

NORTH CAROLINA  
ORANGE COUNTY

## **FORGIVABLE AFFORDABLE HOUSING LOAN AGREEMENT**

THIS AFFORDABLE HOUSING LOAN AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between Community Alternatives for Supportive Abodes, a North Carolina non-profit corporation whose mailing address is 624 West Jones Street, Raleigh, North Carolina 27603 (the “Borrower” or “CASA”) and the Town of Carrboro, North Carolina (the “Town”).

WHEREAS, the Borrower has applied to the Town for a loan to finance the acquisition of land on which Borrower will construct a 48-unit apartment complex in Carrboro and Chapel Hill on property located at 802 and 806 S. Merritt Mill Road (as hereinafter defined) for use as rental units to persons at or below 60% of the Area Median Income; and

WHEREAS, the Town has agreed to make a loan from the Town’s Affordable Housing Fund to the Borrower provided that the Borrower complies with each term and provision of this Agreement and with each term and provision of the other “Loan Documents” as that term is defined hereafter; and

WHEREAS, the Town has entered into an Agreement with CASA of even date herewith, which is incorporated by reference herein as if fully set forth under this Loan Agreement; and

WHEREAS, as required by the Town, the Borrower has agreed to secure this loan by a Deed of Trust which will constitute a first lien on the Property (as hereinafter defined);

NOW, THEREFORE, to induce the Town to make a loan to the Borrower and to establish the mutual agreements and obligations of the parties, and in consideration of the recitals, covenants and promises set forth herein, the Borrower and the Town agree as follows:

### **ARTICLE I**

#### **Definitions**

For purposes of this Agreement each of the following capitalized terms shall have the meaning specified with respect thereto:

1.1 **Agreement**: This Loan Agreement as the same may from time to time be amended.

1.2 **Annualized Gross Income**: Will be defined and calculated using United States Department of Housing and Urban Development (HUD) Section 8 regulations, as may be revised from time to time by HUD.

1.3 Area Median Family Income: The amounts established by HUD as Median Family Income for the Chapel Hill/Carrboro region, as they may be revised from time to time by HUD. See Attachment B, which is attached hereto and incorporated by reference.

1.4 Bonds: N/A

1.5 Borrower: The “Borrower” as defined in the recitals of this Agreement and any person, partnership or corporation hereafter acquiring title to or any interest in the security for the Loan.

1.5A Closing Date: The date on which Borrower acquires fee simple title to the Land and any Property then situated on the Land.

1.6 Code: The Internal Revenue Code of 1986, as amended, and the regulations thereunder.

1.7 Completion Date: The date on or before which the improvements must be completed in the manner specified in this Agreement, which date shall be the Construction Phase Maturity Date.

1.8 Deed of Trust: All security instruments presently or subsequently required by the Town, including, but not limited to, the deed of trust, security agreements, financing statements and assignments of leases, all in form and content satisfactory to the Town, securing the Loan indebtedness of Borrower to the Town. The Town’s Deed of Trust shall constitute a first priority lien on the Property.

1.9 Dwelling Unit: A residence that includes cooking, sleeping and bathroom facilities and that is to be occupied on a year-round basis.

1.10 Eligible Tenant: Households that have a total annual household income at or below 60% of the HUD-determined Area Median Income (as amended from time to time) for the Chapel Hill/Carrboro region at time of initial occupancy. Each individual will be defined as a separate household for income verification purposes.

1.11 First Mortgage: The Town’s Loan will be in first lien position.

1.12 Forgivable Loan: Forgivable Loan: So long as no uncured Event of Default has occurred under the Loan Agreement, this Note, the Deed of Trust, or any other document or instrument pertaining to the loan (the “Loan Documents”), the loan principal amount of Three Hundred Fifty Thousand Two Hundred Eight and no Hundredths Dollars (\$375,280.00) (the “Original Loan Amount”) shall be forgiven in increments of one-thirtieth (1/30) of the Original Loan Amount each year during the Term, with each increment of forgiveness occurring on the anniversary date of the Closing Date.

1.13 Improvements: The improvements and fixtures located at the Property, including improvements and related amenities to be created at the Property.

1.14 Land: That land with frontage along South Merritt Mill Road in Carrboro, Orange County, PINs \_\_\_\_\_ and \_\_\_\_\_, and more particularly described in Exhibit A to the Deed of Trust.

1.15 Loan Documents: The collective reference to the Commitment, if any, this Agreement, the Note and the Deed of Trust and all other documents, approvals, waivers, opinions, policies, surveys and agreements required by the Town as a term of agreeing to make the loan, or required by the terms of this Agreement to be submitted to the Town.

1.16 Note: The promissory note, in form and content required by the Town, which evidences the Loan indebtedness of Borrower to the Town.

1.17 Persons With Disabilities: Those who have a disability that is expected to be of long-term continued and indefinite duration; substantially impedes his/her ability to live independently; and is of such a nature that the disability could be improved by more stable conditions.

1.18 Property: The collective reference to the Land, Improvements and all personal property and fixtures described in the Deed of Trust.

1.19 State: The State of North Carolina.

1.20 Title Assurances: (1) The Title Policy referred to in Section 1.22 insuring that the Deed of Trust is a valid first priority lien on the indefeasible fee simple estate of the Property subject only to such matters of title acceptable to the Town, and (2) such certificates, lien waivers, subordination agreements, indemnity agreements, and other documents as the Town may require from the Borrower and all persons furnishing professional services, labor, or materials for construction of the Improvements to assure the priority of the Deed of Trust.

1.21 Title Policy: Mortgagee's title insurance in a form and substance satisfactory to the Town and from a title insurance company acceptable to the Town.

1.22 Town: The Town of Carrboro, a North Carolina municipality.

1.23 Town's Inspector: The Town's employee or designee, including but not limited to any one or more architectural, engineering or consulting firms of the Town's choice, to be engaged by the Town, at its option and at the Borrower's expense, to examine and approve the Property, Improvements and all materials and services used thereon, the Plans, plan changes, cost breakdowns, progress of construction and all other matters relating to the construction of the Improvements on the Property.

## ARTICLE II

### The Loan

2.1 Loan by the Town: Subject to the terms and conditions provided in this Agreement and in the Loan Documents, and all applicable laws and regulations, the Town agrees to make the Loan to the Borrower and the Borrower agrees to borrow up to Three Hundred Fifty Seven Thousand Two Hundred Eight and No Hundredths Dollars (\$357,208.00) at zero percent (0%) interest, for a term of thirty (30) years, as specified in the Note.

2.2 Advances to Title Insurance Company: At its option, the Town may make any and all advances through the title insurance company insuring the lien of the Deed of Trust and any portion of the Loan so disbursed by the Town shall be deemed disbursed as of the date on which the title insurance company receives such disbursement. The execution of this Agreement by the Borrower shall, and hereby does, constitute an irrevocable direction and authorization to so advance the funds. No further direction or authorization from the Borrower shall be necessary to warrant such direct advances to the title insurance company, and all such advances shall be secured by the Deed of Trust as fully as if made to the Borrower, regardless of the disposition thereof by the title insurance company, and the Borrower gives any title insurance representative the authority, at the Town's request and on behalf of the Borrower, to sign a receipt for such funds stating that such funds are secured by the Deed of Trust.

