

NORTH CAROLINA
DURHAM COUNTY

**CONSTRUCTION OF NINE SINGLE FAMILY UNITS – FRANKLIN VILLAGE
CONSTRUCTION/PERMANENT LOAN AGREEMENT**

THIS CONSTRUCTION/PERMANENT LOAN AGREEMENT is made and entered into this _____ day of _____ 2011 by and between Metropolitan Housing and CDC, Inc., (“MH CDC”) a North Carolina non-profit corporation whose mailing address is 402 N. Market Street, Washington, North Carolina 27889 (the "Borrower") and the City of Durham, North Carolina (the "City").

WHEREAS, the Borrower has applied to the City for a loan to finance new construction by the Borrower on the Property (as hereinafter defined) for use as construction of single family homeownership units to persons at or below 80% of the Area Median Income; and

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

NOW, THEREFORE, to induce the City 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 City 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 Construction/Permanent Loan Agreement, as it may from time to time be amended.

1.2 Annualized Gross Income: 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 Durham Metro Region, as they may be revised from time to time by

HUD.

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.

1.6 City: The City of Durham, North Carolina.

1.7 City's Inspector: The City's employee or designee, including but not limited to any one or more architectural, engineering or consulting firms of the City's choice, to be engaged by the City, 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 and to review and approve all Draw Requests.

1.8 Code: means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

1.9 Commitment: The City has agreed to make a loan to Borrower in a principal sum not exceeding \$450,000 in HOME funds.

1.10 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.

1.11 Construction Phase: The Construction Phase shall mean the period of time from the date of this Agreement until up to twenty four (24) months after the construction permit is received hereafter (the "Construction Phase Maturity Date"). Under no circumstances shall the Construction Phase Maturity Date extend beyond May 31, 2013. In the event, however, that the Borrower properly exercises its option to convert the Loan to a Permanent Loan in accordance with Article V, the Construction Phase shall end on the day immediately preceding the commencement of the Permanent Phase as provided in Section 5.3.

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

1.13 Draw Request: Any request by the Borrower, pursuant to Section 2.2 of this Agreement, for a disbursement of any portion of the proceeds of the Loan.

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

1.15 Eligible Buyer: means a person intending to purchase and reside in a Single-Family Dwelling Unit whose Annualized Gross Income (as computed at the time of application of such person or family for residence in such Unit) from whatever sources derived and before taxes and withholdings utilizing the Section 8 definition of income, does not exceed 80% of the HUD-specified Area Median Family Income.

1.16 First Mortgage: A mortgage of approximately \$600,000 with First South Bank in first lien position.

1.17 Forgivable Loan: That portion of the Loan forgiven in accord with Section 2.1, below.

1.18 General Contractor: a building, construction, or contracting firm with whom Borrower has contracted or may in the future contract with for the construction of the Improvements pursuant to a certain construction contract between them (the "Construction Contract").

1.19 Guarantor: None required.

HOME Funds: The funding made available under the HOME Investment Partnerships Program, plus all repayments and interest or other return on the investment of these funds.

1.20 Improvements: The improvements and fixtures located at the Property, including improvements and related amenities to be created at the Property, as indicated in Exhibit A of this Agreement.

1.21 Land: The nine (9) parcels of real property more particularly described in Exhibit A to the Deed of Trust, but commonly referred to by the following street addresses and identification:

229 N. Plum Street, PIN # 0831-14-44-3480
303 N. Plum Street PIN # 0831-14-44-2485
307 N. Plum Street PIN # 0831-14-44-2437
311 N. Plum Street, PIN # 0831-14-44-1499
1407 Morning Glory Avenue PIN # 0831-14-44-2317
1409 Morning Glory Avenue PIN # 0831-14-44-1379
1411 Morning Glory Avenue PIN # 0831-14-44-2365
1501 Morning Glory Avenue PIN # 0831-14-44-3350
1505 Morning Glory Avenue PIN # 0831-14-44-4208

1.22 Loan: The loan made by the City to the Borrower pursuant to the Loan Documents. The Loan shall have a Construction Phase and if the requirements of Article V are met, a Permanent Phase.

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

1.24 Multi-Family Dwelling Unit: .N/A

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

1.26 Permanent Phase: Provided the requirements of Article V are met, the period of time from the commencement of the Permanent Phase as provided in Section 5.3.

1.27 N/A

1.28 Plans: The plans and specifications for the construction of the Improvements and including such amendments as may, from time to time, be made by the Borrower, so long as the amendments are in accordance with the budget and the overall project plan, and which Plans are incorporated by reference into the Loan Documents as Attachment C to the CHDO Agreement of even date herewith.

