence of this **Section 7**, such potential impairment or destruction of Guarantor's rights, if any, may entitle Guarantor to assert a defense to this Guaranty based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal.App.2d 40 (1968). By executing this Guaranty, Guarantor freely, irrevocably and unconditionally: (a) waives and relinquishes that defense and agrees that Guarantor shall be fully liable under this Guaranty even though Lender may foreclose judicially or nonjudicially against any real property security for the Loan; (b) agrees that Guarantor shall not assert that defense in any action or proceeding which Lender may commence to enforce this Guaranty; (c) acknowledges and agrees that the rights and defenses waived by Guarantor under this Guaranty include any right or defense that Guarantor may have or be entitled to assert based upon or arising out of any one-action, anti-deficiency, reimbursement or other borrower or guarantor protective statute (including, without limitation, any defense that any exercise by Lender of any right or remedy

hereunder or under the Loan Documents violates, or would, in combination with the previous or subsequent exercise by Guarantor of any rights of subrogation, reimbursement, contribution or indemnification against Borrower or any other person, directly or indirectly result in, or be deemed to be, a violation of any of such statutory provisions), including but not limited to any one or more of Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure or Section 2848 of the California Civil Code; and (d) acknowledges and agrees that Lender is relying on this waiver in making the Loan, and that this waiver is a material part of the consideration which Lender is receiving for making the Loan.

**7.4** Guarantor waives any rights and defenses that are or may become available to Guarantor by reason of any statute governing guaranties or suretyship, including but not limited to Sections 2787 to 2855, inclusive of the California Civil Code.

**7.5** Guarantor waives all rights and defenses that Guarantor may have because Borrower's Loan is secured by real property. This means, among other things:

Lender may collect or receive performance from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower.

If Lender forecloses on any real property collateral pledged by Borrower:

(a) The amount of the Loan may be reduced only by the price for which the collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(b) Lender may collect or receive performance from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower.

This **Section 7.5** is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because Borrower's Loan is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

**7.6** Guarantor waives any right or defense it may have at law or equity, which may provide, among other things: that a creditor must file a complaint for deficiency within a specified period of time after a nonjudicial foreclosure sale or judicial foreclosure sale, as applicable; that a fair market value hearing must be held; and that the amount of the deficiency judgment shall be limited to the amount by which the unpaid debt exceeds the fair market value of the security, but not more than the amount by which the unpaid debt exceeds the sale price of the security, including but not limited to California Code of Civil Procedure Section 580a.

**7.7** No provision or waiver in this Guaranty shall be construed as limiting the generality of any other provision or waiver contained in this Guaranty.

**7.8** Guarantor agrees that the payment or performance of any act which tolls any statute of limitations applicable to the Loan Documents shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

**8. Revival and Reinstatement.** If Lender is required to pay, return, or restore to Borrower or any other person any amounts previously paid on the Loan because of any Insolvency Proceeding of Borrower, any stop notice, or any other reason, the obligations of Guarantor shall be reinstated and revived and the rights of Lender shall continue with regard to such amounts, all as though they had never been paid.

**9. Information Regarding Borrower and the Property.** Before signing this Guaranty, Guarantor investigated the financial condition and business operations of Borrower, the present and former condition, uses and ownership of the Property, and such other matters as Guarantor deemed appropriate to assure itself of Borrower's ability to discharge its obligations under the Loan Documents. Guarantor assumes full responsibility for that due diligence, as well as for keeping informed of all matters that may affect Borrower's ability to pay and perform its obligations to Lender. Lender has no duty to disclose to Guarantor any information which Lender may have or receive about Borrower's financial condition or business operations, the condition or uses of the Property, or any other circumstances bearing on Borrower's ability to perform.

**10. Subordination.** Any rights of Guarantor, whether now existing or later arising, to receive payment on account of any indebtedness (including interest) owed to it by Borrower or any subsequent owner of the Property, or to withdraw capital invested by it in Borrower, or to receive distributions from Borrower, shall at all times be subordinate as to lien and time of payment and in all other respects to the full and prior repayment to Lender of the Loan. Guarantor shall not be entitled to enforce or receive payment of any sums hereby subordinated until the Loan has been paid and performed in full and any such sums received in violation of this Guaranty shall be received by Guarantor in trust for Lender. The foregoing notwithstanding, Guarantor is not prohibited from receiving (a) such reasonable management fees or reasonable salary from Borrower as Lender may find acceptable from time to time, and (b) distributions from Borrower in an amount equal to any income taxes imposed on Guarantor that are attributable to Borrower's income from the Property.

