

## FORBEARANCE AND LOAN MODIFICATION AGREEMENT

This Forbearance and Loan Modification Agreement ("**Agreement**") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ but effective \_\_\_\_\_, 20\_\_\_\_ (the "**Effective Date**") by and among, \_\_\_\_\_, a \_\_\_\_\_ ("**Lender**"), \_\_\_\_\_, a \_\_\_\_\_ and \_\_\_\_\_, a \_\_\_\_\_ (collectively, "**Borrower**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Owner**"). Borrower and Owner are sometimes collectively referred to herein as the "**Borrower Parties**," and Borrower Parties and Lender are sometimes collectively referred to herein as the "**Parties**." Any agent of any of the Borrower Parties appointed under the Uniform Power of Attorney Act or otherwise shall be referred to herein as Borrower Parties when applicable.

The following recitals are a material part of this Agreement:

A. Lender made a loan to Borrower in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "**Loan**") to pay for, among \_\_\_\_\_ other \_\_\_\_\_ things,

\_\_\_\_\_ (collectively, the "**Project**"). In connection with the Loan, Borrower Parties signed in favor of Lender, among other documents, a Promissory Note (the "**Note**") and Borrower Parties signed Security Agreement and Collateral Assignment (as amended from time to time, the "**Security Instrument**"), both dated, for reference purposes only, as of \_\_\_\_\_, 20\_\_\_\_, and both of which relate to the obligations of Borrower Parties under and with respect to the Loan. The documents now or hereafter evidencing, securing, or entered into in connection with the Loan, as modified from time to time, are referred to herein collectively as the "**Loan Documents**."

B. Borrower is in default under the Loan Documents by, among other things, failing to pay the outstanding principal balance and accrued, unpaid interest and any additional sums due under the Note upon maturity, and comply with certain other covenants described in the Loan Documents and, as a consequence thereof, Lender has the right to commence enforcement of any and all remedies available to it under the Loan Documents and/or applicable law. The Defaults and Events of Default under the Loan Documents are collectively referred to herein as "**Existing Defaults**."

C. As a consequence of such, Lender has the right to commence enforcement of any and all remedies available to it under the Loan Documents and/or applicable law.

D. Borrower Parties have requested that Lender forbear in the pursuit of its remedies, and Lender is willing to forbear such pursuit but only so long as and on the express conditions that: (1) Borrower Parties acknowledge the Existing Defaults under the Loan Documents; (2) all liens, security interests, rights and remedies of Lender under the Loan Documents continue in full force and effect; (3) Borrower Parties fulfill all conditions and comply with all terms and provisions set forth in this Agreement and perform all other acts necessary to give effect to the covenants, conditions and agreements set forth herein and (4) no Forbearance Termination Event has occurred.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Recitals; Acknowledgments.** Borrower Parties acknowledge and agree that the recitals set forth above are true and accurate, are a material part of this Agreement, are hereby incorporated by reference, and the Parties are entitled to rely thereon. Borrower Parties further acknowledge and agree that Borrower is in default of its obligations under the Loan Documents and Lender is entitled to immediately exercise its rights and remedies under the Loan Documents without any further notice to or cure right of any Borrower Party. Borrower Parties and Lender further acknowledge and agree that Lender currently has a valid first lien on the "Collateral" (as defined in the Loan Documents), and nothing in this Agreement shall limit, discharge, alter or affect the priority of such lien.

**2. Continued Effect of Loan Documents.** Borrower Parties acknowledge and confirm that the Loan Documents were and have been duly authorized, signed and delivered, that each of the Loan Documents as modified hereby is valid, binding and enforceable against Borrower Parties in accordance with its terms, and that each lien and security interest created in favor of Lender under the Loan Documents has been duly and validly created and perfected upon the Collateral.

**3. Forbearance by Lender; Conditions of Forbearance; Effect of Breach.** Except as otherwise set forth in this Agreement, Lender agrees to forbear pursuit of its rights and remedies under the Loan Documents and/or applicable law until the occurrence of a Forbearance Termination Event (as hereinafter defined). Upon the occurrence of a Forbearance Termination Event, Lender may cease such forbearance and may immediately commence and pursue any or all rights and remedies Lender may have under the Loan Documents and/or applicable law, all in such order and manner as Lender may elect from time to time in its sole and absolute discretion, and without notice of any kind to any Borrower Party or any other person, as if this Section 3 had never been agreed to by Lender. Lender's agreement herein to forego immediate pursuit of their rights and remedies constitutes a postponement and forbearance only, and does not in any event constitute a waiver of any such rights or remedies.

**4. No Effect on Existing Default and No Extension of Maturity.** Neither the execution of this Agreement, the execution of any document or instrument required hereunder, nor the consummation of the transactions and agreements set forth in this Agreement shall in any manner rescind or cure any Existing Default, reinstate the Loan to a current status, constitute an accord and satisfaction, or extend the maturity of the Loan.