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

1.30 Mortgage Loan Program Servicing Agreement: means the agreement between the City and a service provider to service mortgage loans by the City.

1.31 Second Mortgage: A mortgage from the City to Borrower of approximately \$450,000, with the City of Durham in second lien position.

1.32 State: means the State of North Carolina.

1.33 Title Assurances: (1) The Title Policy referred to in Section 1.34 insuring that the Deed of Trust is a valid second priority lien on the indefeasible fee simple estate of the Property subject only to such matters of title acceptable to the City, and (2) such certificates, lien waivers, subordination agreements, indemnity agreements, and other documents as the City 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.

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

1.35 Transitional Housing Unit: Not applicable.

ARTICLE II

The Loan

2.1 Loan by the City:

(a) Subject to the terms and conditions provided in this Agreement and in the Loan Documents, and all applicable laws and regulations, the City agrees to make the Loan to the Borrower and the Borrower agrees to borrow up to \$450,000 at zero percent (0%) interest, as specified in the Note. The Construction Phase of the Loan shall terminate no more than twenty four (24) months after the date of execution of this Agreement or after the construction permit is received, whichever is greater. Under no circumstances shall the Construction Phase extend beyond May 31, 2013. If, however, the Borrower exercises the option provided in Article V to convert the Loan to a permanent Loan, the Construction Phase shall expire on the last day immediately preceding the commencement of the Permanent Phase. The Permanent Phase shall be as set forth in Article V. So long as there shall exist no Event of Default or any condition which with the giving of notice or passage of time would constitute an Event of Default, the City agrees to make disbursements to the Borrower against the Note (and each advance hereunder shall be conclusively deemed made against the Note) for construction and development costs approved by the City up to the full Loan amount, in accordance with and subject to the following procedures.

(b) The cost to construct each home is anticipated to exceed the projected sales price. Therefore, at the time each home is sold to an Eligible Buyer, meaning at the time a closing is held and the home and property on which it is built is deeded to the Eligible Buyer, a portion of the Loan will be forgiven in the amount of the difference between the cost to construct that home and the home's sales price, so long as no event of default has occurred.

2.2 Draw Request: At such time as the Borrower shall desire to obtain, subject to the other requirements hereof, a disbursement of any portion of the proceeds of the Loan, the Borrower shall complete, execute and deliver to the City a properly completed draw request in a form designated by the City, together with the General Contractor's Payment Request which shall have been approved by the City's Inspector and by such other documents as the City may request ("Draw Request"), all in such form as the City may require from time to time. No failure or delay on the part of the City to require any such documents or information shall operate in any way so as to waive the City's rights to require all such documents and information at a later time. Draw requests will occur on a monthly basis, only with proper certification of completion from

the Architect, and with the final 5% retainage being paid only after receipt of a Certificate of Occupancy, Release of Liens and Final Cost Certification as approved by the project architect.

2.3 Evidence of Progress of Construction: Without in any way limiting the documentation that the City may require, each Draw Request shall be accompanied by evidence in form and content satisfactory to the City including, but not limited to, certificates and affidavits of the Borrower, General Contractor, and such other persons as the City may require showing the following:

- (a) the percentage of the Improvements completed at that time; the total funds expended to date by the Borrower in connection with the construction of the Improvements (including the portions thereof of which Loan proceeds have been previously disbursed); and the funds required to complete the construction of the Improvements;
- (b) that all outstanding claims for labor, materials and fixtures have been paid (except for bills not yet past due and for which payment will be promptly made upon receipt by the Borrower of the then requested Loan disbursement);
- (c) that there are no liens outstanding against the Property except for First South Bank's First Mortgage Deed of Trust and the City's Second Mortgage Deed of Trust, other than inchoate liens for property taxes not yet due;
- (d) that the Borrower has complied with all of its obligations, as of the date thereof, under the Loan Documents;
- (e) that all construction prior to the date of the Draw Request has been done in accordance with the Plans;
- (f) that all funds previously disbursed by the City, if any, have been applied directly to construction costs approved by the City;
- (g) that attached to such Draw Request are (i) a complete list of invoices or statements to be paid from the requested Loan disbursement, (ii) as to individual costs paid from the last preceding Loan disbursement, copies of invoices and statements, and (iii) satisfactory receipts from all subcontractors and materialmen paid from the last preceding Loan disbursement;
- (h) that all costs associated with change orders that extend beyond the costs in the agreement or that lessens the quality of the materials shall have been approved in writing by the City;
- (i) that the Loan proceeds then remaining to be disbursed are sufficient to

cover the remaining unpaid construction; and

(j) that all construction funds, other than the Loan made pursuant to this Agreement, have been exhausted, with the exception that all other funding sources have retained ten (10) percent of all construction draws until the certificate of occupancy is issued.