**11. Bankruptcy of Borrower.** In any Insolvency Proceeding in which the filing of claims is required by law, Guarantor shall file all claims which Guarantor may have against Borrower relating to any indebtedness of Borrower to Guarantor and shall assign to Lender all rights of Guarantor thereunder. If Guarantor does not file any such claim, Lender, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Lender's discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name of Lender's nominee. The foregoing power of attorney is with full power of substitution and coupled with an interest and cannot be revoked. Lender or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such Insolvency Proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Lender the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to Lender all of Guarantor's rights to any such payments or distributions; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Lender receives cash by reason of any such payment or distribution. If Lender receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty. If all or any portion of the obligations guaranteed hereunder

are paid or performed, the obligations of Guarantor hereunder shall continue and shall remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from Lender as a preference, fraudulent transfer or otherwise under the Bankruptcy Code or other similar laws, irrespective of (a) any notice of revocation given by Guarantor prior to such avoidance or recovery, and (b) full payment and performance of all of the indebtedness and obligations evidenced and secured by the Loan Documents.

**12. Financial and Other Information of Guarantor.** Guarantor shall keep true and correct financial books and records, using generally accepted accounting principles consistently applied, or such other accounting principles as Lender in its reasonable judgment may find acceptable from time to time. Guarantor shall provide to Lender the following, and Lender covenants that it shall not disclose such materials to the public except as required by law;

**12.1** As soon as available, but in any event not later than one hundred and twenty (120) days after the end of each calendar year, beginning for the year ended December 31, 2011, the personal financial statement of each Guarantor, at the end of such year, and a statement of all contingent liabilities of each Guarantor which are not reflected in such financial statements or referred to in the notes thereto, each setting forth in comparative form the figures for the previous fiscal year and all such statements to be in reasonable detail, reviewed by an independent certified public accountant acceptable to the Servicer and prepared in accordance with such method as reasonably approved by Servicer;

**12.2** Promptly upon the request of Lender, quarterly balance sheets and income statements for itself and the Property.

**12.3** Promptly upon the request of Lender, signed copies of all tax returns filed after the date of this Guaranty, including all extensions and all supporting schedules (including K-1's).

**12.4** Promptly upon the request of Lender, such other information as Lender may reasonably request concerning the affairs and properties of Guarantor.

**13. Guarantor's Representations and Warranties.** Guarantor represents and warrants that:

**13.1** All financial statements and other financial information furnished or to be furnished to Lender are or shall be true and correct and do or shall fairly represent the financial condition of Guarantor (including all contingent liabilities);

**13.2** All financial statements comply or shall comply with all government regulations that apply;

**13.3** All financial statements were or shall be prepared in accordance with generally accepted accounting principles, or such other accounting principles as may be acceptable to Lender at the time of their preparation, consistently applied;

**13.4** There are no claims, actions, proceedings or investigations pending against Guarantor except for those previously disclosed by Guarantor to Lender in writing. To the best of Guarantor's knowledge, there has been no threat of any such claim, action, proceeding or investigation, except for those previously disclosed by Guarantor to Lender in writing; and

**13.5** There has been no material adverse change in the financial condition, operations, or properties of Guarantor since the dates of the financial statements most recently furnished to Lender.

**14. Events of Default.** Lender may declare Guarantor to be in default under this Guaranty upon the occurrence of any of the following events (each an "**Event of Default**"):

**14.1** Guarantor fails to perform any of its obligations under this Guaranty within five business days of Lender's notice of default; or

**14.2** Guarantor purports to revoke this Guaranty or this Guaranty becomes ineffective for any reason due to an action or inaction of Guarantor or Borrower; or

**14.3** Any representation or warranty made or given by Guarantor to Lender proves to be false or misleading in any material respect; or

**14.4** Guarantor becomes insolvent or the subject of any Insolvency Proceeding; provided, however, that an involuntary Insolvency Proceeding shall not be considered an Event of Default hereunder if it is either (a) consented to in writing by Lender, or (b) has been dismissed within ninety (90) days of the filing thereof; or

**14.5** Guarantor dissolves or liquidates; or

**14.6** [Intentionally left blank]; or

**14.7** Any Guarantor which is a natural person dies; provided, however, (i) it shall not be an Event of Default hereunder if prior to the date which is sixty (60) days after the last day for filing a claim in the estate of such deceased party, the claim of Lender shall have been accepted and approved by the court administering that estate and a plan satisfactory to Lender shall have been approved by the court to ensure that sufficient assets will be available to pay that claim, if and when it matures, and (ii) nothing in this Agreement shall prevent Lender from filing a claim and such supporting documentation as may be required in the estate of the deceased party; or

**14.8** Any Guarantor which is a trust dissolves or liquidates, or there is a change or substitution of any trustee of Guarantor not approved in writing by Lender, or the trust agreement is revoked or materially modified; or

**14.9** A material adverse change occurs in Guarantor's financial condition, operations or properties, which change results in a material adverse effect on Guarantor's ability to pay or perform under this Guaranty.

