

**CONSTRUCTION AND PERMANENT FINANCING LOAN AGREEMENT
(Villa Serena II-City Loan)**

THIS CONSTRUCTION AND PERMANENT FINANCING LOAN AGREEMENT (“Agreement”) is dated as of the 30th day of March, 2021, by and between VS Phase 1 LP, a California limited partnership (“Borrower”), and the City of San Marcos (“City”) as follows:

RECITALS

A. Borrower is the fee title owner of Villa Serena Apartments affordable rental community generally located at 340 Marcos Street, San Marcos, California (“Property”). Borrower’s construction of the Project, as defined in Recital B, below, will be financed by Borrower in part using a loan from the City in the original principal amount of up to One Million Six Hundred and No/100 Dollars (\$1,600,000.00) (“City Loan”).

B. Borrower will be constructing eighty-five (85) smoke-free, residential units (of which eighty-four (84) shall be rent and occupancy restricted as set forth herein), together with certain on and off-site improvements (collectively, the “Project”). The Project is to be operated as low income housing. All of the eighty-four (84) Affordable Units shall be rent and occupancy restricted as set forth in the Declaration for fifty-five (55) years. The obligations of Borrower under the Declaration shall be independent of, and in addition to, Borrower’s obligations under this Agreement, and repayment of the City Loan shall not terminate or otherwise affect the affordability restrictions set forth in the Declaration.

C. The City Loan is being funded entirely with City of San Marcos inclusionary housing in lieu fee funds. The eighty-four (84) Affordable Units will be restricted as set forth in the Declaration in compliance with the requirements of Section 20.310.050.C. of the San Marcos Municipal Code.

D. Completion of Construction (as defined below) shall be achieved and the Project shall be placed “in service” as that term is used for purposes of Section 42 of the Internal Revenue Code of 1986, on or before April 1, 2023; provided, however, in the event the conversion deadline set forth in that certain Construction/Permanent Loan Agreement between the Borrower and Wells Fargo Bank, National Association, is extended by six (6) months, then the foregoing deadline shall be extended to October 1, 2023. Time is of the essence. The residential units in the Project shall be 100% occupied on or before one hundred eighty (180) days from the date the Project is placed “in service”.

NOW, THEREFORE, in furtherance of the recitals stated above, the mutual covenants set forth below, the parties agree, promise and declare as follows:

DEFINITIONS

The following terms shall have the meanings set forth below:

“Affordable Units” means the eighty-four (84) dwelling units that shall be constructed by Borrower on the Property, the rent and occupancy of which shall be restricted for fifty-five (55) years as set forth in the Declaration.

“Agreement” means this Construction and Permanent Financing Loan Agreement.

“Borrower” means VS Phase 1 LP, a California limited partnership. Nothing contained herein shall prohibit Borrower from changing its name provided that, except as expressly permitted herein, there is no change in the composition and make up of the partners of Borrower, without the prior written consent of City, except for Permitted Transfers.

“City” means the City of San Marcos.

“City Loan” means the construction and permanent financing loan from City to Borrower in the original principal amount of up to One Million Six Hundred and No/100 Dollars (\$1,600,000.00).

“Closing” means the Borrower’s closing on the City Loan and the Construction Loan, which shall occur concurrently.

“City Note” means a promissory note, in a form and format approved by the City in the City’s sole discretion, evidencing the City Loan, executed by Borrower in favor of the City at Closing. The City Note is hereby incorporated herein by reference.

“Completion of Construction” shall occur upon the filing or the issuance by the building official of the City of a temporary certificate of occupancy for all units within the Project.

“Construction Loan” means the first lien priority construction loan to the Borrower from Wells Fargo Bank, N.A., in the original principal amount of not more than \$22,979,242.00, which at conversion will pay off the Construction Loan and convert to the Permanent Loan.

“Declaration” means a declaration of covenants, conditions and restrictions, in a form and format approved by the City in the City’s sole discretion, which shall restrict the rent and occupancy of all of the eighty-four (84) Affordable Units for fifty-five (55) years as set forth in the Declaration. The Declaration shall require Borrower to pay an annual occupancy monitoring fees imposed by the City.

“Deed of Trust” means the deed of trust securing the Declaration and the City Loan, in a form and format approved by the City in the City’s sole discretion, which shall be recorded as an encumbrance against the Property at Closing.

“Environmental Indemnity Agreement” means an unsecured environmental indemnity agreement, in a form and format approved by the City in the City’s sole discretion, which shall be executed by the City and Borrower at Closing.

“Escrow” means the escrow depository and disbursement services to be performed by the Escrow Agent pursuant to the provisions of this Agreement.

“Escrow Agent” means Fidelity National Title Company.

“Escrow Instructions” means the Escrow Instructions being delivered by the City to Escrow Agent concurrently with the delivery of this Agreement to Escrow Agent.

“Hazardous Materials” means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United State Government. Provided, however, the term “Hazardous Materials” shall not include substances typically used in the ordinary course of developing, operating and maintaining apartment complexes in California or small amounts of chemicals, cleaning agents and the like commonly employed in routine household uses in a manner typical of occupants in other similar properties, provided that such substances are used in compliance with applicable laws.

“Permanent Loan” means the first lien priority permanent loan to Borrower from the California Community Reinvestment Corporation, in an original principal amount not to exceed \$7,250,000.