2.4 Continuation of Title Insurance Coverage: Each Draw Request shall, if required by the City, be accompanied by a satisfactory updated as-built survey of the Property, and by a satisfactory endorsement to the previously issued Title Policy, which endorsement shall (i) indicate that since the effective date of said policy (or the effective date of the last such endorsement, if any) there has been no change in the status of title to the Property as set out in said policy, (ii) have the effect of increasing the coverage under the "pending disbursement" clause of the policy by an amount equal to the advance then being made, and (iii) contain such other provisions as may be required by the City.

2.5 Limits on Amounts of Disbursements: At no time and in no event shall the City be obligated to disburse funds for personal property or construction materials stored off the Land or against any construction contract or subcontract not previously furnished to and approved by (and, if requested by the City, assigned to) the City.

2.6 Amount of Disbursement: Following a request by the Borrower for a Loan disbursement, the City shall disburse only after meeting the following conditions.

(a) Construction Work and Materials: Loan disbursements for construction work, materials and other "hard costs" shall initially be made on the basis of fifty percent (50%) of the value of the work and material then in place on the Improvements and materials acquired and stored on site in a manner reasonably satisfactory to the City, minus the amount of all previous Loan disbursements (including those for "hard" and "soft" costs). When Borrower's construction loan is expended (\$60,000 per unit), Loan disbursements for construction work, materials and other "hard costs" shall be made on the basis of ninety-five percent (95%) of the value of the work and material then in place on the Improvements and materials acquired and stored on site in a manner reasonably satisfactory to the City, minus the amount of all previous Loan disbursements (including those for "hard" and "soft" costs). As part of the loan disbursement process, Borrower is to include in its loan disbursement request, weekly certified payroll reports and the City of Durham subcontractor monthly record of payment report. The required forms will be provided by the City of Durham.

(b) Non-Construction Items: Loan disbursements for non-construction items (i.e., so called "soft costs") shall be made on the basis of 50% of all such costs as may be approved by the City in the City's discretion. When Borrower's First Mortgage is expended (\$60,000 per unit), Loan disbursements for non-construction items (i.e., so

called "soft costs") shall be made on the basis of 95% of all such costs as may be approved by the City in the City's discretion. The City may require that invoices for such costs be submitted for City approval prior to making any disbursements for such items. The City shall, in its discretion, determine what constitutes "construction items" or "non-construction items" for the purpose of determining the amount of disbursement to be made with respect to such items.

(c) At any time prior to or during the term of the Loan, the City may require the Borrower to submit an updated budget of construction and other costs associated with the construction and development of the proposed Improvements (the "Budget"). The Budget shall be in such detail as City may require and all aspects thereof are subject to City's approval. Disbursements under this Agreement and the associated Loan Documents shall under no circumstances exceed the City's commitment of \$450,000. If any costs exceed the committed amount, the Borrower shall pay such excess from its own funds.

(d) From and after the fulfillment of the conditions set forth in Section 4.2, the remaining undisbursed Loan proceeds shall be disbursed.

2.7 Notice, Frequency and Place of Disbursement: Unless otherwise determined by the City, (i) each Draw Request shall be submitted to the City at least ten (10) business days prior to the date of the requested advance, (ii) disbursements shall be made no more frequently than monthly, and (iii) all disbursements shall be mailed from the City of Durham's Finance Department.

2.8 Deposit of Funds Advanced: If required by the City, the Borrower immediately will deposit all Loan proceeds advanced by the City in a separate and exclusive demand deposit account with a financial institution acceptable to the City, and the City, at its option, may make any advance directly to such account (with the date of the deposit being the date of the advance for all purposes). All Loan proceeds shall be withdrawn and used solely for the purposes specified in the Draw Request, and Borrower will promptly furnish the City with evidence thereof. The City reserves the right to require that disbursements from any disbursement account for major contracts or subcontracts be made by checks with joint payees requiring endorsements by both the labor contractor and materialman.

2.9 Value of Work; Percentage Completion: The value of work and material in place as well as stored on the Property at any time shall be determined by the City and the City's Inspector, (or, if employed, by the City's Architect) and the percentage of completion so determined shall be binding on the Borrower.

2.10 Deposits by Borrower: If the City, at any time, determines that the Loan proceeds remaining to be disbursed are not sufficient to pay the cost of completing the Improvements in accordance with the Plans, the City shall have the right to require the Borrower to expend or to

deposit with the City sufficient additional funds from some other source to cover the deficit before the City will disburse any additional Loan proceeds. The City shall disburse the entire amount so deposited pursuant to the terms hereof prior to disbursing any additional Loan proceeds.