**15. Reference and Arbitration.**

**15.1 Judicial Reference.** In any judicial action between or among the parties, including any action or cause of action arising out of or relating to this Guaranty or the Loan Documents or based on or arising from an alleged tort, all decisions of fact and law shall at the request of any party be referred to a referee in accordance with California Code of Civil Procedure Sections 638 et seq. The parties shall designate to the court a referee or referees



selected under the auspices of the American Arbitration Association ("AAA") in the same manner as arbitrators are selected in AAA-sponsored proceedings. The presiding referee of the panel, or the referee if there is a single referee, shall be an active attorney or retired judge. Judgment upon the award rendered by such referee or referees shall be entered in the court in which such proceeding was commenced in accordance with California Code of Civil Procedure Sections 44 and 645.

**15.2 Mandatory Arbitration.** After the Mortgage has been released, fully reconveyed or extinguished, any controversy or claim between or among the parties, including those arising out of or relating to this Guaranty or the Loan Documents and any claim based on or arising from an alleged tort, shall at the request of any party be determined by arbitration. The arbitration shall be conducted in accordance with the United States Arbitration Act (Title 9, U.S. Code), notwithstanding any choice of law provision in this Guaranty, and under the Commercial Rules of the AAA. The arbitrator(s) shall give effect to statutes of limitation in determining any claim. Any controversy concerning whether an issue is arbitrable shall be determined by the arbitrator(s). Judgment upon the arbitration award may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

**15.3 Real Property Collateral.** Notwithstanding the provisions of **Section 15.2** above, no controversy or claim shall be submitted to arbitration without the consent of all parties if, at the time of the proposed submission, such controversy or claim arises from or relates to an obligation by Guarantor or Borrower to Lender which is secured by real property collateral. If all parties do not consent to submission of such a controversy or claim to arbitration, the controversy or claim shall be determined by reference as provided in **Section 15.1** above.

**15.4 Provisional Remedies, Self-Help and Foreclosure.** No provision of this Section shall limit the right of any party to exercise self-help remedies such as setoff, foreclosure against or sale of any real or personal property collateral or security, or to obtain provisional or ancillary remedies from a court of competent jurisdiction before, after, or during the pendency of any arbitration or other proceeding. The exercise of a remedy does not waive the right of either party to resort to arbitration or reference. At Lender's option, foreclosure under a deed of trust or mortgage may be accomplished either by exercise of the power of sale under the deed of trust or mortgage or by judicial foreclosure.

**16. Authorization; No Violation.** Guarantor is authorized to execute, deliver and perform under this Guaranty, which is a valid and binding obligation of Guarantor. To Guarantor's actual knowledge, no provision or obligation of Guarantor contained in this Guaranty violates any applicable law, regulation or ordinance, or any order or ruling of any court or governmental agency that is applicable to Guarantor. No such provision or obligation conflicts with, or constitutes a breach or default under, any agreement to which Guarantor is a party. No consent, approval or authorization of or notice to any person or entity is required in connection with Guarantor's execution of and obligations under this Guaranty.

**17. Additional and Independent Obligations.** Guarantor's obligations under this Guaranty are in addition to its obligations under any other existing or future guaranties, each of which shall remain in full force and effect until it is expressly modified or released in a writing signed by Lender. Guarantor's obligations under this Guaranty are independent of those of Borrower on the Loan. Lender may bring a separate action, or commence a separate reference or arbitration proceeding against Guarantor without first proceeding against Borrower, any other person or any security that Lender may hold, and without pursuing any other remedy. Lender's rights under this Guaranty shall not be exhausted by any action by Lender until this Guaranty has been released pursuant to **Section 19** below.

**18. No Waiver; Consents; Cumulative Remedies.** Each waiver by Lender shall be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from Lender's delay in exercising or failure to exercise any right or remedy against Borrower, Guarantor or any security. Consent by Lender to any act or omission by Borrower or Guarantor shall not be construed as a consent to any other or subsequent act or omission, or as a waiver of the requirement for Lender's consent to be obtained in any future or other instance. All remedies of Lender against Borrower and Guarantor are cumulative.

**19. Survival; Release.** This Guaranty shall remain in full force and effect and shall survive the exercise of any remedy by Lender under the Mortgage or any of the other Loan Documents, including, without limitation, any foreclosure or deed in lieu thereof. Guarantor shall be released from its obligations under this Guaranty only upon the first to occur of the following: (a) delivery by the Lender to Guarantor of a written release of Guarantor from its obligations hereunder; or (b) issuance by the City of Elk Grove of certificates of occupancy for the Project, or (c) when the Loan has been paid in full and all obligations of Borrower under the Loan Documents have been performed in full.