2.23 Other Payments: In addition to Loan payments required of the Borrower under this Agreement, the Borrower agrees to make additional payments, at any time and from time to time until this Agreement is terminated, to the Town for any and all costs, expenses and liabilities paid or incurred by the Town, including reasonable fees of counsel and disbursements thereof in connection with the execution and delivery of this Agreement, the Deed of Trust or any of the other Loan Documents or paid or incurred by the Town in satisfaction of any obligation of the Borrower hereunder which is not performed by the Borrower in accordance with the terms hereof in the Deed of Trust or any of the other Loan Documents. The Borrower shall also prepay or reimburse the Town for any and all expenses, costs and liabilities paid or incurred, or to be paid or incurred, by the Town or any of its officers, employees and agents, including reasonable fees of counsel and disbursements thereof, requested by the Borrower, or required by this Agreement, or incurred in enforcing the provisions of this Agreement, or incurred in defending any action or proceedings with respect to the Property or this Agreement, or arising out of or based upon any other document relating to this Agreement, which are not otherwise required to be paid by the Borrower hereunder.

2.24 No Warranty by Town: The Town does not make any warranty, either express or implied, that the proceeds of the Loan will be sufficient to pay all or any particular portion of the cost of the Improvements.

2.25 Covenants to Run with the Land: The covenants, reservations and restrictions set forth herein shall be incorporated by reference in the Deed of Trust, which shall be recorded, and shall be deemed covenants running with the land appurtenant to the

Improvements and shall pass to and be binding upon the Borrower's heirs, assigns and successors in title to such Land or Improvements; provided, however, that upon the termination of this Agreement in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying such Land or Improvements or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of such Land or Improvements are conveyed, all of such covenants, reservations and restrictions shall run to each portion of such Land or Improvements.

### **ARTICLE III**

#### **Conditions Precedent to Loan Closing**

The Town shall not be obligated to close the Loan until all of the following conditions have been satisfied:

3.1 **Instruments Received by the Town.** The Town shall have received in form and substance satisfactory to the Town and the Town's counsel, all documents, approvals, agreements, authorizations, opinions, certifications, consents, waivers, surveys, insurance policies, licenses, photographs, schedules, projections and permits required by the Loan Documents and all other terms, conditions and requirements of the Loan Documents shall have been complied with by the Borrower.

3.2 **No Event of Default:** No uncured Event of Default, as hereafter defined, shall exist, and no event shall have occurred which, with the giving of notice, the passage of time or both shall constitute an Event of Default.

### **ARTICLE IV**

#### **Permanent Phase**

4.1 **Use Of Property:** During such time as the Borrower will own and lease or rent the Property or any part thereof, the Borrower shall require that:

- (a) None of the Improvements will at any time (i) be used for any other purpose than rental housing, (ii) be used as a hotel, motel, dormitory, fraternity or sorority house, nursing home, hospital, sanitarium, rest home or trailer court or park or (iii) be rented for a lease period of less than six months.
- (b) No Eligible Tenant will use any of the Improvements as an investment property.

(c) Unless permitted by the Town in writing, the Improvements will not be used by any Eligible Tenant in such Eligible Tenant's trade or business, including the following uses:

- (i) as a place that is used for the purpose of meeting or dealing with patients, clients or customers in the course of trade or business or that is otherwise used for or in connection with any trade or business;
- (ii) as a place where inventory is held for use in the trade or business of selling products at wholesale or retail;
- (iii) as a place that is used in the trade or business of providing day care for children, for individuals who have attained the age of 65 or for individuals who are physically or mentally incapable for caring for themselves; or
- (iv) for lease or rent to any other person.

(d) At all times during the term of this Agreement, no Improvements will be rented to an individual or family that is not an Eligible Tenant.

For purposes of this Section, a rental unit occupied by a person or family that at the time of application of such person or family for residence in such unit is an Eligible Tenant shall be counted as occupied by an Eligible Tenant during such person's or family's tenancy in such unit, even though such person or family ceases to be an Eligible Tenant.

#### 4.2 Reporting Requirements:

- (a) During the term of this Agreement, the Borrower shall obtain from each prospective tenant, as computed at the time of such tenant's application for residence in the Improvements, a certification dated immediately prior to the application for residence of such tenant in the Improvements as to the Annualized Gross Income of such tenant, in a form acceptable to the Town.
- (b) The Borrower shall maintain complete and accurate records pertaining to the Annualized Gross Income of each Eligible Tenant residing in the Improvements and shall permit, upon five (5) business days' notice to the Borrower, any duly authorized representative of the Town to inspect such records.
- (c) The Borrower shall prepare and submit to the Town as soon as all rental apartment units have been rented and on each January 1 thereafter a Certificate of Continuing Program Compliance executed by the Borrower stating (i) that all rental apartment units are occupied by

Eligible Tenants and (ii) that no default has occurred under this Agreement or, if such a default has occurred, the nature of such default and the steps, if any, the Borrower has taken or proposes to take to correct such default.

- (d) The Borrower shall also file with the Town, on the first day of each calendar year, copies of the income certifications specified in Section 5.6(a) obtained by the Borrower during the previous year from all tenants residing in the Improvements.

4.7 Maintenance: During such time as the Borrower will own and lease or rent the Property, the Borrower will maintain the Property, both inside and outside, in a good state of repair and preservation, except for ordinary wear or tear or obsolescence in spite of repair. The Borrower will not use or permit the use of any part of the Property for any unlawful purpose or permit any unsafe or unsanitary condition or nuisance to exist thereon.

Provided there is continued compliance with applicable laws and regulations of governmental authorities, the Borrower shall have the right to remodel the Improvements or make additions, modifications and improvements thereto, from time to time, which benefit the Improvements. The cost of which remodeling, additions, modifications and improvements shall be paid by the Borrower and which shall, when made, become a part of the Property.

4.8 Substitution or Removal of Portions of Property: The Borrower shall have the right from time to time to substitute personal property or fixtures constituting a part of the Property, provided that the personal property or fixtures to be substituted for the personal property or fixtures to be replaced shall be of comparable quality and that the Borrower shall have given to the Town notice in writing of its intention to effect such substitution at least seven (7) days prior to such substitution. Removal of any portion of the Property other than personal property or fixtures replaced in accordance with the preceding sentence shall be made only with the prior written consent of the Town.

## **ARTICLE V**

### **Borrower's Warranties**

Borrower hereby warrants and represents to Town as follows:

5.1 Validity of Loan Documents: The Loan Documents are in all respects legal, valid and binding in accordance with their terms and grant to the Town a direct, valid and enforceable first lien on and security interest in and to the Property.