2.11 Payments to General Contractor, etc.: At its option, the City may make any or all Loan disbursements requested by the Borrower directly to the General Contractor or any subcontractor, laborer or material supplier providing labor, services or materials in connection with the construction of the Improvements, and the Borrower hereby gives the City irrevocable direction and authorization to so disburse the funds. No further direction or authorization from the Borrower shall be necessary to warrant such direct disbursements, and all such disbursements shall be secured by the Deed of Trust as fully as if made to the Borrower, regardless of the disposition thereof by the General Contractor, subcontractor, laborer or material supplier so paid, and the Borrower gives the person to whom such payments are made the authority, at the City'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.

2.12 Advances to Title Insurance Company: At its option, the City 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 City 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 City'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.

2.13 Advances Do Not Constitute a Waiver: No advance of Loan proceeds hereunder shall constitute a waiver of any of the conditions of the City's obligation to make further advances nor, in the event the Borrower is unable to satisfy any such condition, shall any such advance have the effect of precluding the City from thereafter declaring such inability to be an Event of Default hereunder.

2.14 City's Option to Employ Architect: The City reserves the right at any time to engage an architect or engineer of its choice to inspect the work and materials in place, to review the work for defects and conformity with the Plans, and to approve Draw Requests. All costs and expenses incurred by the City for such services shall be paid by the Borrower.

2.15 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 City for any and all costs, expenses and liabilities

paid or incurred by the City, 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 City 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 City for any and all expenses, costs and liabilities paid or incurred, or to be paid or incurred, by the City 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.

2.16 No Warranty by City: The City 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.

2.17 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. However, the expiration of the covenants referenced in this Section 2.17 shall not apply to the covenants regarding income restrictions and the period of affordability required under the terms of HUD's HOME funds. 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 First Disbursement

The City shall not be obligated to make the first Loan disbursement until all of the following conditions have been satisfied:

3.1 Instruments Received by the City: The City shall have received in form and

substance satisfactory to the City and the City's counsel, all documents, approvals, agreements, authorizations, opinions, certifications, consents, waivers, surveys, insurance policies, licenses, photographs, schedules, foundation survey, 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.

3.3 Borrower's Request: The City shall have received the Borrower's Draw Request as described in Section 2.2.

3.4 Architect's and the City's Inspector's Approval: Any architect engaged by the City's Inspection Department, the City's Housing Inspector, and the Project Manager shall have approved the Borrower's Draw Request.

3.5 No Advance Without Building Permit: The City will not make an initial advance of funds for construction activities without the Borrower having first acquired the building permits necessary for the construction of the Improvements, or documentation from the City's Inspections Department that no building permit is required.

ARTICLE IV

Conditions Precedent to Disbursements Following the First Disbursement

4.1 Conditions Precedent to Second and Subsequent Disbursements: The City shall not be obligated to make any Loan disbursements after the first disbursement and prior to the final disbursement unless and until all of the following conditions have been satisfied at the time of and with respect to each such disbursement

(a) All of the conditions stated in Article III;

(b) No lien or other interest shall have been permitted to attach to the Property except taxes for the current year, if not then payable, and other matters acceptable to the City; and upon request by the City, the Borrower shall have the Title Policy insuring the City's lien on the Property brought up to date upon each disbursement by issuance of an endorsement to the policy satisfactory to the City and Borrower shall provide to City all Title Assurances which the City may require;

(c) Construction of the Improvements has been conducted in a good and workmanlike manner, in substantial accordance with the Plans, and the Improvements have not been materially damaged or injured, in the opinion of the City, by fire or otherwise;

(d) At the time of each disbursement: (1) the City is satisfied with the quality and progress of construction; and (2) in the opinion of the City, the estimated remaining cost of construction of the Improvements does not exceed an amount which the City reasonably believes can be funded from the remaining Loan proceeds along with the proceeds of the first position loan.

(e) All warranties and representations referred to in Section 6.17 are true and correct; and

(f) If the foundation for any building constituting any of the Improvements has been completed the City shall have received an updated foundation survey satisfying the requirements of Section 7.9.

4.2 Conditions Precedent to Final Loan Disbursement: The City shall not be obligated to make a final Loan disbursement until all conditions in Article III and in Section 4.1 and all of the following conditions have been satisfied by no later than the Completion Date.