**20. Heirs, Successors and Assigns; Participations.** The terms of this Guaranty shall bind and benefit the heirs, legal representatives, successors, and assigns of Lender and Guarantor; provided, however, that Guarantor may not assign this Guaranty, or assign or delegate any of its rights or obligations under this Guaranty, without the prior written consent of Lender in each instance. Lender in its sole and absolute discretion may sell or assign participations or other interests in the Loan and this Guaranty, in whole or in part, all without notice to or the consent of Guarantor and without affecting Guarantor's obligations under this Guaranty. Also without notice to or the consent of Guarantor, Lender may disclose any and all information in its possession concerning Guarantor, this Guaranty and any security for this Guaranty to any actual or prospective purchaser of any securities issued or to be issued by Lender, and to any actual or prospective purchaser or assignee of any participation or other interest in the Loan and this Guaranty.

**21. Notices.** All notices given under this Guaranty shall be in writing and be given by personal delivery, overnight receipted courier (such as Federal Express), or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below its signature. Notices shall be effective upon the first to occur of receipt, when proper delivery is refused, or the expiration of forty-eight (48) hours after deposit in registered or certified United States mail as described above. Addresses for notice may be changed by any party by notice to any other party in accordance with this Section. If Guarantor consists of more than one party,

service of any notice on any one Guarantor signing this Guaranty shall be effective service on Guarantor for all purposes.

**22. Rules of Construction.** In this Guaranty, the word "Borrower" includes both the named Borrower and any other person who at any time assumes or otherwise becomes primarily liable for all or any part of the obligations of the named Borrower on the Loan. The word "person" includes any individual, company, trust or other legal entity of any kind. If this Guaranty is executed by more than one person, the word "Guarantor" includes all such persons. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." When the context and construction so require, all words used in the singular shall be deemed to have been used in the plural and vice versa. No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Guaranty. All headings appearing in this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.

**23. Governing Law.** This Guaranty is governed by the laws of the State of California, without regard to the choice of law rules of that state.

**24. Costs and Expenses.** If any lawsuit, reference, or arbitration is commenced which arises out of, or which relates to this Guaranty, the Loan Documents or the Loan, the prevailing party shall be entitled to recover from each other party such sums as the court, referee, or arbitrator may adjudge to be reasonable attorneys' fees (including allocated costs for services of in-house counsel) in the action or proceeding, in addition to costs and expenses otherwise allowed by law. In all other situations, including any Insolvency Proceeding, Guarantor agrees to pay all of Lender's costs and expenses, including attorneys' fees (including allocated costs for services of Lender's in-house counsel) which may be incurred in any effort to collect or enforce the Loan or any part of it or any term of this Guaranty. From the time(s) incurred until paid in full to Lender, all sums shall bear interest at the Alternate Rate (as such term is defined in the Note).

**25. Consideration.** Guarantor acknowledges that it expects to benefit from Lender's extension of the Loan to Borrower because of its relationship to Borrower, and that it is executing this Guaranty in consideration of that anticipated benefit.

**26. Credit Verification.** Each legal entity and individual obligated on this Guaranty, whether as a Guarantor, a general partner of a Guarantor, or in any other capacity, hereby authorizes Lender to check any credit references, verify his/her employment, and obtain credit reports from credit reporting agencies of Lender's choice in connection with any monitoring, collection, or future transaction concerning the Loan, including any modification, extension, or renewal of the Loan. Also in connection with any such monitoring, collection, or future transaction, Lender is hereby authorized to check credit references, verify employment, and obtain a third party credit report for the spouse of any married person obligated on this Guaranty, if such person lives in a community property state.

**27. Enforceability.** Guarantor acknowledges that Guarantor has had adequate opportunity to carefully read this Guaranty and to seek and receive legal advice from skilled legal counsel of

Guarantor's choice in the area of financial transactions of the type contemplated herein prior to signing it. Guarantor hereby acknowledges that: (a) the obligations undertaken by Guarantor in this Guaranty are complex in nature, (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Lender's consideration for entering into this transaction, Lender has specifically bargained for the waiver and relinquishment by Guarantor of all such defenses. Given all of the above, Guarantor does hereby represent and confirm to Lender that Guarantor is fully informed regarding, and that Guarantor does thoroughly understand: (i) the nature of such possible defenses, (ii) the circumstances under which such defenses may arise, (iii) the benefits which such defenses might confer upon Guarantor, and (iv) the legal consequences to Guarantor of waiving such defenses. Guarantor acknowledges that Guarantor makes this Guaranty with the intent that this Guaranty and all of the informed waivers herein shall each and all be fully enforceable by Lender, and that Lender is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