“Permitted Transfer” shall mean any of the following:

(a) A pledge of or conveyance of a security interest in the Borrower, the Property or the Project, or any of them, in connection with any loan permitted hereunder;

(b) The removal for cause of any general partner of Borrower by a limited partner of the Borrower, and the replacement thereof, so long as the replacement general partner is reasonably acceptable to the City Manager, based on sufficient evidence of creditworthiness and submittal of appropriate financial statements;

(c) The inclusion of equity participation by Borrower by addition of limited partners, or similar mechanism, and any subsequent transfer of interests by or in such limited partners;

(d) The leases for occupancy of all or any Affordable Unit and the leases or similar agreements for the unrestricted manager’s unit;

(e) The granting of easements or permits to facilitate the completion of the Project in accordance with this Agreement; and

(f) The granting of an option for or a transfer of the interests of Borrower’s limited partner to any general partner of Borrower or an affiliate of any general partner of Borrower at any time during and following the expiration, for each building in the Project, of the applicable credit period of ten taxable years described in Code Section 42(f)(1).

“Project” is defined in Recital B, above.

“Property” is defined in Recital A, above.

“Security Agreement” means a security agreement, in a form and format approved by the City in the City’s sole discretion, which shall be executed by the City and Borrower at Closing.

ARTICLE I

Loan Provisions - General

Section 1.1 Construction and Permanent Financing Loan. The City will fund the City Loan to Borrower according to and upon the terms and conditions set forth in this Agreement. The proceeds of the City Loan shall be used by Borrower solely for the purposes of constructing and permanently financing the Project.

(a) City Loan Amount. The amount of the City Loan shall not exceed One Million Six Hundred Thousand and No/100 Dollars (\$1,600,000.00).

(b) Promissory Note.

(1) The City Loan shall be evidenced by the City Note executed by Borrower, in favor of City, in the original principal amount of up to One Million Six Hundred Thousand and No/100 Dollars (\$1,600,000.00). Prior to the timely completion of construction of the Project, the City Loan and the City Note shall be fully recourse to Borrower. Upon placement of the Project “in service”, as that term is used for purposes of Section 42 of the Internal Revenue Code of 1986, the City Loan and the City Note shall be non-recourse to Borrower.

(2) The City Note shall bear simple interest at three percent (3%) per annum from the dates of disbursement. Annual payments on the City Note shall be due in accordance with the Note. The first payment shall be due on or before May 31, 2024 (for calendar 2023). All principal and unpaid interest on the City Note shall be due and payable to the City on December 31, 2078. The residual receipts shall be calculated as specifically set forth in the City Note. Notwithstanding anything to the contrary contained in this Agreement, the City Note or any other document or agreement executed in conjunction herewith, the City Note shall be due and payable in full prior to or concurrently with any sale, conveyance, transfer or further encumbrance of all or any portion of the Property without the consent of the City, except as otherwise permitted hereunder. The principal and interest evidenced by the City Note may be prepaid in whole or in part at any time and from time to time, without notice, premium or penalty. Any prepayment shall be allocated first to unpaid interest and then to principal. The obligations of Borrower under the Declaration shall be independent of, and in addition to, Borrower’s obligations under this Agreement, and repayment of the City Note shall not terminate or otherwise affect the Declaration.

(3) Should Borrower agree to or actually sell, convey, transfer, further encumber or dispose of the Property or any interest in the same, except Permitted Transfers

hereunder, without first obtaining the written consent of the holder of the City Note (i.e., the City), which consent shall be granted or withheld at the reasonable discretion of the holder of the City Note, then all obligations secured by the City Note may be declared due and payable at the option of the holder of the City Note, provided, however, that the holder of the City Note has already consented to the encumbrances against the Property reflected in the policy of title insurance issued in favor of the holder of the City Note concurrently herewith which is more particularly described in the Escrow Instructions. The consent to one transaction of this type will not constitute a waiver of the right to require consent to future or successive transactions. The Declaration shall remain in place for its term of fifty-five (55) years whether or not City approves or disapproves a successor-in-interest.

Section 1.2 - Security.

(a) Deed of Trust. Upon the close of Escrow, as security for the City Loan and the Declaration, Borrower shall execute, acknowledge, deliver and cause the Deed of Trust to be recorded against the Property. A copy of this Agreement shall not be attached to and recorded as part of the Deed of Trust but any breach of or misrepresentation under this Agreement shall, upon the expiration of any applicable notice and cure period(s), constitute an event of default under the Deed of Trust. At Closing the Deed of Trust shall be recorded in a position superior and prior to all encumbrances on the Property, except that the same may be subordinated to: (i) the deed of trust and instruments securing the Construction Loan and, upon conversion, the Permanent Loan; (ii) the regulatory agreement in favor of the County of San Diego; (iii) the deed of trust securing the loan to the Borrower from the City of San Marcos acting solely in its capacity as the designated successor housing agency to the former San Marcos Redevelopment Agency; (iv) the deed of trust securing the loan to the Borrower from the County of San Diego; and (v) the exceptions to title set forth in the Escrow Instructions. Such subordinations shall be on terms and conditions acceptable to the City in its sole discretion. Notwithstanding anything to the contrary contained herein, the City hereby agrees that Borrower's limited partner shall have the right, but not the obligation, to cure any defaults of the Borrower hereunder, and the City agrees to accept cures tendered by Borrower's limited partner on behalf of the Borrower within the applicable cure periods set forth herein.

(b) Additional Security. Borrower shall execute and deliver to City the Environmental Indemnity Agreement and the Security Agreement and such other consents, certificates, assignments and other documents or instruments as City may require.

Section 1.3 - Subsequent Financing. Except as otherwise set forth herein and specifically as set forth in Section 1.2, above, no further loan, deed of trust, or encumbrance, shall be placed by Borrower upon any portion of the Property, including without limitation the Project, whether by refinancing or otherwise, without first obtaining the express written consent of City. Any such unconsented to financing or refinancing shall constitute a material breach of this Agreement. Further, during any City approved refinancing or subsequent encumbrance, City shall be provided ALTA title insurance or endorsements acceptable to City, at the cost and expense of Borrower. Said written consent shall be at City's sole discretion. Without the express written consent of City

such subsequent financing is void. As used in this Agreement, the approval of the City shall mean the approval of the City Manager.