(a) The Improvements have been fully completed in a good and workmanlike manner and in substantial accordance with the Plans, and certificates as to completion in such manner have been issued by the General Contractor, the City's Inspector and the City's architect, if any, and certificates of occupancy and use have been issued with respect to all the Improvements by all appropriate governmental authorities.

b) A final, as-built survey of the Property has been received and approved by the City. Such survey shall show all Improvements in place, the striping of parking areas, streets, and roadways, all access easements and the location and dimensions of all easements affecting the Land.

(c) The Title Policy insurer shall have agreed in writing satisfactory to the City to issue to the City a Title Policy or endorsement thereto insuring the full amount of the Loan and containing no exceptions for possible mechanic lien claims or other exceptions not approved by the City, and the Borrower shall have provided to the City all Title Assurances which the City may require.

ARTICLE V

Permanent Phase

5.1 Permanent Phase: Provided that all of the following conditions have then been satisfied by the Borrower to the City's satisfaction, the Borrower shall have the option, exercisable at any time after the fulfillment of the following conditions but in no event later than fifteen (15) days prior to the Construction Phase Maturity Date, to convert all amounts advanced during the Construction Phase to a Permanent Loan which Permanent Loan shall have a final maturity date of May 31, 2015, (the "Permanent Phase Maturity Date"):

- (a) The Improvements shall have been fully completed to the City's satisfaction in accordance with the Plans and in accordance with all applicable governmental regulations and the City shall have received and approved written certifications of completion from the Borrower, the Borrower's architect, if any, and the General Contractor;
- (b) The Borrower shall have furnished to the City copies of certificates of occupancy with respect to all of the Improvements and such other governmental consents or approvals for use and occupancy of the Improvements as a residential apartment complex, as may be required by local, county, state, or federal governmental agencies;
- (c) The Borrower shall have furnished to the City and obtained the City's approval of a current survey of the Land and Improvements which survey shall be prepared by a registered land surveyor reasonably acceptable to the City and which survey shall show no matters which would materially and adversely affect (1) the operation of the Improvements as a residential apartment complex or (2) the value of the Improvements or (3) the City's lien thereon;
- (d) The Borrower shall have fully paid all costs and expenses of the construction and development of the Improvements and there shall be no unpaid materialmen or contractors (including, without limitation, the General Contractor) and the City shall have received a satisfactory endorsement to the Title Policy updating the effective date of the policy to the date of the commencement of the Permanent Phase and providing coverage against materialmen and mechanics' liens and against matters of survey;
- (e) No uncured Event of Default shall have occurred or shall be continuing under any of the Loan Documents; and

5.2 Exercise of Option to Convert the Loan to Permanent Loan: In order to exercise the option to convert the Loan to a Permanent Loan, the Borrower must provide the City with

written notice of such election at least fifteen (15) days prior to the Construction Loan Maturity Date. The notice shall set forth the desired relevant commencement date of the Permanent Phase determined in accordance with Section 5.3.

5.3 Commencement of Permanent Phase: Provided all of the requirements and conditions set forth in Section 5.1 have been met and the Borrower has properly exercised the option to convert the Loan to a Permanent Loan in the manner and at a time permitted under Section 5.2, then the Permanent Phase shall commence on the Construction Loan Maturity Date.

5.4 Permanent Phase Loan Terms: If the Permanent Phase commences as provided in this Article V, there shall be due on the Loan such payments as are set forth in the Note with respect to the Permanent Phase.

(a) On or before May 31, 2015, if there are undeveloped lots or unconstructed units, the Borrower may request a loan extension from the City of Durham that must be received by the City prior to May 31, 2015. The request must be writing addressed to the Director of the Department of Community Development. In the event the City does not grant the loan extension, title to the property and any improvements thereon shall be conveyed to the City of Durham by Borrower. If Borrower shall fail to provide good and clear title to the property to the City upon City's demand, the City shall be granted title through an action in the General Court of Justice, and if there are liens or other impairments of title Borrower shall be liable to the City for the cost of clearing or repairing such liens or improvements.

5.5 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 Buyer will use any of the Improvements as an investment property.

c. Unless permitted by the City in writing, the Improvements will not be used by any Eligible Buyer in such Eligible Buyer'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 Buyer.

For purposes of this Section, a home 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 Buyer shall be counted as occupied by an Eligible Buyer during such person's or family's ownership such unit, even though such person or family ceases to be an Eligible Buyer.

5.6 Reporting Requirements:

(a) During the term of this Agreement, the Borrower shall obtain from each prospective buyer, as computed at the time of such buyer's application for residence in the Improvements, a certification dated immediately prior to the application for residence of such buyer in the Improvements as to the Annualized Gross Income of buyer, in a form acceptable to the City.