**28. Miscellaneous.** This Guaranty may be executed in counterparts, and all counterparts shall constitute but one and the same document. The illegality or unenforceability of one or more provisions of this Guaranty shall not affect any other provision. Time is of the essence in the performance of this Guaranty by Guarantor. The liability of all persons who are in any manner obligated under this Guaranty shall be joint and several. The death or legal incapacity of any Guarantor shall not terminate the obligations of such Guarantor or any other Guarantor under this Guaranty, including its obligations with regard to future advances under the Loan Documents. Any Guarantor who is married, agrees that Lender may look to all of his or her property, including but not limited to community property (if any), joint property (if any), equitable property (if any), and separate property to satisfy his or her obligations under this Guaranty. The obligations of Guarantor under this Guaranty are not secured by the Mortgage.

**29. Integration; Modifications.** This Guaranty (a) integrates all the terms and conditions mentioned in or incidental to this Guaranty, (b) supersedes all oral negotiations and prior writings with respect to its subject matter, and (c) is intended by Guarantor and Lender as the final expression of the agreement with respect to the terms and conditions set forth in this Guaranty and as the complete and exclusive statement of the terms agreed to by Guarantor and Lender. No representation, understanding, promise or condition shall be enforceable against any party hereto unless it is contained in this Guaranty. This Guaranty may not be modified except in a writing signed by both Lender and Guarantor. No course of prior dealing, usage of trade, parol or extrinsic evidence of any nature shall be used to supplement, modify or vary any of the terms hereof.

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

**"GUARANTOR"**

\_\_\_\_\_

Address for Notices to Guarantor:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

**ALL SIGNATURES MUST BE NOTARIZED**

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, 2011 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.

\_\_\_\_\_

(Notary Seal)

## GUARANTY OF NON-RECOURSE OBLIGATIONS

This GUARANTY OF NON-RECOURSE OBLIGATIONS (this “**Guaranty**”), dated as of March \_\_, 2011, is executed by the undersigned (“**Guarantor**”), to and for the benefit of the CITY OF ELK GROVE, a public body, corporate and politic (“**Lender**”).

### RECITALS:

A. Pursuant to that certain Affordable Housing Loan Agreement dated as of the date hereof, by and between Ridge Elk Grove L.P., a California limited partnership (“**Borrower**”) and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), Lender is making a loan to Borrower in the original principal amount of Nine Million Seven Hundred Thousand and No/100 Dollars (\$9,700,000) (the “**Mortgage Loan**”), as evidenced by that certain Promissory Note Secured by Deed of Trust dated as of the date hereof, executed by Borrower and made payable to the order of Lender in the amount of the Mortgage Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Note**”).

B. The Note will be secured by, among other things, a Deed of Trust (as defined in the Loan Agreement) encumbering the real property described in the Deed of Trust (the “**Property**”).

C. Guarantor has an economic interest in Borrower or will otherwise obtain a material financial benefit from the Mortgage Loan.

D. As a condition to making the Loan to Borrower, Lender requires that Guarantor execute this Guaranty.

NOW, THEREFORE, in order to induce Lender to make the Mortgage Loan to Borrower, and in consideration thereof, Guarantor agrees as follows:

### AGREEMENTS:

#### 1. **Recitals.**

The recitals set forth above are incorporated herein by reference as if fully set forth in the body of this Guaranty.

#### 2. **Defined Terms.**

Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement.

#### 3. **Guaranteed Obligations.**

Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Lender the full and prompt payment of any loss, damage, liability, action, cause of action, cost or expense

incurred by Lender as a result, and to the extent of, (a) fraud or material gross misrepresentation under the Loan Documents (as defined in the Loan Agreement) (any of them); (b) intentional bad faith waste of the Property; (c) losses resulting from Borrower's failure to properly maintain insurance as required under the Loan Agreement; or (d) gross misappropriation of any of the rents, security deposits, loan proceeds, insurance proceeds, condemnation awards or any other proceeds derived from the collateral security (the "**Guaranteed Obligations**"). Lender shall have the right to proceed directly against Guarantor to recover any loss, damage, liability, action, cause of action, cost or expense (including without limitation, reasonable attorneys' fees and expenses) incurred by Lender to the extent directly caused by events (a) through and including (d).

#### **4. Survival of Guaranteed Obligations.**

The obligations of Guarantor under this Guaranty shall survive any foreclosure, and any recorded release or reconveyance of the Deed of Trust or any release of any other security for any of the Mortgage Loan.