Section 1.4 - Funding. City's obligation to fund the City Loan shall be and is specifically conditioned upon Borrower closing on the Construction Loan, the loan to the Borrower from the County of San Diego, the CalHFA MHSA Loan and Borrower obtaining commitments for the Permanent Loan and Tax Credit Equity, the City approving all documents with respect to the same, the City approving the partnership agreement of Borrower, the City approving the preliminary title reports concerning the Property, payment of all taxes due and payable on the Property, issuance of an ALTA Lender's policy insuring the City Loan satisfactory to the City and general counsel, satisfaction of all conditions precedent to City's obligation to fund the City Loan contained in this Agreement, and satisfaction of those conditions set forth in Section ____ of this Agreement.

Section 1.5 - Declaration of Covenants and Restrictions. The obligation of City to make and fund the City Loan hereunder is subject to the execution, and recordation of the Declaration against the Property. The Declaration shall contain housing payment and income level restrictions for the eighty-four (84) Affordable Units for a period of fifty-five (55) years as set forth in the Declaration. The monthly rental rates shall be as set forth in the Declaration, subject to annual modification as set forth in the Declaration. At Closing, the Declaration shall be recorded in a position superior and prior to all encumbrances on the Property, except that the same may be subordinated to: (i) the deed of trust and instruments securing the Construction Loan; (ii) the regulatory agreement to be recorded against the property in favor of the County of San Diego; and (iii) the exceptions to title set forth in the Escrow Instructions. Upon closing of the Permanent Loan, the Declaration shall be subordinated to the deed of trust and instruments securing the Permanent Loan. Such subordinations shall be on terms and conditions acceptable to the City in its sole discretion.

Section 1.6 - No Partnership or Joint Venture. The relationship between City and Borrower created by this Agreement shall not be one of partnership or joint venture, but rather shall be one of secured lender and borrower.

Section 1.7 - Insurance. Borrower, at its sole cost and expense, shall purchase and maintain all policies of insurance as required by the City. All public liability insurance and property damage insurance shall insure the performance of Borrower of the indemnity provisions set forth in this Agreement. Further, in all such insurance required to be purchased and maintained by Borrower, the City shall be named as an additional insured, and the policy shall contain cross-liability endorsements. Certificates of insurance acceptable to City shall be filed with City prior to funding of the City Loan.

Section 1.8 - Assignability.

(a) Except for a Permitted Transfer, Borrower may not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the City. Any assignment without the prior written consent of the City shall be voidable, at the election of the City. Further, except for a Permitted Transfer,

Borrower shall not change any of its general partners nor admit new general partners without the express written consent of City, which shall not be unreasonably withheld.

(b) Except to the extent that changes are solely to effectuate a Permitted Transfer, Borrower shall not amend, modify, restate, revoke or rescind its LP-1 or the partnership agreement of Borrower or convert to any other type of entity without the prior written consent of City.

Section 1.9 - General Contractor and Subcontracting. The guaranteed not to exceed construction contract, entered into by Borrower with the general contractor for the construction of the Project shall be entered into on or before the date of the Closing, and shall be subject to the prior written approval of the City Manager. Borrower shall be fully responsible to the City for the acts and omissions of the general contractor and its subcontractors, and of persons either directly or indirectly employed by Borrower. Borrower shall cause the general contractor to name the City as an additional insured on all insurance required to be purchased and maintained by the general contractor. Certificates of insurance acceptable to City shall be filed with City prior to funding of the City Loan.

Section 1.10 – Borrower Liability. The Borrower shall be responsible for all injuries to persons and/or all damages to real or personal property of the City or others, caused by or resulting from the negligence and/or breach of this Agreement, by Borrower, Borrower's employees, contractors, subcontractors and/or Borrower's agents during the construction of, or arising out of, the construction of the Project and/or the breach of this Agreement, except those arising from the sole active negligence or sole willful misconduct of the City. Borrower shall defend and hold harmless and indemnify the City and all officers and employees of the same from all liabilities, causes of action, demands costs, damages, judgments, expenses and claims (collectively "Claims") by any person resulting from the negligence and/or breach of this Agreement, by Borrower, Borrower's employees, contractors, subcontractors and/or Borrower's agents, arising out of the construction of the Project and/or the breach of this Agreement. Borrower shall defend any Claims against the City at the sole cost and expense of Borrower, with counsel of the indemnified party's choosing.

Section 1.11 - Ownership of Materials and Documents. Any and all sketches, drawings, tracings, field survey notes, computations, plans, details and other materials and documents prepared by or on behalf of Borrower pertaining to the Property shall be the property of City upon a default by Borrower, and the expiration of all applicable notice and cure period(s), and Borrower shall deliver such materials and documents to City whenever requested to do so by City. Notwithstanding the foregoing, the City's rights to the materials delineated in the immediately preceding sentence shall be subordinate to the rights of any senior institutional lender with respect to the same. City shall have the right to have duplicate copies of such materials and documents for their file, at the cost and expense of City, upon written request even if Borrower is not in default under the terms of this Agreement.

Section 1.12 - Indemnification.