(b) The Borrower shall maintain complete and accurate records pertaining to the Annualized Gross Income of each Eligible Buyer residing in the Improvements and shall permit, upon five (5) business days' notice to the Borrower, any duly authorized representative of the City to inspect such records.

5.7 Maintenance: During such time as the Borrower will own 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.

ARTICLE VI

Borrower's Warranties

Borrower hereby warrants and represents to City as follows:

6.1 Validity of Loan Documents: The Loan Documents are in all respects legal, valid

and binding in accordance with their terms and grant to the City a direct, valid and enforceable first lien on and security interest in and to the Property.

6.2 Priority of Lien on Personalty: 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 City.

6.3 Conflicting Transactions of Borrower: The consummation of the transactions 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.

6.4 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.

6.5 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 6.6.

6.6 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 City; (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, 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 City with such evidence of the foregoing as the City shall request, including without limitation a report and certification from an engineer acceptable to the City. 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.

6.7 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 City 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, electricity and telephone facilities. The Borrower shall furnish the City with such evidence of the foregoing as the City shall request, including without limitation certificates of the General Contractor, appropriate governmental officials and appropriate utility company officials.

6.8 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.

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

6.10 Financial Statements: Other Information: The financial statements of the Borrower heretofore delivered to the City 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 City 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.

6.11 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 partnership or of assumed or business name have been delivered to the City 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.

6.12 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 subordinating any right to a lien against the Property by reason of materials supplied or services rendered to the liens and security interests created under and by virtue of the Deed of Trust and all other Loan Documents, and if so requested, such liens shall be subordinated by separate instrument, all in form and substance satisfactory to the City.

6.13 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 City with such evidence of the foregoing as the City shall request, including without limitation, certificates of a surveyor approved by the City.

6.14 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 Affirmation by Each Draw Request: Each Draw Request shall constitute an affirmation that the representations and warranties of this Article VI remain true and correct as of the date hereof, and, unless the City is notified to the contrary prior to the disbursement of the requested advance or any portion thereof, shall constitute an affirmation that the same remain true and correct on the date of such disbursement.

6.17 Indemnification: To the fullest extent permitted by law, the Borrower releases the City from, agrees that the City shall not be liable for and agrees to hold the City 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 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 City 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 City 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 VII

Borrower's Covenants and Agreement

The Borrower covenants and agrees with the City as follows:

7.1 Payment, Noncommencement; Additional Documents: The Borrower will pay when and as due all sums and other payments owing to the City 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 City, the Borrower will do any act, or execute or cause to be executed by the appropriate parties any additional documents required by the City 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 City 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.

7.2 Commencement of Construction: The Borrower will begin construction of the Improvements 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.

7.3 Notice of Nonpayment: The Borrower will advise the City 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.

7.4 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 City 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 City, and will not permit any material deviations of any contractor(s) from the Plans.

7.5 Subcontractors: The Borrower will deliver to the City, 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.

7.6 Inspection by the City: Borrower to Furnish Plans; Receipts: The Borrower will permit the City and its authorized agents to enter upon the Property during normal working hours and as often as the City 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 City 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 City and its authorized agents during such inspections (including making available to the City working copies of the Plans and other related materials and documents). Failure of the City 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 City's right subsequently to inspect and to reject any such workmanship or materials. The Borrower acknowledges that neither the City's Inspector nor any other agent of the City 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 City proof that all bills for labor and materials have been paid, except those which will be paid from the current request for advance.

7.7 Payment of the City'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 City'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 City's attorneys' fees in connection with the making of the Loan and the enforcement of the City's rights hereunder. The City may pay any such amounts to be repaid by the Borrower immediately, and if Borrower shall not reimburse the City therefore within ten (10) days after written demand, the City 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.

7.8 Contract with General Contractor and Architects: Additional Contractors: Except as permitted in Section 7.4, the Borrower will not, without the prior approval of the City: (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 City 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 City 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.

7.9 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 City 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 City, the Borrower shall cause the surveyor preparing such survey to submit to the City 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.

7.10 Financial Statement: The Borrower will submit or cause to be submitted to the City 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 City. The City may require the financial statements of the Borrower to be certified by a certified public accountant satisfactory to the City.

7.11 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 City, incur any liability, make any capital expenditures or enter into any binding commitments of a material nature that would materially adversely effect its financial condition.

7.12 Insurance: The Borrower will obtain such insurance or evidence of insurance as the City'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 City 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 City. The policy shall contain no exceptions other than those approved by the City.