#### **5. Guaranty of Payment; Community Property.**

Guarantor's obligations under this Guaranty constitute a present and unconditional guaranty of payment and not merely a guaranty of collection. If Guarantor (or any Guarantor, if more than one) is a married person, and the jurisdiction of the Property is a community property jurisdiction, Guarantor (or each such married Guarantor, if more than one) agrees that Lender may satisfy Guarantor's obligations under this Guaranty to the extent of all Guarantor's separate property, and if applicable, community property.

#### **6. Obligations Unsecured; Cross-Default.**

The obligations of Guarantor under this Guaranty shall not be secured by the Deed of Trust or the Loan Agreement. However, a default under this Guaranty shall be an Event of Default under the Loan Agreement, and a default under this Guaranty shall entitle Lender to be able to exercise all of its rights and remedies under the Loan Agreement and other Loan Documents.

#### **7. Continuing Guaranty.**

The obligations of Guarantor under this Guaranty shall be unconditional irrespective of the genuineness, validity, regularity or enforceability of any provision of this Guaranty, the Note, the Loan Agreement, the Deed of Trust or any other Loan Document. Guarantor agrees that performance of the obligations hereunder shall be a primary obligation, shall not be subject to any counterclaim, set-off, recoupment, abatement, deferment or defense based upon any claim that Guarantor may have against Lender, Borrower, any other guarantor of the obligations hereunder or any other person or entity, and shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by any circumstance or condition (whether or not Guarantor shall have any knowledge thereof), including:



(a) any furnishing, exchange, substitution or release of any collateral securing repayment of the Mortgage Loan, or any failure to perfect any lien in such collateral;

(b) any failure, omission or delay on the part of Borrower, Guarantor, any other guarantor of the obligations hereunder or Lender to conform or comply with any term of any of the Loan Documents or failure of Lender to give notice of any Event of Default;

(c) any action or inaction by Lender under or in respect of any of the Loan Documents, any failure, lack of diligence, omission or delay on the part of Lender to perfect, enforce, assert or exercise any lien, security interest, right, power or remedy conferred upon it in any of the Loan Documents, or any other action or inaction on the part of Lender;

(d) any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshaling of assets and liabilities or similar events or proceedings with respect to Guarantor or any other guarantor of the obligations hereunder, or any of their respective property or creditors or any action taken by any trustee or receiver or by any court in such proceeding;

(e) any merger or consolidation of Borrower into or with any entity or any sale, lease or transfer of any asset of Borrower, Guarantor or any other guarantor of the obligations hereunder to any other Person;

(f) any change in the ownership of Borrower or any change in the relationship between Borrower, Guarantor or any other guarantor of the obligations hereunder, or any termination of such relationship;

(g) any release or discharge by operation of law of Borrower, Guarantor or any other guarantor of the obligations hereunder, any obligation or agreement contained in any of the Loan Documents; or

(h) any other occurrence, circumstance, happening or event, whether similar or dissimilar to the foregoing, and whether seen or unforeseen, which otherwise might constitute a legal or equitable defense or discharge of the liabilities of a guarantor or surety or which otherwise might limit recourse against Borrower or Guarantor to the fullest extent permitted by law.

## **8. Guarantor Waivers.**

Guarantor hereby waives:

(a) the benefit of all principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Guaranty (and agrees that Guarantor's obligations shall not be affected by any circumstances, whether or not referred to in this Guaranty, which might otherwise constitute a legal or equitable discharge of a surety or a guarantor);

(b) the benefits of any right of discharge under any and all statutes or other laws relating to guarantors or sureties and any other rights of sureties and guarantors;

(c) diligence in collecting the Mortgage Loan, presentment, demand for payment, protest and all notices with respect to the Loan Documents and this Guaranty which may be required by statute, rule of law or otherwise to preserve Lender's rights against Guarantor under this Guaranty, including notice of acceptance, notice of any amendment of the Loan Documents, notice of the occurrence of any default or Event of Default, notice of intent to accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest and notice of the incurring by Borrower of any obligation or indebtedness; and

(d) all rights to require Lender to:

(1) proceed against or exhaust any collateral held by Lender to secure the repayment of the Indebtedness;

(2) proceed against or pursue any remedy it may now or hereafter have against Borrower or any guarantor, or, if Borrower or any guarantor is a partnership, any general partner of Borrower or general partner of any guarantor; or

(3) demand or require collateral security from Borrower, any other guarantor or any other Person as provided by applicable law or otherwise.