(a) Environmental Indemnity. Borrower agrees to indemnify, defend and hold the City and all of its respective councilmembers, agents, officers, representatives, directors and employees

(“Indemnified Parties”) harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys’ fees), resulting from, arising out of, or based upon any of the following: (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property or the Project, or (ii) the violation, or alleged violation, of any applicable statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property or the Project. The indemnification of the Indemnified Parties by Borrower set forth in this Section 1.12 shall apply regardless of when the Hazardous Materials came to be on, under, in or about the Property or the Project, including without limitation whether the Hazardous Materials came to be on, under, in or about the Property or the Project prior to Borrower’s acquisition of an interest in the Property or the Project. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. The indemnity provided in this Section 1.12 does not include any condition arising solely as a result of the gross negligence or affirmative acts of the Indemnified Parties. Notwithstanding anything contained in this Agreement to the contrary, Borrower’s duty to indemnify the Indemnified Parties as set forth in this Section 1.12 shall survive and remain an outstanding obligation of Borrower after termination of this Agreement.

(b) General Indemnity.

(1) Definitions.

(A) Claims. “Claims” means any Claims as set forth in Section 1.10, above, or any and all threatened, pending or completed claims, actions, suits, proceedings, arbitrations, grand jury proceedings or investigations, damages, liabilities, injunctive relief, injuries to person or property, fines, penalties, causes of action, losses, costs, expenses and judgments whether civil, criminal, administrative or investigative, and any one or more appeals therefrom.

(B) Expenses. “Expenses” means reasonable attorneys’ fees, retainers, court costs, staff time, transcripts, reasonable fees of experts, reasonable witness fees, arbitration fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all and all other direct or indirect costs and disbursements associated with any Claims, including without limitation expenses of establishing a right to indemnification under this Section 1.12.

(C) Indemnified Parties. “Indemnified Parties” means the City and all of its respective councilmembers, agents, officers, representatives, directors and employees (individually an “Indemnified Party”).

(D) Liabilities. “Liabilities” means the obligations (including an obligation incurred by way of settlement) to pay any judgment, settlement, penalty, interest, assessment, Claim, cost, expert witness fee and award of attorneys’ fees.

(2) Indemnification. Borrower hereby agrees to indemnify, protect and hold harmless the Indemnified Parties from and against any and all Claims incurred by or asserted against any Indemnified Party, which arise directly or indirectly, in whole, in part or in any way, from the City Loan, the Property, the Project, the Affordable Units or from any other approval or action whatsoever in connection with the Property or the Project, except to the extent of the gross negligence or willful misconduct of an Indemnified Party.

(3) Payment of Liabilities and Expenses. Borrower further agrees to pay any and all Liabilities and Expenses incurred by any and all Indemnified Parties with respect to any Claims which arise directly or indirectly, in whole, in part or in any way from the City Loan, the Property, the Project, the Affordable Units or from any other approval or action whatsoever in connection with the Project, except to the extent of the gross negligence or willful misconduct of an Indemnified Party.

(4) Separate Rights of Action. A separate right of action hereunder shall arise each time each Indemnified Party acquires knowledge of any matters described herein. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action.

(5) Right to Defend. Each Indemnified Party shall have the right, but not the obligation, to conduct its own defense with respect to any Claims and to retain legal counsel of its own choosing. Borrower shall pay for or reimburse any such Indemnified Party for any and all Expenses and Liabilities incurred by such Indemnified Party, as such Expenses and Liabilities are incurred. An Indemnified Party’s election to defend itself as provided in this Section, shall not in any way limit the Borrower’s obligation to reimburse and pay for any and all Liabilities and Expenses incurred by the Indemnified Parties with respect to any Claims; provided, however, any Indemnified Party may elect in its sole discretion to demand that the Borrower defend and pay all Expenses with respect to any Claims, provided the Claims if determined adversely to such Indemnified Party, would be covered by the foregoing indemnification provisions. Upon any such demand by any Indemnified Party, Borrower shall defend and pay all Expenses and Liabilities with respect to such Claims; such defense shall be at the Borrower’s sole cost and expense and by counsel reasonably approved by such Indemnified Party.

(6) Survival. Borrower’s duty to indemnify shall survive and remain an outstanding obligation of Borrower upon the termination of this Agreement.

Section 1.13 - Termination. This Agreement and the relationship created herein shall terminate upon full satisfaction of all of Borrower’s obligations, and those of Borrower’s successors, if approved by the City, under this Agreement. The obligations of Borrower include, but are not

limited to, those obligations arising under the Declaration, the provisions of which shall survive repayment of the City Loan.

Section 1.14 - Default by Borrower.

(a) Notwithstanding anything to the contrary set forth herein, in the event of a material default by Borrower in the performance of any of the terms, covenants and conditions contained in this Agreement, the City Note, the Deed of Trust, the Declaration or the Security Agreement after expiration of the cure period set forth in Section 1.14(b) or 1.14(c) hereof, or as a result of a default past any applicable notice and cure period under any prior or junior note secured by an encumbrance on the Property or any portion of it, or any note or deed of trust given in conjunction herewith, or in the event of the filing of a bankruptcy proceeding by or against Borrower which is not dismissed within one hundred twenty (120) days, all sums disbursed or advanced by City, plus interest, shall at the option of City immediately become due and payable and City shall have no obligation to disburse any further funds, or otherwise, and City shall be released from any and all obligations to Borrower under the terms of this Agreement. These remedies shall be in addition to any and all other rights and remedies available to City, either at law or in equity.

(b) If a non-monetary event of default occurs under the terms of this Agreement, the City Note, the Deed of Trust, the Declaration or the Security Agreement, prior to exercising any remedies hereunder or thereunder, the City shall give Borrower written notice of such default indicating in reasonable detail the nature of the default. If the default is capable of being cured within ninety (90) calendar days after such notice is received or deemed received, Borrower shall have such period to effect a cure prior to exercise of remedies by the City. If the default is such that it is not capable of being cured within ninety (90) days in the City's reasonable discretion and Borrower (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 shall have such additional time as the City determines, in its reasonable discretion, is necessary to cure the default prior to exercise of any remedies by the City. If such default is not timely cured, then the City may proceed with all or any of its rights and remedies as set forth herein, in the Declaration and/or the Deed of Trust.