5.2 Priority of Lien on Personal Property: No chattel mortgage, bill of sale, security agreement, financing statement or other title retention agreement has or will be executed with respect to any materials, fixtures, machinery, equipment or other personal property of the Borrower given as security for the Loan, without the prior written consent of the Town.

5.3 Conflicting Transactions of Borrower: The consummation of the transaction hereby contemplated and the performance of the obligations of the Borrower under and by virtue of the Loan Documents will not result in any breach of, or constitute a default under, any mortgage, deed of trust, promissory note, lease, loan or credit agreement, partnership agreement or other instrument, document or agreement to which the Borrower or any Guarantor is a party or by which it is bound or affected.

5.4 Litigation: There are no actions, suits or proceedings pending or threatened, against or affecting the Borrower or the Property, or involving the validity or enforceability of any of the Loan Documents or the priority of the lien and security interest thereof, at law or in equity, or before or by any governmental authority.

5.5 Violations of Requirements: The Borrower has no knowledge of any violations or notices of violations of any statute, law, ordinance, order, rule or regulation relating in any way to the Property, or of any other requirement described in Section 5.6.

5.6 Compliance with Requirements; Hazardous Waste: (i) The Plans and construction pursuant thereto and the use of the Property contemplated thereby comply with all applicable statutes, laws, ordinances, orders, rules, regulations, restrictive covenants and all requirements of all governmental authorities including without limitation, building ordinances, health and environmental ordinances and zoning ordinances and regulations; (ii) the Plans have been approved by all necessary governmental authorities, and all zoning, utility, building, health, operating and other required permits have been obtained or will be obtained by the Borrower prior to the commencement of construction, copies of all of which shall be delivered to the Town; (iii) the Property is free of hazardous waste, contaminants, oil and radioactive and any other materials the removal of which is required or the maintenance of which is prohibited or penalized; (iv) the Borrower will not use or permit the use of any hazardous or environmentally regulated substance on the Property other than as customarily used by residential tenants in compliance with all applicable environmental laws and regulations, and if any such substance is found on the Property, the Borrower will cause it to be removed immediately at the Borrower's expense. The Borrower shall furnish the Town with such evidence of the foregoing as the Town shall request, including without limitation a report and certification from an engineer acceptable to the Town. Notwithstanding any of the Borrower's warranties herein to the contrary, the Borrower has taken the steps necessary to insure that it can avail itself of the defenses to hazardous waste liability, if such liability is ever found to exist, provided in 42 USC 9607(b)(3) of the Comprehensive Environmental Response, Compensation and Liability Act.

5.7 Availability of Utilities: All utility services necessary or desirable for the construction of the Improvements and the operation thereof for their intended purposes and the timely issuance of certificates of occupancy, are presently available (through public or private easements or rights-of-way which would inure to the benefit of the Town in the event of the foreclosure of, or the sale under the power contained in, the Deed of Trust) at the boundaries of the Land, including, but not limited to, water supply, storm and sanitary sewer, electric and telephone facilities. The Borrower shall furnish the Town with such evidence of the foregoing as the Town shall request, including without limitation certificates of the

General Contractor, appropriate governmental officials and appropriate utility company officials.

5.8 Condition of Property: The Property has not been damaged or injured as result of any fire, explosion, accident, flood, spill, leak or disposal of a regulated substance as such term is defined under all applicable federal, state and local environmental statutes, rules, regulations or ordinances, or other casualty.

5.9 Brokerage Commissions: The Borrower has employed no brokers in connection with the Commitment or the Loan.

5.10 Financial Statements; Other Information: The financial statements of the Borrower heretofore delivered to the Town are true and correct in all respects and fairly present the respective financial conditions of the Borrower as of the respective dates thereof. No material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof. No other certification, report or other information submitted to the Town by the Borrower, or on Borrower's behalf, contains any material misstatement of fact or omits to state any fact necessary to make such certification, report or other information not misleading.

5.11 Status and Authority: (i) The Borrower is a non-profit corporation duly organized, existing and in good standing under the laws of North Carolina, (ii) its articles of incorporation and any certificates of assumed or business name have been delivered to the Town and are in full force and effect and have not been amended or changed, (iii) no proceeding is pending, planned or threatened for the dissolution, termination or annulment of it, (iv) all articles of incorporation and of assumed or business name required to be filed have been duly filed and it has complied with all other conditions prerequisite to its doing business in North Carolina, (v) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in transactions contemplated by the Loan Documents, and (vi) all necessary corporate actions of it have been duly taken.

5.12 Construction: Both the Borrower and the General Contractor are and shall remain in full compliance with their respective obligations under the contract(s) for construction of the Improvements. The work to be performed under the construction contract(s) is all the work called for by the Plans, and all work on the Improvements shall substantially conform to the Plans and shall be free of material structural defects. Each construction contract entered into by the Borrower or General Contractor, or on their behalf, in connection with the Improvements shall contain a provision specifically

5.13 Access: The Land abuts publicly dedicated and maintained streets and access to the Land may be made by such streets. All curb cuts and traffic signals shown on the Plans are existing or have been fully approved by all necessary governmental authorities. The Borrower shall furnish the Town with such evidence of the foregoing as the Town shall request, including without limitation, certificates of a surveyor approved by the Town.

5.14 No Event of Default Under Loan Documents: No Event of Default by the Borrower exists under any of the Loan Documents, and no event has occurred and is continuing which, with notice or the passage of time or both, would constitute an Event of Default under any of the Loan Documents.

6.15 Sufficient Funds: Sufficient funds are available to the Borrower, in addition to the proceeds of the Note, to pay all costs of construction of the Improvements in the manner required hereby.

6.16 Indemnification: To the fullest extent permitted by law, and excepting claims arising out of the intentional misconduct of the Town, its officers, employees and/or agents, the Borrower releases the Town from, agrees that the Town shall not be liable for and agrees to hold the Town and its officers, employees and agents harmless against: (a) any and all claims by or on behalf of any person arising in any manner whatsoever from or out of (1) any condition of the Property, (2) the construction, reconstruction, improvement, use, occupancy, conduct or management of or in any work or anything whatsoever done in or about the Property, (3) any accident, injury or damage occurring in or about the Property, (4) any breach or default by the Borrower of or in any of its obligations hereunder, (5) any environmental contamination of the Property where such liability arises under any applicable federal, state or local statute, rule, or ordinance including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or (6) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees; and (b) any and all costs, counsel fees, expenses, liabilities, obligations, losses or damages incurred in connection with any such claim or any action or proceeding brought thereon. In case any action or proceeding which is brought against the Town or any such officer, employee or agent by reason of any such claim, the Borrower, upon notice from the affected party, shall resist or defend such action or proceeding. Subject to the foregoing, the Town shall cooperate and join with the Borrower at the expense of the Borrower as may be reasonably required in connection with any action taken or defended by the Borrower. In the event of a conflict between the provisions of this section and any other section of this Agreement, this section shall be deemed to be controlling.