(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 City, 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 City thirty (30) days' prior written notice of intention to cancel) shall be delivered promptly to the City; 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 City 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 City'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 City 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 public liability and worker's compensation insurance to the satisfaction of the City's Risk Manager.

(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 City approves continuing with the Loan, Borrower shall provide the City with satisfactory evidence that the maximum amount of available flood insurance is in effect.

7.13 Collection and Application of Insurance and Condemnation Proceeds: The Borrower will cooperate with the City in obtaining for the City the benefits of any insurance, condemnation or other proceeds lawfully or equitably payable in connection with the transactions contemplated hereby and to reimburse the City for any expenses incurred in connection therewith (including the payment by the Borrower of the expense of any independent appraisal on behalf of the City 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.

7.14 Application of Loan Proceeds: The Borrower will use the proceeds of the Loan solely for the purpose of paying for approved construction and development costs.

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

7.16 Notice of Occupancy: The Borrower will permit no occupancy by tenants of any portion of the Improvements.

7.17 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 City 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 City of the services of accountants which the City 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 City shall determine to be necessary or appropriate in the protection of the City'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 City with quarterly and annual operating statements for the Property sufficient to enable the City to verify the amount of income being generated by the Improvements and the expenses of the operation hereof.

7.18 Soil Tests:

A. Compaction Tests. The Borrower will provide to the City at the Borrower's expense soil compaction tests satisfactory to the City as to the ground under each building before any concrete floor slabs are poured.

B. Environmental Audit. The Borrower shall assess the Property and shall have concluded from the results of such assessment that there is no environmental condition on or affecting the Property that would constitute a violation of any environmental law, statute, regulation, or ordinance.

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

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

7.21 Operation of Residential Apartments: Not applicable.

7.22 Borrower Not to Adversely Affect Tax-exempt Status of Interest on Bonds: Not applicable.

7.23 Opinion to be Provided: Not applicable.

ARTICLE VIII

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 City'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:

8.1 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.

8.2 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.

8.3 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 City as one of the Loan Documents, or the failure of Borrower to advise the City of any material act or information of which it has knowledge, with regard to the Property, the Loan or otherwise;

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

8.5 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 City, or the appearance of materially defective workmanship or materials.

8.6 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 City.

8.7 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 City given after the expiration of such period; or a determination by the City that the work of construction cannot reasonably be expected to be completed prior to the Completion Date.

8.8 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 City without discharge or satisfaction thereof or provision therefore satisfactory to the City in accordance with the terms hereof.

8.9 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 City from performing this Agreement, when the order continues in effect unstayed for a period of thirty (30) days.

8.10 Insurance Policies: The Borrower neglects, fails or refuses to obtain and to keep in full force and effect any insurance policies required by the City 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 City.

8.11 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.

8.12 Misleading or Unfurnished Financial Statements; Adverse Change in Financial Condition of Borrower: Any representation or warranty submitted to the City concerning the financial conditions 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 City, or, in the City's opinion, there shall occur a material adverse change in the financial condition or credit standing of the Borrower.

8.13 Priority of Deed of Trust: Other Liens: The Deed of Trust, in the opinion of the City's counsel, does not constitute a second priority and enforceable lien upon all of the Property or the status of the Deed of Trust as a second 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 the First Mortgage and those previously approved in writing by the City and except involuntary liens which the Borrower has bonded against to the City's satisfaction and which are being contested by the Borrower in good faith.

8.14 Failure to Commence or Complete Construction: In the exclusive judgment of the City, if construction has not commenced within one hundred eighty days (180) days after the date hereof or the Improvements are not fully completed in accordance with the Plans on or before the Completion Date, borrower shall notify the City as soon as possible of its request for a contract extension should it be known that Borrower will not meet the completion deadline. The Improvements shall be deemed to have been completed when all the conditions applicable to the final disbursement of Loan proceeds under Article IV shall have been satisfied.

8.15 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 City to the Borrower.

8.16 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 8.16.

8.17 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 City. No notice or opportunity to cure shall be required for a default under this Section 8.17.

8.18 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 7.20 or unless the City shall give its prior written consent thereto. No notice or opportunity to cure shall be required for a default under this Section 8.18.

8.19 Impairment to Security: Any condition or situation which constitutes, in the City's judgment, a substantial danger or impairment to the security for the Loan (including the City'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 IX

City's Rights and Remedies

In the event of the occurrence of any Event of Default the City 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:

9.1 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 City and without notice to the Borrower, become immediately due and payable and the City 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 City to cease disbursements of Loan proceeds.