(e) To the extent not addressed elsewhere by this Guaranty, Guarantor expressly waives any and all benefits, rights and/or defenses which might otherwise be available to Guarantor under the following sections of the California Civil Code: Section 2809 (the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal), Section 2810 (a surety is not liable if, for any reason other than the mere personal disability of the principal, there is no liability upon the part of the principal at the time of execution of the contract, or the liability of the principal thereafter ceases), Section 2819 (a surety is exonerated if the creditor alters the original obligation of the principal without the consent of the surety), Section 2822 (a surety's right to have the principal designate the portion of any obligation to be satisfied by the surety in the event that the principal provides partial satisfaction of such obligation), Section 2845 (a surety is exonerated to the extent that the creditor fails to proceed against the principal, or to pursue any other remedy in the creditor's power which the surety cannot pursue and which would lighten the surety's burden), Section 2846 (a surety may compel the principal to perform the obligation when due), Section 2847 (if a surety satisfies the principal obligation, or any part thereof, the principal is obligated to reimburse the surety for the amounts paid by the surety), Section 2850 (whenever the property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation), Section 2899 (where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in a certain order, on the demand of any party interested) and Section 3433 (where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons).

(f) To the extent not addressed elsewhere by this Guaranty, Guarantor expressly agrees not to exercise or take advantage of any rights, benefits and/or defenses which might be available to Guarantor under the following California Civil Code Sections, unless and until the Guaranteed Obligations shall have been indefeasibly paid and satisfied in full: Section 2839 (performance of the principal obligation, or an offer of such performance, duly made as provided in the Civil Code, exonerates a surety), Section 2848 (a surety, upon satisfaction of the obligation of the principal, is entitled to enforce remedies which the creditor then has against the principal and to pursue his co-sureties or other third parties after the surety has satisfied the underlying debt, or at least more than his share of it), and Section 2849 (a surety is entitled to the benefit of security held by the creditor for the performance of the principal obligation held by the creditor).

(g) If Borrower is a partnership and Guarantor is a general partner of that partnership, then Guarantor shall not be liable under this Guaranty for any portion of the Mortgage Loan that is secured by real property; provided, however, that Guarantor shall remain liable under partnership law for all the Indebtedness.

(h) This Guaranty is an absolute guaranty of payment and not of collection.

(i) Guarantor waives any defense that Guarantor may have by reason of the failure of Lender to provide Guarantor with any material facts about Borrower, including any information respecting the financial condition of Borrower, Borrower's ability to perform the Mortgage Loan obligations or the sufficiency of Lender's security.

(j) Guarantor waives any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person, or the failure of Lender to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons.

(k) Guarantor waives all rights of indemnification and contribution and any other rights and defenses that are or may become available to Guarantor by reason of Sections 2787 to 2855, inclusive, of the California Civil Code. Guarantor hereby waives the benefits of any right of discharge under any and all statutes or other laws relating to guarantors or sureties and any other rights of guarantors or sureties thereunder.

(l) Guarantor waives all rights and defenses that Guarantor may have because the debtor's (Borrower's) debt is secured by real property. This means, among other things:

(1) The creditor (Lender) may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.

(2) If the creditor forecloses on any real property collateral pledged by the debtor: (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) the creditor may collect from Guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the Code of Civil Procedure.

Guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the principal (Borrower) by the operation of Section 580d of the Code of Civil Procedure or otherwise.

(m) Any summary of statutory provisions is for convenience only, and Guarantor has read and is familiar with the entirety of such provisions.

## **9. No Effect Upon Obligations.**

At any time or from time to time and any number of times, without notice to Guarantor and without releasing, discharging or affecting the liability of Guarantor:

(a) the time for payment of the principal of or interest on the Mortgage Loan may be extended or the Mortgage Loan may be renewed in whole or in part;

(b) the rate of interest on or period of amortization of the Mortgage Loan or the amount of the debt service payable under the Loan Documents may be modified;

(c) the time for Borrower's performance of or compliance with any covenant or agreement contained in any Loan Document, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived;

(d) the maturity of the Mortgage Loan may be accelerated as provided in the Loan Documents;

(e) any or all payments due under the Loan Agreement or any other Loan Document may be reduced;

(f) any Loan Document may be modified or amended by Lender and Borrower in any respect, including an increase in the principal amount of the Mortgage Loan;

(g) any amounts under the Loan Agreement or any other Loan Document may be released;

(h) any security for the Mortgage Loan may be modified, exchanged, released, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Indebtedness;

(i) the payment of the Mortgage Loan or any security for the Mortgage Loan, or both, may be subordinated to the right to payment or the security, or both, of any other present or future creditor of Borrower;

(j) any payments made by Borrower to Lender may be applied to the Mortgage Loan in such priority as Lender may determine in its discretion; and

(k) any other terms of the Loan Documents may be modified as required by Lender.

#### **10. Subordination of Affiliated Debt.**

Any indebtedness of Borrower held by Guarantor now or in the future is and shall be subordinated to the Mortgage Loan and any such indebtedness of Borrower shall be collected, enforced and received by Guarantor, as trustee for Lender, but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty.