## **ARTICLE VI**

### **Borrower's Covenants and Agreement**

The Borrower covenants and agrees with the Town as follows:

6.1 Payment Noncommencement; Additional Documents: The Borrower will pay when and as due all sums and other payments owing to the Town hereunder or under the Note or other Loan Documents. The Borrower will not permit the commencement of any work or the delivery of any materials until the Note and Deed of Trust have been executed, and the Deed of Trust properly placed on record. On demand of the Town, the Borrower will do any act, or execute or cause to be executed by the appropriate parties any additional documents required by the Town to secure the Loan, confirm the security interest and lien of the Deed of Trust and first priority thereof or to comply with any conditions the Town may have imposed as a term of the loan

commitment, including such additional documents, but not limited to, a new or replacement Note and/or Deed of Trust and an agreement extending or otherwise modifying the Note and/or Deed of Trust and a certificate as to the amount of the indebtedness evidenced by the Note.

6.2 Commencement of Construction: The Borrower will begin development activity as soon as practicable after recordation of the Deed of Trust, and, in any event, within sixty (60) days after the date of this Agreement and will continue conscientiously to complete the construction of the Improvements. Construction work constituting the Improvements will be carried out and the Improvements will be utilized and maintained in such manner as to conform with this Agreement and all applicable zoning, planning, building, land use, environmental and other laws, regulations, ordinances and requirements of all governmental authorities having jurisdiction over the Improvements, and all necessary permits, licenses, consents and permissions have been obtained as of the date of execution of this Agreement or will be obtained.

6.3 Notice of Nonpayment: The Borrower will advise the Town immediately in writing if Borrower receives any notice, written or oral, from any professional, laborer, contractor or material furnisher to the effect that the professional, laborer, contractor or material furnisher has not been paid for any professional services, labor or materials furnished to, on or in the Property.

6.4 Correction of Defects; Changes to Plans: The Borrower, at Borrower's sole cost and expense from funds other than the Loan proceeds, will correct any defects in the Improvements or any departure from the Plans not previously approved by the Town or otherwise permitted hereunder, whether such defects or departures are discovered before or after the disbursement of any Loan proceeds relating thereto. The Borrower will not change, alter or amend in any material respect either the Plans or installation of the Improvements without the prior written consent of the Town, and will not permit any material deviations of any contractor(s) from the Plans. Notwithstanding the foregoing, no consent is required from the Town for (i) change orders in an amount equal to or less than ten percent (10%) of the construction contingency per occurrence or (ii) multiple change orders that do not exceed in the aggregate the total construction contingency allowance of One Hundred Thousand Dollars (\$100,000).

6.5. Subcontractors: The Borrower will deliver to the Town, upon request, the names of persons with whom the Borrower or any general contractor has contracted or intends to contract for the construction of the Improvements or for the furnishing of labor or materials for them.

6.6 Inspection by the Town; Borrower to Furnish Plans; Receipts: The Borrower will permit the Town and its authorized agents to enter upon the Property during normal working hours and as often as the Town desires, for the purpose of inspecting the construction of the Improvements and all materials used or to be used in the construction thereof. When requested, the Borrower will furnish to the Town detailed plans, shop drawings and specifications which relate to the Improvements. The Borrower will cooperate, and shall cause all general contractors and architects to cooperate, with the Town and its authorized agents during such inspections (including making available to the Town working copies of the Plans and other related materials and documents). Failure of the Town or its authorized agents to

undertake any authorized inspections or to discover any defects or to reject materials or workmanship during any such inspection shall not make it liable to the Borrower or to any other person or relieve any obligations of the Borrower hereunder, nor shall any prior failure constitute a waiver of the Town's right subsequently to inspect and to reject any such workmanship or materials. The Borrower acknowledges that neither the Town's Inspector nor any other agent of the Town shall have any obligation or responsibility whatsoever to the Borrower, General Contractor or any of their agents or employees. When requested, the Borrower will furnish to the Town proof that all bills for labor and materials have been paid, except those which will be paid from the current request for advance.

6.7 Payment of the Town's Expenses: Whether or not the Loan is made, or all funds disbursed hereunder, the Borrower agrees to pay all expenses incurred by the Borrower in order to meet the Town's requirements in connection with the Loan, including (without limitation) fees and expenses for origination; commitment fees, fees for appraisal, re-appraisal, survey, recording, and title insurance premiums; architect's and the Town's attorneys' fees in connection with the making of the Loan and the enforcement of the Town's rights hereunder. The Town may pay any such amounts to be repaid by the Borrower immediately, and if Borrower shall not reimburse the Town therefore within ten (10) days after written demand, the Town may add the same to the unpaid principal of the Loan, or if the Loan was not made, any such unpaid amounts shall bear interest at the rate described in the Note.

6.8 Contract with General Contractor and Architects; Additional Contractors: Except as permitted in Section 6.4, the Borrower will not, without the prior approval of the Town: (a) terminate or cancel or amend or modify in any manner any contracts or agreement with any general contractor or architect for the providing of labor, services or materials in connection with the construction of the Improvements; (b) permit any default under the terms thereof, (c) waive any of the obligations of any general contractor or any architect thereunder; or (d) take any action or fail to take any action which would relieve any general contractor or architect from its obligations thereunder. The Borrower will immediately notify the Town of any additional or substitute general contractors or any architects with whom the Borrower has dealt in connection with the construction of the Improvements, and the Town has the right to require the submission of any additional Loan documentation regarding such contractors or architects and the right to approve or disapprove any such additional or substitute general contractors or such architects, which consent or approval shall not be unreasonably withheld.

6.9 Foundation Survey: Upon the completion of the construction of the foundation for any building constituting a part of the Improvements, the Borrower will promptly submit to the Town for its approval two (2) copies of a foundation survey of the Property prepared by a North Carolina registered land surveyor showing no violation of any restrictions, zoning or covenants pertaining to the Property. If requested by the Town, the Borrower shall cause the surveyor preparing such survey to submit to the Town a certification as to the absence of any encroachments from or onto the Land and compliance by the Improvements with all relevant zoning requirements and restrictive covenants governing the size, location and height of such Improvements. The Borrower will cause such survey to be delivered to the title insurance company issuing the Title Policy and shall cause the company to issue an endorsement providing coverage as to matters of survey.

6.10 Financial Statement: The Borrower will submit or cause to be submitted to the Town at such time or times so requested the then current financial statements of Borrower (and any general partner of Borrower and person or entity that is an equity owner, either directly or indirectly, of the Borrower) in such form as is acceptable to the Town. The Town may require the financial statements of the Borrower to be certified by a certified public accountant satisfactory to the Town.

6.11 Approval of Liabilities, Expenditures and Binding Commitments: Prior to payment in full of the Loan, the Borrower will not, without prior written consent of the Town, incur any liability, make any capital expenditures or enter into any binding commitments of a material nature that would adversely effect its financial condition.