9.2 Assignment of Construction-Related Contracts: Effective upon the occurrence of an Event of Default, the Borrower hereby assigns to the City (without limiting in any manner any other assignment thereof previously or contemporaneously made by the Borrower to the City) 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 City, be deemed to impose upon the City 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 City 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 City, 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 City 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 City. 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 City 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 City's security. The Borrower hereby also assigns and quitclaims to the City all sums undisbursed under the Loan, with such assignment and quitclaim to be effective only upon the occurrence of an Event of Default. The City 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.

9.3 Payments by the City in the Event of Dispute: Where disputes have arisen which, in the good faith opinion of the City, may endanger timely completion of the Improvements or fulfillment of any condition precedent or covenant herein, the City may agree and enter into an agreement to disburse and may disburse Loan funds for the account of the Borrower without prejudice the Borrower's rights, if any, to recover said funds from the party to whom paid. Such agreement or agreements may take the form which the City, 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 City'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 City for any such payments made upon demand therefor, 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.

9.4 Appointment of Receiver: The City 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 complete construction on, 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.

9.5 Remedies Cumulative: All remedies of the City 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 City 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 City 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.

9.6 Assignment by the City: The title, interest, right and power granted herein by

the Borrower to the City shall inure to the benefit of anyone to whom the City shall assign the indebtedness herein secured, as well as to the successors and legal representatives of the City.

9.7 Liability of the City: Whether or not the City elects to employ any or all remedies available to it on occurrence of an Event of Default, the City 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 City or for the construction or completion of the Improvements or for the performance or non-performance of any other obligation of the Borrower.

9.8 Security Interest in Reserves etc.: It is understood and agreed that the City 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 City 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.

9.9 Access to Books: The City 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, and all such records shall be made in accordance with customary accounting standards, and kept in good order, with records accessible and complete.

ARTICLE X

General Conditions

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

10.1 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 City 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 City 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 City hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy. The City 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.

10.2 No Third Party Beneficiaries: This Agreement is made and entered into for the sole protection and benefit of the City 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 City 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 City hereunder or arising from any default by the Borrower.

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

10.4 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 City 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 City 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 City 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.

10.5 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.

10.6 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.

10.7 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 Durham County.

10.8 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.

10.9 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.

10.10 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.

10.11 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:
Metropolitan Housing and CDC
402 N. Market Street
Washington, North Carolina 27889
Tel: 252-946-1668
Fax: 252-946-8537

To City:
Director, Department of
Community Development
101 City Hall Plaza
Durham, NC 27701
Tel: 919-560-4570
Fax: 919-560-4090

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

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

10.13 No Discrimination. The City of Durham opposes discrimination 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 City contracts and loans.

10.14 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 City from exercising or performing any regulatory, policing, legislative governmental or other powers and functions with respect to the Property pursuant to applicable law.

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

10.16 Limited Capacity of City under this Agreement. The Borrower understands and acknowledges that with respect to the City's Mortgage Loan Programs, under which the Loan is being offered by the City to the Borrower, the City is acting in a limited capacity only as a mortgage 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.

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by a duly authorized officer of each party and attested on its behalf as of the date first written above.

CITY OF DURHAM

ATTEST:

By: _____

D. Ann Gray, City Clerk

Thomas J, Bonfield, City Manager

ACKNOWLEDGMENT BY CITY OF DURHAM

Name of other party to the contract: Metropolitan Housing and CDC, Inc.

Title of the contract: Construction of Nine Single Family Units - Franklin Village

I, _____, a notary public, certify:
(Type or print name of Notary Public)

(1) _____ personally appeared
before me
(Type or print name of City Clerk or Deputy City Clerk who attested)

in Durham County, N. C. on this day; (2) I have personal knowledge of her identity; and (3) she
acknowledged that by authority duly given and as the act of the City of Durham, the foregoing
document was signed in its corporate name by its _____ City Manager, sealed with its
corporate seal, and attested by its said City Clerk or Deputy City Clerk.

This the _____ day of _____, 20_____.

My commission expires:

Notary Public

Metropolitan Housing and CDC, Inc.

By: _____
Rev. David L. Moore
President and CEO

Corporate Secretary

(Affix Corporate Seal

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, Notary Public of the County and State aforesaid certify that _____, personally appeared before me this day and stated her or she is the _____ Secretary of Metropolitan Housing and CDC, Inc., a non-profit corporation, and that by authority duly given and as the act of the corporation the foregoing contract or agreement with the City of Durham was signed in its name by the President and CEO, whose name is Rev. David L. Moore, sealed with its corporate seal, attested by him/herself as its said Secretary or Assistant Secretary. This the _____ day of _____, 2011.

Notary Public: _____

My Commission Expires: _____

Preaudit