#### **11. Subrogation.**

Guarantor shall have no right of, and hereby waives any claim for, subrogation or reimbursement against Borrower or any general partner of Borrower by reason of any payment by Guarantor under this Guaranty, whether such right or claim arises at law or in equity or under any contract or statute, until the Mortgage Loan has been paid in full and there has expired the maximum possible period thereafter during which any payment made by Borrower to Lender with respect to the Mortgage Loan could be deemed a preference under applicable bankruptcy laws.

#### **12. Voidable Transfer.**

If any payment by Borrower is held to constitute a preference under any applicable bankruptcy laws, or if for any other reason Lender is required to refund any sums to Borrower, such refund shall not constitute a release of any liability of Guarantor under this Guaranty. It is the intention of Lender and Guarantor that Guarantor's obligations under this Guaranty shall not be discharged except by Guarantor's performance of such obligations and then only to the extent of such performance. If any payment by any Guarantor should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, and if Lender is required to repay or restore, in whole or in part, any such voidable transfer, or elects to do so upon the advice of its counsel, then the obligations guaranteed hereunder shall automatically be revived, reinstated and restored by the amount of such voidable transfer or the amount of such voidable transfer that Lender is required or elects to repay or restore, including all reasonable costs, expenses and legal fees incurred by Lender in connection therewith, and shall exist as though such voidable transfer had never been made, and any other guarantor, if any, shall remain liable for such obligations in full.

#### **13. Financial Reporting.**

Upon Lender's request, not to exceed once per year, Guarantor shall deliver to Lender third party audited financial statements.

**14. Final Agreement.**

Guarantor acknowledges receipt of a copy of each of the Loan Documents and this Guaranty. THIS GUARANTY REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Guaranty. Neither this Guaranty nor any of its provisions may be waived, modified, amended, discharged or terminated except by an agreement in writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in that agreement.

**15. Property Jurisdiction.**

Guarantor agrees that any controversy arising under or in relation to this Guaranty shall be litigated exclusively in the State of California. The state and federal courts and authorities with jurisdiction in the State of California shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Guaranty or any other Loan Document with respect to the subject matter hereof. Guarantor irrevocably consents to service, jurisdiction and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

**16. Time is of the Essence.**

Guarantor agrees that, with respect to each and every obligation and covenant contained in this Guaranty, time is of the essence.

**17. Notices.**

Guarantor agrees to notify Lender of any change in Guarantor's address within ten (10) Business Days after such change of address occurs. All "Notices" under this Guaranty shall be:

- (a) in writing and shall be
  - (1) delivered, in person;
  - (2) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
  - (3) sent by overnight courier; or
  - (4) sent by electronic mail with originals to follow by overnight courier;

(b) addressed to the intended recipient at the notice addresses provided under the signature block at the end of this Guaranty; and

- (c) deemed given on the earlier to occur of:
  - (1) the date when the Notice is received by the addressee; or
  - (2) if the recipient refuses or rejects delivery, the date on which the Notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or such express courier service.

**18. Construction.**

(a) Any reference in this Guaranty to an “Exhibit” or “Schedule” or a “Section” or an “Article” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Guaranty or to a Section or Article of this Guaranty.

(b) Any reference in this Guaranty to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.

(c) Use of the singular in this Guaranty includes the plural and use of the plural includes the singular.

(d) As used in this Guaranty, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only, and not a limitation.

(e) Whenever Guarantor’s knowledge is implicated in this Guaranty or the phrase “to Guarantor’s knowledge” or a similar phrase is used in this Guaranty, Guarantor’s knowledge or such phrase(s) shall be interpreted to mean to the best of Guarantor’s knowledge after reasonable and diligent inquiry and investigation.

(f) Unless otherwise provided in this Guaranty, if Lender’s approval is required for any matter hereunder, such approval may be granted or withheld in Lender’s sole and absolute discretion.

(g) Unless otherwise provided in this Guaranty, if Lender’s designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such designation, determination, selection, estimate, action or decision shall be made in Lender’s sole and absolute discretion.

(h) All references in this Guaranty to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(i) “Lender may” shall mean at Lender’s discretion, but shall not be an obligation.

**[Remainder of Page Intentionally Blank]**

**ALL SIGNATURES MUST BE NOTARIZED**

**IN WITNESS WHEREOF**, Guarantor has signed and delivered this Guaranty as of the first date set forth above.

**GUARANTOR:**

ST. ANTON CAPITAL, LLC  
a California limited liability company

By: \_\_\_\_\_  
Steven L. Eggert, Manager

Address for Notices to Guarantor:

1801 I Street, Suite 200  
Sacramento, CA 95811



State of California

County of \_\_\_\_\_

On \_\_\_\_\_, 2011 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.

\_\_\_\_\_

(Notary Seal)