6.12 Insurance: The Borrower will obtain such insurance or evidence of insurance as the Town's Risk Manager may reasonably require, including, but not limited to, the following:

(a) Title Insurance. A mortgage loan title insurance policy in an amount, form and substance and written by a title insurance company satisfactory to the Town and insuring a valid first lien upon and security interest in and to the Property by virtue of the Deed of Trust, the original of which policy shall be promptly delivered to the Town. The policy shall contain no exceptions other than those approved by the Town.

(b) Builder's Risk Insurance. All risk replacement cost insurance with the agreed amount endorsement, written in builder's risk form, with standard noncontributing mortgagee clauses and standard subrogation clauses, such insurance to be in such amounts and form and by such companies as shall be approved by the Town, the originals of which policies (together with appropriate endorsements thereto, evidence of payment of premiums thereon and written agreement by insurer or insurers therein to give the Town thirty (30) days' prior written notice of intention to cancel) shall be delivered promptly to the Town; said insurance coverage to be kept in full force and effect at all times until the completion of construction of the Improvements.

(c) Hazard Insurance: All risk replacement cost insurance with the agreed amount endorsement and such other hazard insurance as the Town may require with standard noncontributing mortgagee clauses and standard subrogation clauses. Such insurance is to be in such amounts and form and by such companies as shall be approved by the Town's Risk Manager, the originals of which policies (together with appropriate endorsements thereto, evidence of payment of premiums thereon and written agreement by the insurer or insurers therein to give the Town thirty (30) days prior written notice of intention to cancel) shall be promptly delivered upon completion of construction of the Improvements and before any portion of the Property is occupied by the

Borrower or any tenant of the Borrower, with such insurance to be kept in full force and effect at all times thereafter until the payment in full of the Loan.

(d) Public Liability and Worker's Compensation Insurance: A certificate from an insurance company indicating that the Borrower is covered by general liability and worker's compensation insurance to the satisfaction of the Town's Risk Manager. The Town must be named as additional insured on the liability policy. The certificate and the endorsement providing additional insured coverage must be originals. All insurance must be provided by companies with a Best rating of A or better and companies authorized to do business in North Carolina.

(e) Flood Insurance: Satisfactory evidence, which may consist of a letter from the appropriate agent of the National Flood Insurance Association that the Land is not located in an area designated by the Secretary of Housing and Urban Development as having special flood hazards. In the event the Land is so located, and the Town approves continuing with the Loan, Borrower shall provide the Town with satisfactory evidence that the maximum amount of available flood insurance is in effect.

6.13 Collection and Application of Insurance and Condemnation Proceeds: The Borrower will cooperate with the Town in obtaining for the Town the benefits of any insurance, condemnation or other proceeds lawfully or equitably payable in connection with the transactions contemplated hereby and to reimburse the Town for any expenses incurred in connection therewith (including the payment by the Borrower of the expense of any independent appraisal on behalf of the Town in case of a fire or other casualty or condemnation affecting the Property). All such proceeds shall be applied to the restoration of the Property or to the payment of the Loan as more particularly described in the Deed of Trust.

6.14 Application of Loan Proceeds: The Borrower will use the proceeds of the Loan solely for the purpose of paying for acquisition of fee simple title to the Property.

6.15 Sign and Advertising Regarding Construction Financing: If so requested by the Town, the Borrower will use the name of the Town in any advertising or communications; however, the Borrower shall not do so without the prior written consent of the Town.

6.16 Notice of Occupancy: The Borrower will permit no occupancy by tenants of any portion of the Improvements unless and until appropriate certificates of occupancy have been issued for such Improvements and copies thereof have been forwarded to the Town.

6.17 Books and Records: The Borrower will maintain accounting records for the Improvements, separate from any general accounting records which the Borrower may maintain in connection with the Borrower's general business activities. The Borrower acknowledges that the purpose of this provision is to facilitate determination of costs incurred with reference to the Improvements and the obligations of the Borrower in respect thereof. The Borrower agrees that the Town shall, at any reasonable time, have access to and the right to examine all

accounting records of the Borrower which relate directly or indirectly to the Improvements. It is expressly agreed that the reasonable cost to the Town of the services of accountants which the Town may employ, after a default or an Event of Default under any of the Loan Documents, to make examinations of the Borrower's accounting records with reference to the Improvements, as the Town shall determine to be necessary or appropriate in the protection of the Town's interests, shall be an expense which shall be treated as an advance on account of the Loan. From and after the commencement of the Permanent Phase, the Borrower shall furnish the Town with quarterly and annual operating statements for the Property sufficient to enable the Town to verify the amount of income being generated by the Improvements and the expenses of the operation hereof.

6.18 Administration of the Loan: The Borrower will comply, during the term of the Loan, with the Town's requirements with regard to Draw Request procedures, reporting procedures, and other matters related to the Loan; will utilize the Town's forms in connection therewith; and, without limiting the generality of the foregoing, will provide the Town monthly, during the term of the Loan, with such photographs of the Property as the Town shall reasonably require.

6.19 Secondary Financing and Alienation: During the Loan term there shall be (i) no sale or transfer of the ownership of the Property; and (ii) no changes in the structure of the Borrower without the Town's prior written consent, which consent may be withheld in the Town's complete discretion or be subject to such conditions as the Town may impose, including the payment of transfer fees or increases in the interest rate due under the Note.

6.20 Operation of Residential Apartments: At all times following the completion of the Improvements, the Borrower shall operate the Improvements as residential rental units for occupancy by Eligible Tenants. The Borrower shall not discontinue the operation of the Property as residential rental units for Eligible Tenants. The Town shall have the right to approve all managing agents employed by the Borrower to manage and operate the Property, which approval shall not be unreasonably withheld.

6.21 Borrower Not to Adversely Affect Tax-Exempt Status of Interest On Bonds:  
(Intentionally Deleted)

6.22 Opinion to be Provided: Prior to that date four and one half years from the date of this Agreement and prior to the anniversary of such date each fifth year thereafter during the term of this Agreement, and at such other times as the Town shall reasonably request, the Borrower shall cause to be delivered to the Town an opinion of counsel, who may be counsel for the Borrower, addressed to the Town and stating that, based upon the law in effect on the date of such opinion, no filing, registration or recording and no re-filing, re-registration or rerecording of any agreement or instrument, including the Deed of Trust, any assignment or amendment thereto, and any financing statement or amendments thereto, or any continuation statements or instruments of a similar character relating to any pledges and assignments made by the Borrower to secure its obligations under this Agreement, the Note or otherwise, is required by law during the five (5) year period commencing on the fifth anniversary of the date of this Agreement (or on each succeeding fifth anniversary thereafter as applicable), in

order to fully preserve and protect the security of the Town and the rights of the Town under this Agreement, the Note or otherwise, or if such filing, registration, recording, re-filing, re-registration or rerecording is necessary, setting forth the requirements in respect thereto. The Borrower, with such assistance and cooperation from the Town as the Borrower may reasonably request, shall take or cause to be taken all actions necessary to satisfy any such requirements. Promptly after any filing, registration, recording, re-filing, re-registration or rerecording of any such agreement or instrument, the Borrower will deliver to the Town an opinion of counsel, who may be counsel for the Borrower, to the effect that such filing, registration, recording, re-filing, re-registration or rerecording has been duly accomplished and setting forth the particulars thereof.