(c) In the event of any monetary default by the Borrower under the terms of this Agreement, the City Note, the Deed of Trust, the Declaration or the Security Agreement, the City shall give Borrower a thirty (30) day written notice of default, during which time the Borrower shall have the ability to cure the monetary default. If the default is not timely cured, the City may proceed with all rights and remedies under the terms of the City Loan or at law.

(d) The City hereby agrees that any cure of any default made or tendered by one or more of the Borrower's limited partners shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

Section 1.15 - Conditions to City Obligations. The obligation of City to make and fund the City Loan is subject to satisfaction of all of the conditions set forth in this Section 1.15, which may be satisfied concurrently with Closing.

(a) Execution of Documents. This Agreement, the Note, Deed of Trust, Security Agreement, Environmental Indemnity Agreement and Declaration, fully executed by the Borrower, shall have been delivered to the Escrow Agent along with all other fully executed security documents and instruments provided for herein and/or as required by City.

(b) Commitment to Issue Title Policy. The Escrow Agent shall be irrevocably committed to issue and deliver to the City a standard form ALTA Lender's Policy of Title Insurance, insuring City's security interest in the Property under the Deed of Trust in an amount equal to the original principal amount of the City Loan. Which ALTA Lender's Policy of Title Insurance shall be paid for by Borrower.

(c) Compliance with Obligations. Borrower shall have strictly complied with, and performed, all terms and conditions of the documents executed by Borrower in connection with this Agreement and the City Loan.

(d) Financing. Borrower shall have closed on, or will concurrently with the Closing close on, the Construction Loan, the SHA Loan, the loan to the Borrower from the County of San Diego, the CalHFA MHSA Loan, the tax credits and the City shall have reviewed and approved all documentation with respect to the same.

(e) Partnership Agreement. The City shall have approved the Borrower's partnership agreement.

(f) Borrower's Payment of Escrow Fees. Borrower has paid an amount into Escrow, which is sufficient to pay for all costs associated with such escrow, including without limitation title fees, escrow fees, closing costs and carrying costs.

(g) Construction Contract. The guaranteed not to exceed construction contract for the Project, acceptable to the City Manager, shall have been executed by the Borrower and the general contractor(s).

(h) ALTA Survey. The City shall have approved the ALTA survey of the Property.

(i) Insurance Certificates. The Borrower shall have delivered all certificates of insurance and additional insured endorsements.

(j) Final Proforma. The Borrower shall have delivered and the City shall have approved the final financial proforma for the Project.

(k) Additional Conditions. Such other conditions as City shall reasonably request.

Section 1.16 - Borrower's Representations and Warranties. Borrower represents and warrants to the City that:

(a) Borrower is a validly and lawfully formed limited partnership, is in good standing under California law and will remain such for the term of this Agreement.

(b) Execution of this Agreement, the Deed of Trust, City Note, Declaration and all other documents executed in conjunction herewith have been duly authorized by Borrower's general partner, and such execution shall not result with the passage of time or the giving of notice or both in breach of or in acceleration of performance under any contract or document to which Borrower may be a party.

(c) All required approvals have been obtained in connection with Borrower's execution of this Agreement, and all related agreements and documents to the effect that no breach of or acceleration of performance under any agreement or document to which Borrower is a party will result from such execution.

(d) Funds advanced by City pursuant to the City Loan are advanced wholly for the benefit of Borrower.

(e) The principal and interest due and payable under the City Loan are subject to the terms and conditions of this Agreement, any other security documents or instruments provided for herein.

(f) Funds advanced by City pursuant to the City Loan shall be used solely for the construction and permanent financing of the Project.

(g) Any default by Borrower under the terms of this Agreement shall not relieve Borrower from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to City, when such inaccuracies, defects and incomplete work are due to Borrower's fault, including the fault of Borrower's subcontractors, agents, partners, joint venturers and employees.

(h) Borrower shall comply with the Declaration at all times during the term of the Declaration.

Section 1.17 Affordability Provisions.

(a) Execution of Declaration. Borrower agrees to execute the Declaration and to cause it to be recorded against the Property, assuring compliance with the affordability provisions of this Agreement. Borrower agrees to obtain any and all subordination agreements, if any, necessary to ensure that the Declaration is subject only to the encumbrances and liens described in Section 1.5, above. The Declaration shall be binding and enforceable against all heirs, successors and assigns of Borrower.

(b) Term of Affordability. Borrower agrees that the Property shall remain affordable and subject to the Declaration until December 31, 2078.

(c) Cross-Default With the Declaration. Borrower and its successors in interest to the Project and/or the Property shall strictly comply with all of the terms and conditions of the Declaration. Any default under the Declaration, which continues uncured after any applicable notice and cure period provided in the Declaration, shall be a default under this Agreement, the City Note and the Deed of Trust.

Section 1.18 - City Approval of Property Manager. At all times that any portion of the City Loan remains unpaid and outstanding and/or the Declaration is in force and effect, and City has served a thirty (30) day written notice of deficiencies in the property management for the Project, the Declaration or any document executed in conjunction herewith, which deficiencies have not been rectified by Borrower, within the thirty (30) day period (unless such deficiency is not capable of being cured within such thirty (30) day period, then such amount of time as City determines is needed, not to exceed ninety (90) days unless otherwise approved by the City, provided Borrower commences cure within such thirty (30) day period and continues to diligently pursue cure of such deficiency), then, City shall have the right, but not the duty, in its reasonable discretion, subject to any approval rights of the senior lender, and upon an additional thirty (30) days written notice: (i) to require and approve, in advance and in writing, the retention of a professional property management firm, to manage the Project including the terms of the contract governing such retention; and (ii) to require Borrower to terminate the existing property management firm. Borrower shall cooperate with City to effectuate City's rights.