## **ARTICLE VII**

### **Events of Default**

The occurrence of any of the following events and the failure of the Borrower to cure or correct such event to the Town's satisfaction within the applicable notice or grace periods, if any, shall from and after the expiration of the relevant notice or grace period, if any, constitute an Event of Default under the terms of this Agreement.

7.1     Borrower's Failure to Pay: The Borrower's failure to pay any installment payment of principal, interest, the Servicing Fee or any other payment as the same becomes due under the Note.

7.2     Default in Loan Documents: The Borrower's default under or failure to perform under the terms of any Loan Document and such default or failure to perform is not cured within thirty (30) days after notice of default has been given to the Borrower as provided in Section 10.11; provided, however, if a different notice and cure period is specifically provided in such Loan Document with respect to a specific default such different notice and cure period shall govern with respect to the specified default.

7.3     Inaccurate Representations: The invalidity or material inaccuracy of any warranty, representation or opinion in this Agreement or in any other Loan Document, or the breach, withdrawal, cancellation, rescission, termination or alteration of any agreement, approval, opinion or waiver submitted to the Town as one of the Loan Documents, or the failure of Borrower to advise the Town of any material act or information of which it has knowledge, with regard to the Property, the Loan or otherwise;

7.4     Breach of Covenant: The breach by the Borrower of any covenant or agreement contained in this Agreement or in any other Loan Document.

7.5     Deviation from Plans: Defective Workmanship: Any material deviation from the Plans in the methods or in the materials, fixtures or articles used in construction without the prior written approval of the Town, or the appearance of materially defective workmanship or materials.

7.6. Easements or Encroachments on Survey: The appearance on any survey furnished hereunder of easements or encroachments which have occurred without the written approval of the Town.

7.7 Termination or Delay in Progress of Work: Cessation of the work of construction prior to completion of the Improvements in accordance with the Plans for as much as ten (10) days and the failure to recommence work within five (5) days after notice from the Town given after the expiration of such period; or a determination by the Town that the work of construction cannot reasonably be expected to be completed prior to the Completion Date.

7.8 Claim of Lien: The filing of any claim of lien against the Property, or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold funds and the continued maintenance of said claim of lien or notice to withhold for a period of thirty (30) days after notice from the Town without discharge or satisfaction thereof or provision therefore satisfactory to the Town in accordance with the terms hereof.

7.9 Injunction. The issuance of an order or decree in any court of competent jurisdiction restraining, enjoining or prohibiting the construction of the Improvements or restraining, enjoining or prohibiting Borrower or the Town from performing this Agreement, when the order continues in effect unstayed for a period of thirty (30) days.

7.10 Insurance Policies: The Borrower neglects, fails or refuses to obtain and to keep in full force and effect any insurance policies required by the Town or any governmental permit or approval with respect to the construction of the Improvements and fails to restore such insurance or such approval or permit within ten (10) days after notice from the Town.

7.11 Lawsuits: Any suit or administrative action shall be filed against the Borrower or any person or entity that is an equity owner (either directly or indirectly) of the Borrower which, if adversely determined, could substantially impair the ability of the Borrower to perform any of its or his obligations under and by virtue of the Loan Documents and such suit is not dismissed within sixty (60) days.

7.12 Misleading or Unfurnished Financial Statements; Adverse Change in Financial Condition of Borrower: Any representation or warranty submitted to the Town concerning the financial condition or credit standing of the Borrower proves to be materially false or misleading, or if the Borrower shall fail to furnish any financial information requested by the Town, or, in the Town's opinion, there shall occur a material adverse change in the financial condition or credit standing of the Borrower.

7.13 Priority of Deed of Trust: Other Liens: The Deed of Trust, in the opinion of the Town's counsel, does not constitute a first priority and enforceable lien upon all of the Property or the status of the Deed of Trust as a first priority lien on the Property shall be challenged or endangered by any party whatsoever and the title insurance company providing

the Title Policy shall deny coverage; or the Borrower fails to keep the Property free and clear of all encumbrances, liens, mortgages, security interests and subsequent financing, except those previously approved in writing by the Town and except involuntary liens which the Borrower has bonded against to the Town's satisfaction and which are being contested by the Borrower in good faith.

7.14 Failure to Commence or Complete Construction: In the exclusive judgment of the Town, if development activity has not commenced within ninety (90) days after the Closing Date, or the Improvements are not fully completed in accordance with the Plan's on or before the Completion Date, Borrower shall notify the Town as soon as possible of its request for a contract extension should it be known that Borrower will not meet the completion deadline.

7.15 Invalidity or Questioning of Permit or Compliance with Other Legal Requirements: Any permit, approval or consent or any building, zoning, environmental or other legal requirement of any governmental authority relating to the Property, the Improvements or the operation thereof is revoked or invalidated, or any of such matters is questioned by a proceeding by any board, commission, agency, court or other authority having jurisdiction thereof and such permit or approval is not restored or such proceeding is not dismissed within thirty (30) days after notice from the Town to the Borrower.

7.16 Bankruptcy, etc.: The Borrower shall (a) apply for or consent to the appointment of a receiver, trustee or liquidator of the Borrower or any of the Property, (b) file a voluntary petition in bankruptcy or admit in writing the Borrower's inability to pay its or his debts as they become due, (c) make a general assignment for the benefit of creditors (d) file a petition or answer seeking reorganization or rearrangement with creditors who are taking advantage of any insolvency law, (e) file an answer admitting the material allegations of a petition filed against the Borrower or such similar proceeding, or (f) be the subject of order, judgment or decree entered by any court of competent jurisdiction, or by any other duly authorized authority, on application of a creditor or otherwise, adjudicating the Borrower as bankrupt or involvement or approving a petition seeking reorganization of the Borrower or appointing a receiver, trustee or liquidator of any of the Property, if such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days. No additional notice shall be applicable to matters under this Section 8.15

7.17 Dissolution, etc. of Borrower: The Borrower or any owner, either directly or indirectly, of an equity interest in the Borrower shall be dissolved, wound up, liquidated or otherwise terminated, or a party to any merger or consolidation without the written consent of the Town. No notice or opportunity to cure shall be required for a default under this Section 8.16.

7.18 Transfer of Property or Interest in Borrower: If any interest in the Property is transferred or disposed of in any manner or there shall occur any change in the structure of the Borrower (or any equity owner, either directly or indirectly, of the Borrower), including without limitation, a change in partners, shareholders, or any change in the respective interests of any partner or shareholder thereof, unless such disposition or change is specifically

permitted by Section 7.19 or unless the Town shall give its prior written consent thereto. No notice or opportunity to cure shall be required for a default under this Section 8.17.

7.19 Impairment to Security: Any condition or situation which constitutes, in the Town's judgment, a substantial danger or impairment to the security for the Loan (including the Town's reasonable suspicion that one or more of the aforementioned Events of Default has occurred) and such condition or situation is not remedied within thirty (30) days after written notice to the Borrower to remedy such condition or situation.

## **ARTICLE VIII**

### **Town's Rights and Remedies**

In the event of the occurrence of any Event of Default the Town shall, in addition to all other remedies as may be provided by law or by any other Loan Document, be entitled to the following rights and remedies:

8.1 Acceleration of Note; No Further Disbursements: Upon the occurrence of an Event of Default, the entire unpaid principal balance of the Loan, including all accrued interest shall, at the option of the Town, and without notice to the Borrower, become immediately due and payable and the Town shall be under no obligation to make any further disbursements of Loan proceeds hereunder. The Borrower shall continue to be obligated to perform all duties and obligations under the Loan Documents despite any decision by the Town to cease disbursements of Loan proceeds.

8.2 Assignment of Construction-Related Contracts: Effective upon the occurrence of an Event of Default, the Borrower hereby assigns to the Town (without limiting in any manner any other assignment thereof previously or contemporaneously made by the Borrower to the Town) all of the Borrower's interest in all contracts relating to the construction of the Improvements, but this assignment shall not, in the absence of affirmative written ratification of any contract by the Town, be deemed to impose upon the Town any of the Borrower's obligations under any such contract. A ratification of one or more contracts shall not constitute the ratification of any other contracts. The Borrower hereby constitutes and appoints the Town its true and lawful attorney-in-fact, with full power of substitution in the Property to complete the Improvements in the name of the Borrower. The Borrower hereby empowers said attorney as follows: (a) to use any funds of the Borrower, including any funds which may remain undisbursed hereunder, for the purpose of completing the Improvements in the manner called for by the Plans; (b) to make such additions, changes, and corrections in the Plans as shall be necessary or desirable to complete the Improvements; (c) to employ such contractors, subcontractors, agents, architects, and inspectors as shall be required for said purposes; (d) to pay, settle, or compromise all existing bills and claims which may be liens against the Improvements, or as may be necessary or desirable, in the sole discretion of the Town, for the completion of the Improvements or for the clearance of title; (e) to take over and use all or any part of the labor, materials, supplies and equipment contracted for, owned by, or under the control of the Borrower, whether or not previously incorporated into the Improvements; (f) to execute all applications and certificates in the name of the Borrower which may be

required by any of the contract documents; (g) to prosecute and defend all actions or proceedings in connection with the Property or the construction of the Improvements and to take such action and require such performance as the Town shall deem necessary under any guaranty of completion; and (h) to do any and every act with respect to construction or completion of the Improvements which the Borrower might do in its own behalf, including without limitation, execution, acknowledgment, and delivery of all instruments, documents, and papers in the name of the Borrower as may be necessary or desirable, in the sole discretion of the Town. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. All sums so expended by the Town shall be deemed to have been disbursed to the Borrower and secured by the Deed of Trust and any other Loan Documents and shall be deemed a necessary expenditure for the preservation of the Town's security. The Borrower hereby also assigns and quitclaims to the Town all sums undisbursed under the Loan, with such assignment and quitclaim to be effective only upon the occurrence of an Event of Default. The Town may require the General Contractor and the Borrower's architect, if any, to execute documentation evidencing their consent to this assignment, and failure of either General Contractor or architect to give such consent shall constitute an Event of Default hereunder.

8.3 Payments by the Town in the Event of Dispute: Where disputes have arisen which, in the good faith opinion of the Town, may endanger timely completion of the Improvements or fulfillment of any condition precedent or covenant herein, the Town may agree and enter into an agreement to disburse and may disburse Loan funds for the account of the Borrower without prejudice to the Borrowers rights, if any, to recover said funds from the party to whom paid. Such agreement or agreements may take the form which the Town, in its discretion, deems proper, including, but not limiting the generality of the foregoing, agreements to indemnify (on behalf of the Borrower and/or for the Town's own account) any title insurer against possible assertion of lien claims, agreements to pay disputed amounts to contractors in the event the Borrower is unable or unwilling to pay the same, and the like. All sums paid or agreed to be paid pursuant to such undertaking shall be for the account of the Borrower, and the Borrower agrees to reimburse the Town for any such payments made upon demand therefore, with interest at the default rate set forth in the Note from the date of payment until date of reimbursement. Such disbursements are secured by the Deed of Trust and by all other Loan Documents which are applicable.

8.4 Appointment of Receiver: The Town shall be at liberty immediately upon any Event of Default to apply for and shall be entitled as a matter of right, without regard to the value of the Property or to the solvency or insolvency of the Borrower, to the appointment of a receiver to collect the rents and profits of the Property and/or to manage and operate all or part of the Improvements and with the power to sell the Property under order of Court and to apply the net proceeds of the sale toward the payment of the debt secured by this Deed of Trust.

8.5 Remedies Cumulative: All remedies of the Town provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided or available at law or in equity. The exercise of any right or remedy by the Town hereunder shall not in any way constitute a cure or waiver of default hereunder or under the Note, the

Deed of Trust or any applicable Loan Document, or invalidate any act done pursuant to any notice of default, or prejudice the Town in the exercise of any of its rights hereunder or under the Note, the Deed of Trust or any applicable Loan Document. No delay or omission to exercise any right or power accruing upon any default shall impair any such right of power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

8.6 Assignment by the Town: The title, interest, right and power granted herein by the Borrower to the Town shall inure to the benefit of anyone to whom the Town shall assign the indebtedness herein secured, as well as to the successors and legal representatives of the Town.

8.7 Liability of the Town: Whether or not the Town elects to employ any or all remedies available to it on occurrence of an Event of Default, the Town shall not be liable for the construction of or failure to construct or complete or protect the Improvements or for payment of any expense incurred in connection with the exercise of any remedy available to the Town or for the construction or completion of the Improvements or for the performance or non-performance of any other obligation of the Borrower.

8.8 Security Interest in Reserves etc.: It is understood and agreed that the Town shall have and enjoy, and is hereby granted a lien on and a security interest in, (a) all unpaid contributions, equity payments and other funds due the Borrower, or other equity owners of the Borrower and (b) any and all reserves, deferred payments, insurance refunds, impound accounts, refunds for overpayment of any kind, and any surplus or withheld funds or funds or payments owing from any party to the Borrower arising out of or occurring in connection with the construction of the Improvements, and such lien and security interest shall constitute additional security for the indebtedness of the Borrower evidenced by the Note, and upon the occurrence of any default hereunder the Town shall have and possess any and all remedies of a secured party provided by law with respect to enforcement of and recovery on its security interest on such items and amounts.

8.9 Access to Books: The Town may have access to and inspect, examine and make copies of the books and records and any and all accounts, data and tax returns of the Borrower.