Section 1.19 - Usury. If a court of competent jurisdiction determines, by way of final unappealable order or judgment, that the interest rate charged under the City Note is usurious, then such rate shall automatically and retroactively be reduced to the maximum rate allowed under applicable law.

Section 1.20 - Remedies.

(a) Contract Governed by Laws of the State of California. This Agreement, the performance of this Agreement, and all suits and special proceedings under this Agreement, shall be constituted in accordance with the laws of the State of California and Federal law, to the extent applicable. In any action, special proceeding, or other proceeding that may be brought arising out of, under or because of this Agreement, the laws of the State of California and the United States, to the extent applicable, shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

(b) Standing, Equitable Remedies; Cumulative Remedies. Borrower expressly agrees and declares that City shall be the proper party and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity, including but not limited to foreclosure under any security instrument securing performance hereunder, to enforce the provisions hereof and/or to recover damages for any default hereunder, which default continues uncured after any applicable notice and cure period, notwithstanding the fact that such damages or the detriment arising from such a default may have actually been suffered by some other person or by the public at large. Further, Borrower expressly agrees that receivership, injunctive relief and specific performance are proper pre-trial and/or post-trial remedies hereunder, and that, upon any default,

which default continues uncured after any applicable notice and cure period, a receiver may be appointed by the court to take control of the Project and to assure compliance with this Agreement. Nothing in this subparagraph, and no recovery by the City, shall restrict or limit the rights or remedies of persons or entities other than the City, against Borrower in connection with the same or related acts by Borrower. The remedies set forth in this Section are cumulative and not mutually exclusive, except the extent that their award is specifically determined to be duplicative by final order of a court of competent jurisdiction.

(c) Remedies at Law for Breach of Operating Restrictions. In the event of any default under this Agreement regarding restrictions on the operation and the transfer of the Project, after expiration of all applicable notice and cure periods, City shall be entitled to, in addition to any and all other remedies available at law or in equity: (i) declare the City Loan to be all due and payable; and (ii) unless the nonrecourse provisions of the City Loan otherwise prohibit, recover compensatory damages. If the default in question involves the violation of Section 1.17, above, including without limitation a default under the Declaration, the amount of such compensatory damages shall be the product of multiplying (A) the number of months that the default in question has continued until the time of trial by (B) the result of subtracting the rents properly chargeable hereunder for the Affordable Unit(s) in question from the amount actually charged. Borrower and City agree that it would be extremely difficult or impracticable to ascertain the precise amount of actual damages accruing to City as a result of such a default and that the foregoing formula is a fair and reasonable method of approximating such damages. City shall be entitled to seek and to recover damages in separate actions for successive, separate breaches which may occur. Further, interest shall accrue on the amount of such damages from the date of the breach in question at the rate of ten percent (10%) per annum or the maximum rate then allowed by law, whichever is less. Nothing in this section shall preclude the award of exemplary damages as allowed by law.

(d) Expert Witness, Attorneys' Fees, and Costs. The parties agree that the prevailing party in litigation for the breach and/or interpretation and/or enforcement of the terms of this Agreement shall be entitled to their reasonable expert witness fees, if any, as part of their costs of suit, and reasonable attorneys' fees as may be awarded by the court, pursuant to California Code of Civil Procedure ("CCP") Section 1033.5 and any other applicable provisions of California law, including, without limitation, the provisions of CCP Section 998. All claims, disputes, causes of action or controversies shall be subject solely to the jurisdiction of the San Diego Superior Court.

Section 1.21 - Completion of Construction. All construction of the Project shall be completed and the Project shall be placed "in service" (as such term is used in 26 U.S.C. §42) on or before April 1, 2023; provided, however, in the event the conversion deadline set forth in that certain Construction/Permanent Loan Agreement between the Borrower and Wells Fargo Bank, National Association, is extended by six (6) months, then the foregoing deadline shall be extended to October 1, 2023. Time is of the essence. Failure to comply with this requirement shall constitute a material default under the terms of this Agreement.

Section 1.22 - Funding Mechanism; Disbursements. The City's obligation to fund the City Loan shall be and is specifically conditioned upon Borrower satisfying all of the conditions set forth in this Agreement.

(a) Disbursements. The City Loan shall be disbursed pursuant to written draw requests submitted by the Borrower to the City supported by such back up documentation as the City requires. Disbursements of approved draws shall be conditioned upon the receipt of lien release(s) from the general contractor and any applicable subcontractors for the work performed and contained within the draw request or evidence of an adequate bond or other security reasonably acceptable to the City.

(b) Limit on Effect of Approval. Review and/or approval of any work by the fund control, disbursement of monies pursuant to a draw request, or any City review and/or approval of the Construction Loan and/or work shall be understood to be general review and/or approval only, and shall not relieve Borrower of the responsibility to design, engineer, and construct the Project in accordance with all applicable laws, codes, regulations, and good design, construction, and engineering practice. Any deficiencies or defects shall be corrected at Borrower's cost and expense and without any cost to the City.

ARTICLE II

Specific Loan Provisions

Section 2.1 - Conditions to City Obligations and Borrower Representations and Warranties.

(a) Interest of Current or Former Members, Officers or Employees. Borrower represents and warrants that no member, officer, or employee of Borrower, no member of the governing body of the locality in which City was activated, or other public official of such locality or localities who exercises any functions or responsibilities with respect to this Agreement, has or shall have during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this section may, at the option of City, result in unilateral and immediate termination of this Agreement by City.