## **ARTICLE IX**

### **General Conditions**

The following terms and covenants shall be applicable throughout the term of this Agreement:

9.1 No Waiver: No waiver of any Event of Default or breach by the Borrower hereunder shall be implied from any delay or omission by the Town to take action on account of such default, and no express waiver shall affect any default other than the default specified in the waiver, and it shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein must be in writing and shall not

be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the Town to or of any act by the Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act. No single or partial exercise of any right or remedy of the Town hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy. The Town may, at any time, extend the payment of the Loan and any extensions so granted shall be deemed made in pursuant of this Agreement and are not to be modifications thereof and shall not in any way adversely affect the priority of any of the Loan Documents.

9.2 No Third Party Beneficiaries: This Agreement is made and entered into for the sole protection and benefit of the Town, the Borrower and their successors and assigns, and no other person or persons shall have any right to action hereon or rights to the Loan funds at any time, nor shall the Town owe any duty whatsoever to any claimant for labor performed or material furnished in connection with the construction of the Improvements, or to apply any undisbursed portion of the Loan to the payment of any such claim, or to exercise any right or power of the Town hereunder or arising from any default by the Borrower.

9.3 Joint and Several Liability: All persons, firms and/or entities identified by the designation "Borrower" herein shall be jointly and severally liable to the Town for the faithful performance of the terms hereof.

9.4 Heirs, Successors, Assigns, Assignment: The terms hereof shall be binding upon and insure to the benefit of the heirs, successors, assigns and personal representatives of the parties hereto; provided, however, that the Borrower shall not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any moneys to be advanced hereunder in whole or in part without the prior written consent of the Town and that any such assignment (whether voluntary or by operation of law) without said consent shall be void. It is expressly recognized and agreed that the Town may assign this Agreement, the Note, the Deed of Trust and any other Loan Documents to any other person, firm, or legal entity provided that all of the provisions hereof shall continue in force and effect. In the event of such assignment, the Town shall thereafter be relieved of all liability hereunder and any Loan disbursements made by any assignee shall be deemed made in pursuance and not in modification hereof and shall be evidenced by the Note and secured by the Deed of Trust and any other Loan Documents.

9.5 Definitions: Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural, and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine. References to a "Section" or "Article" shall mean a section or article of this Agreement unless otherwise expressly stated.

9.6 Business or Commercial Purposes: The Borrower warrants that the extension of credit evidenced by the Note secured hereby is solely for business or commercial purposes, other than agricultural purposes.

9.7 Governing Law: This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State and any litigation relating to this Agreement shall be brought in a court in the State, with venue in Orange County.

9.8 Severability: Invalidation of any one or more of the provisions of this Agreement shall in no way affect any of the other provisions thereof, which shall remain in full force and effect.

9.10 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

9.11 Captions: The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision hereof.

9.12 Notices: When any notice or consent is required or permitted to be given under the terms of this Agreement or under applicable law, such notice or consent shall be in writing and shall be effective only upon the earlier of (i) actual receipt by the party to whom notice is given or (ii) 48 hours after deposit in registered or certified United States Mail. Such notice shall be given by personal delivery or sent by certified mail, return receipt requested, and addressed as follows:

To Borrower: Chief Executive Officer  
Community Alternatives for Supportive Abodes  
624 West Jones Street  
Raleigh, NC 27603  
Tel.: 919-754-9960 Fax: 919-754-9968

To Town: Town Manager  
Town of Carrboro  
301 West Main Street  
Carrboro, NC 27510  
Tel.: Fax: 919-

Or to such other persons or addresses as the parties may, from time to time, establish in writing.

9.12 Survivability: The Borrower's obligations, warranties and representation under Article IV, V and VI shall survive a default or breach by the Borrower hereunder whether or not such default or breach leads to the termination of this Agreement.

9.13 No Discrimination. The Town of Carrboro opposes discriminate on the basis of race and sex and urges all of its contractors and Borrowers to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under Town contracts and loans.

9.14 Exercise of Functions. Notwithstanding anything to the contrary contained in this Agreement, nothing contained in this Agreement shall in any way estop, limit or impair the Town from exercising or performing any regulatory, policing, legislative governmental or other powers and functions with respect to the Property pursuant to applicable law.

9.15 No Partnership. Nothing in this Agreement is intended or shall be considered to create a joint venture or partnership between the Town and the Borrower or constitute either the agent of the other or to make the Town in any way responsible for the duties, responsibilities, obligations, liabilities, debts or losses of the Borrower.

9.16 Limited Capacity of Town under this Agreement. The Borrower understands and acknowledges that with respect to the Town's Affordable Housing Fund, under which the Loan is being offered by the Town to the Borrower, the Town is acting in a limited capacity only as a lender and is not otherwise responsible in any way with respect for the construction, operation or maintenance of the Property. The Borrower further understands and acknowledges that the Borrower is responsible for contracting with any other person with respect to the construction, operation or maintenance of the Property, that the Borrower is responsible for determining that the Improvements have been constructed or will be constructed, and thereafter operated and maintained, in accordance with all applicable requirements of law and that the Borrower is responsible for its obligations to any other person with respect to the construction of the Improvements.

9.17 Whole Agreement. This Agreement, including the Loan Documents and all exhibits attached hereto, shall be the whole agreement between the Town and the Borrower with respect to the matters herein.

**IN TESTIMONY WHEREOF,** the parties hereto have caused this Agreement be duly executed by their authorized agents.

TOWN OF CARRBORO

\_\_\_\_\_  
David Andrews, Town Manager

ATTEST:

TOWN OF CARRBORO

\_\_\_\_\_  
Town Clerk

COMMUNITY ALTERNATIVES FOR  
SUPPORTIVE ABODES

By: \_\_\_\_\_  
Debra King, Chief Executive Officer

ATTEST:

COMMUNITY ALTERNATIVES FOR  
SUPPORTIVE ABODES

\_\_\_\_\_  
Secretary (Corporate Seal)

\_\_\_\_\_ County, North Carolina

I, a Notary Public in and for the aforesaid County and State certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that she is the Town of Carrboro Town Clerk, a municipal corporation, and that by authority duly given and as the act of the Town, the foregoing contract or agreement was signed in its corporate name by David Andrews, the Town Manager, sealed with its corporate seal, and attested by its said Town Clerk or Deputy Clerk. This the \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

\*\*\*\*\*

\_\_\_\_\_ County, North Carolina

I, a Notary Public in and for the aforesaid County and State certify that \_\_\_\_\_ personally (1) appeared before me this day, (2) stated that Debra King is the Chief Executive Officer of Community Alternatives for Supportive Abodes, a non-profit company organized and existing under the laws of the State of North Carolina, (3) acknowledged that the foregoing agreement with the Town of Carrboro carries on the company's business in the usual way, and (4) acknowledged the due execution of the contract or agreement on behalf of the company. This the \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

This instrument has been pare-audited in the manner required by the Local Government Budget and Fiscal Control Act. This the \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Finance Officer