(b) Unsecured Environmental Indemnity. Borrower shall enter into the Unsecured Environmental Indemnity Agreement in favor of City and shall name the City as a named additional insured on its insurance policies.

(c) Title Policy. Borrower, shall, at Borrower's sole cost and expense, obtain an ALTA lender's policy naming City as a named insured, and insuring that City's interest is subject to no superior liens, encumbrances, special assessments or taxes, except as approved by City.

(d) Construction. City shall be entitled to review, inspect and approve, without liability, all of the construction of the Project. All construction shall be performed substantially in accordance with the plans and specifications approved by the City in accordance with Section 2.2 of this Agreement, without liability to City for review and observation of the construction. Any deficiencies in construction shall be corrected by the contractor and/or Borrower, upon written notice from City to Borrower, prior to any additional funding of the City Loan and prior to making

any additional payments under the construction contract and/or to any contractor or subcontractors responsible for such deficiency until such correction is completed.

(e) Monitoring of Project Activities. Borrower agrees to allow City upon prior written notice and during regular business hours, such reasonable access to review and inspect Borrower's activities under this Agreement as City shall require to perform its monitoring duties under the Declaration. City shall monitor Borrower's activities without liability for said inspection and review.

Section 2.2 - Commencement of Construction and Compliance with Plans and Specifications. Not later than thirty (30) days following the Closing, Borrower shall commence construction of the Project and shall continue such construction diligently and without substantial delay in a good and workmanlike manner. Borrower will complete the Project substantially in accordance with the plans and specifications approved by City, including any additional specifications prescribed by City at or before Closing, and in compliance with all requirements of governmental authorities having or asserting jurisdiction. Construction of the Project shall be completed and the Project shall be placed "in service" as that term is used for purposes of Section 42 of the Internal Revenue Code of 1986, on or before April 1, 2023; provided, however, in the event the conversion deadline set forth in that certain Construction/Permanent Loan Agreement between the Borrower and Wells Fargo Bank, National Association, is extended by six (6) months, then the foregoing deadline shall be extended to October 1, 2023. No material change shall be made in the plans and specifications approved by City, including any additional specifications prescribed by City, without the City's prior written consent. For purposes of this Section, "material change" means changes which, in aggregate, increase or decrease the construction costs by Fifty Thousand Dollars (\$50,000.00) or more. Should any deviation from the plans and specifications including any additional specifications prescribed by City occur in the construction of the Project and such deviation, in the opinion of City, results in the Project having a value less than the value which would have existed had such deviation not occurred, to the extent that City has not fully funded the City Loan, City may reduce the principal amount of the City Loan by an amount equivalent to the reduction in value of the Project.

Section 2.3 - Stoppage of Work by City. City or the City's agents shall have the right at all times to enter upon the Project during the period of construction. If the work of construction is not in material conformance with the plans and specifications, the City shall have the right to stop the work and order the replacement of any unsatisfactory work theretofore incorporated into the Project, and to instruct fund control to withhold all disbursements from the accounts until the City is satisfied with the work. If the work is not made satisfactory to City, in the City's reasonable discretion, within thirty (30) calendar days from the date of stoppage by City, the same shall constitute a default hereunder. If any unsatisfactory work is such that it is not capable of being cured within thirty (30) calendar days and Borrower, in City's reasonable discretion, (i) initiates corrective action within said period, and (ii) diligently and in good faith works to correct the unsatisfactory work as soon as possible, then Borrower shall have such additional time as City determines, in the City's reasonable discretion, is necessary to cure the unsatisfactory work prior to exercise of any remedies by City.

Section 2.4 - Cessation of Work, Completion by City. Subject to force majeure delays, should the work of constructing the Project cease for a period of sixty (60) consecutive days, specifically including stoppage by City in accordance with Section 2.3 hereof, or should said work for any reason whatsoever not progress continuously in a manner satisfactory to City, then City may, at the City's option and without notice declare Borrower to be in default hereunder, and City may thereupon, should the City so elect, take possession of the Project and let contracts for the completion of the Project and pay the cost thereof, plus a fee of fifteen percent (15%) of the cost to complete the Project for supervision of construction, disbursing all or any part of the City Loan for such purposes; and should the cost of completing the Project plus such fee exceed the undisbursed balance of the City Loan, then the amount of such excess may be expended by City, in which event such amount shall be considered an additional loan to Borrower, and the repayment thereof, together with interest thereon at the rate provided in the City Note, shall be secured by the Deed of Trust and shall be repaid within thirty (30) days after the completion of the Project, and Borrower agrees to pay the same; Borrower further authorizes City at the City's option at any time, upon a default by any general contractor under any contract in connection with construction of the Project which is not cured within fifteen (15) days following notice to Borrower, either in the City's own name or in the name of Borrower, to do any act or thing necessary or expedient in the opinion of City to secure the performance of the construction contracts and assure the completion of construction of the Project substantially in accordance with the plans and specifications, disbursing all or any part of the loan funds for such purposes. In addition to the specific rights and remedies hereinabove mentioned, the City shall have the right to avail itself of any other rights or remedies to which the City may be entitled under any existing law or laws.

Section 2.5 - Mechanic's Liens and Notices to Withhold. In the event of the serving upon the City of a notice to withhold or the recording of a mechanic's lien pursuant to Division 3, Part 4, Title 15 of the Civil Code of the State of California, the City may summarily refuse to honor any requests for payment pursuant to this Agreement. In the event Borrower fails to furnish City with a bond or other security causing such notice or lien to be released within twenty (20) days after the service upon or recording thereof, such failure shall at the option of City constitute a default under the terms of this Agreement.

Section 2.6 - Involvement of City in Legal Proceedings. City shall have the right to commence, to appear in, or to defend any action or proceeding purporting to affect the rights or duties of the parties hereunder or the payment of any funds in connection with this City Loan and to pay out of funds not yet disbursed, necessary expenses, employ counsel and pay its fees, all of which the undersigned, jointly and severally, agree to repay to City upon demand. Provided, however, such costs and expenses shall not be due and owing to City, if they are incurred as a result of the breach of the Agreement by City or the City's negligence or willful misconduct.

Section 2.7 - Books and Records. Borrower shall require that the general contractor maintain complete and accurate books and records showing all of the income and disbursements made in connection with the Project, and such books and records shall be available for inspection and copy by City upon request and during regular business hours.

ARTICLE III

Miscellaneous Provisions

Section 3.1 - Governmental Requirements Superior. All provisions of this Agreement and all the other documents relating to the City Loan shall be subject and subordinate to any and all applicable federal, state and local statutes, regulations and ordinances and shall be subject to modification to comply therewith.

Section 3.2 - Notices. All notices under this Agreement shall be in writing and sent (a) by certified or registered U.S. mail, return receipt requested, (b) overnight by a nationally recognized overnight courier such as UPS Overnight or FedEx, or (c) by personal delivery. All notices shall be effective upon receipt (or refusal to accept delivery). All notices shall be delivered to the following addresses or such other addresses as changed by any party from time to time by written notice to the other parties hereto:

Borrower: VS Phase 1 LP, a California limited partnership
c/o National Community Renaissance of California
9421 Haven Avenue
Rancho Cucamonga, CA 91730
Attn: Chief Financial Officer

Copy to: Edward A. Hopson
655A North Mountain Avenue
Upland, CA 91786

Copy to: Wells Fargo Affordable Housing Community Development Corporation
MAC D1053-170
Upland, CA 91786
301 South College Street, 17th Floor
Charlotte, NC 28288
Attention: Director of Asset Management

with a copy to:
Timothy McCann, Senior Vice President
tim.mccann@wellsfargo.com

City: City of San Marcos
Attn. City Manager
One Civic Center Drive
San Marcos, California 92069

Section 3.3 - Severability. If any provision of this Agreement is deemed to be invalid or unenforceable by a court of competent jurisdiction, that provision shall be severed from the rest of this Agreement and the remaining provisions shall continue in full force and effect.

Section 3.4 - Nonwaiver of City's Rights. No right, remedy, or power of City in this Agreement shall be deemed to have been waived by any act or conduct on the part of City or by any failure to exercise or delay in exercising such right, remedy, or power. Every such right, remedy or power of City shall continue in full force and effect until specifically waived or released by an instrument in writing executed by City.

Section 3.5 - Entire Agreement. This Agreement and the other loan documents contain the entire understanding between the parties concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed and/or referred to herein.

Section 3.6 - Recitals Incorporated. The Recitals to this Agreement are hereby incorporated in this Agreement by this reference.

Section 3.7 - Construction of the Agreement. The provisions contained in this Agreement shall not be construed in favor of or against either party but shall be construed as if both parties contributed equally to its preparation. This Agreement shall be construed in accordance with the laws of the State of California.

Section 3.8 - City Not Liable for Acts of Omissions of Borrower or Others. City shall in no way be liable for any acts or omissions of Borrower, any agent or contractor employed by Borrower, or any person furnishing labor and/or materials used in or related to the construction of the Project.

Section 3.9 - Time of the Essence. Time is of the essence of this Agreement and of each and every provision hereof. The waiver by City of any breach or breaches hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach or breaches.

Section 3.10 - Assignment. Borrower shall not assign Borrower's rights nor delegate Borrower's duties under this Agreement without the prior written consent of City. Any attempt at the assignment or delegation in violation of this section shall be void. City shall have full right and authority to assign all or a part of the City's rights and delegate all or a part of the City's duties under this Agreement.

Section 3.11 - Integration. This Agreement represents the entire agreement between the parties hereto of the subject matter of this Agreement and supersedes any other agreements, promises, or representations oral or written pertaining to such subject matter, including without limitation, any and all agreements, promissory notes, and deeds of trust, along with any amendments and modifications to such agreements, promissory notes and deeds of trust entered into by and between City and Borrower.

Section 3.12 - Approvals, Consents and Other Determinations. Unless otherwise provided, in any approval, consent, or other determination by City or Borrower required under this Agreement or

any of the other loan documents evidencing and/or securing the City Loan, City and Borrower shall act in good faith and without delay.

Section 3.13 - Counterparts. This Agreement may be executed in any number of counterparts and, as so executed, the counterparts shall constitute one and the same Agreement. The parties agree that each such counterpart is an original and shall be binding upon all the parties, even though all of the parties are not signatories to the same counterpart.

Section 3.14 - Waiver and Amendment. No provision of this Agreement, or breach of any provision, can be waived except in writing. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. Except as otherwise provided herein, this Agreement may be amended, modified or rescinded only in writing signed by Borrower and the City Manager.

Section 3.15 - Capacity and Authority. All individuals signing this Agreement for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the City that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

BORROWER:

VS Phase 1 LP, a California limited partnership

By: VS Phase 1 GP LLC, a California limited liability company
Its: General Partner

By: National Community Renaissance of California
Its: Manager

By: _____
Print Name: _____
Its: _____

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

CITY:
City of San Marcos

By: _____
Jack Griffin, City Manager

APPROVED AS TO FORM:
Christensen & Spath LLP

By: _____
Walter F. Spath III
Special Counsel to the City