**5. Acceptance of Collateral in Partial Satisfaction of Indebtedness.**

(a) Pursuant to Section 9-620 of the Uniform Commercial Code of the State of California ("UCC") and in reliance on the covenants, agreements, warranties and representations made in this Agreement, and subject to the provisions herein, Lender hereby proposes to accept the "Collateral," (as defined in the Security Instrument) pledged to Lender under the Security Instrument, including all of Borrower Parties' membership interests in (i) \_\_\_\_\_, a \_\_\_\_\_ ("ABC Holdings"),

(ii) \_\_\_\_\_, a \_\_\_\_\_ ("**ABC 100**"), and  
(iii) \_\_\_\_\_, a \_\_\_\_\_ ("**ABC 200**") (collectively, the "**LLCs**") including all capital accounts, rights of distribution, profits and losses and all proceeds thereof, all additions, attachments, accessories and accessions thereto, and any and all substitutions, replacements or exchanges therefor ("**Interests**"), in partial satisfaction of the Obligations ("**Collateral Acceptance**"). Owner and the other Borrower Parties hereby consent and accept the terms of the Collateral Acceptance, and this Agreement shall be deemed to be "a record authenticated after default" pursuant to Section 9-620(b)(c)(l) of the UCC. The Collateral Acceptance shall be effective upon (i) the occurrence of a Forbearance Termination Event followed by (ii) Lender's written notice, which it may send or not in its sole and absolute discretion, to the Borrower Parties that the Collateral Acceptance is effective, complete, and final and designates the Lender or its designee as the recipient of the Collateral Acceptance. Until and unless the Collateral Acceptance is effective, complete, and final, all provisions of the Loan Documents shall remain in full force and effect and Lender may pursue any or all of its other remedies under the Loan Documents and applicable law.

(b) Notwithstanding the Collateral Acceptance, the Owner agrees to continue to be obligated to Lender under and pursuant to the Loan Documents, as modified by this Agreement. Owner acknowledges and agrees that (i) it is not "secondary obligor" under Section 9-621(b) of the UCC, (ii) Lender is not required to send the Collateral Acceptance proposal to the Owner under Section 9-621 of the UCC, (iii) the Owner had no right to object to the Collateral Acceptance proposal under Section 9-620 of the UCC, (iv) to the extent Owner is deemed to be secondary obligors under Section 9-621(b) of the UCC, it hereby waives all rights to notice and objection to the Collateral Acceptance proposal under Sections 9-620 and 621 of the UCC, and (v) to the extent Owner is deemed to be secondary obligors under Section 9-621(b) of the UCC and if the rights of secondary obligors under Sections 9-620 and 621 of the UCC may not be waived, this Agreement constitutes the sending to the Owner of the Lender's proposal to accept collateral in full or partial satisfaction of the obligation it secures required under Section 9-621 of the UCC, and the period within which Owner may object ("**Objection**") to the Collateral Acceptance under Sections 9-620 and 621 shall begin on the date of this Agreement and end on the date that is \_\_\_\_\_ (\_\_\_\_) days after the date of this Agreement.

**6. Warranties and Representations of Borrower Parties.** The Owner and other Borrower Parties hereby warrant and represent to Lender that (i) Owner owns the Interests free and clear of all liens or encumbrances or prior pledges other than the security interest of Lender therein, and no person, other than Owner, holds an interest in the Collateral subordinate to the security interest of the Lender therein; (ii) the Interests owned by Owner and pledged to Lender pursuant to the Security Instrument constitute one hundred percent (100%) of the Interests in the LLCs owned by Borrower Parties; (iii) complete and correct copies of the current articles of organization or similar document and the operating agreements or similar document of each of the LLCs are attached hereto as Exhibit A, Exhibit B and Exhibit C, respectively, and no changes have been made nor shall be made to such documents without the prior written consent of Lender; (iv) Owner is (1) either an individual, a trustee of a trust or an entity duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under all contracts to which it is a party and (2) is duly qualified to do business in California and is in

good standing under the laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification; (v) the individual or individuals signing this Agreement on behalf of a trust or as the Co-Trustees of \_\_\_\_\_ dated \_\_\_\_\_ have the full power and authority to execute and deliver this Agreement and perform all of the obligations under this Agreement; and (vi) each of the LLCs are (1) limited liability companies duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization, with full power and authority to conduct their business as it is now being conducted, to own or use the properties and assets that they purport to own or use, and to perform all their obligations under all contracts to which they are a party and (2) duly qualified to do business as limited liability companies and are in good standing under the laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification. In the event it becomes necessary to amend and/or restate any operating agreement or articles of organization or any other operative documents of any of the LLCs, Borrower Parties shall cause such amendment, restatement or modification as reasonable required by Lender or its advisors, and (vii) the only lien burdening the Project located at \_\_\_\_\_ is a first mortgage in favor of \_\_\_\_\_ (the “XYZ Mortgage”), secured by a Promissory Note in the principal amount of \$\_\_\_\_\_, and a balance due as of the Effective Date of \$\_\_\_\_\_.

**7. Operation of Business from Date of Agreement.** In addition to and not in limitation of any obligations of the Borrower Parties under the other Loan Documents, from the date of this Agreement the Borrower Parties shall, and shall cause the Borrower and LLCs to, (i) with respect to the Project, afford Lender and its respective representatives (collectively, “**advisors**”) full and free access to Borrower’s and Owner’s personnel, properties, contracts, books and records, and other documents and data; (ii) with respect to the Project, furnish Lender and its advisors with copies of all such contracts, books and records, and other existing documents and data, and (iii) with respect to the Project, furnish Lender and its advisors with such additional financial, operating, and other data and information as either Lender may request; (iv) conduct the business of Borrower and LLCs only in the ordinary course and use their best efforts to preserve intact the current business of Borrower and LLCs, keep available the services of the current officers, employees, and agents of Borrower and LLCs, and maintain the relations and good will with suppliers, customers, landlords, creditors, employees, agents, and others having business relationships with Borrower and LLCs; and (v) confer with Lender concerning operational matters of a material nature with respect to the Project and otherwise report periodically to Lender concerning the status of the business, operations, and finances of Borrower and LLCs.

**8. Special Covenants.** As a material part of the consideration for Lender’s forbearance and execution of this Agreement, the Borrower Parties agree as follows:

(a) Borrower Parties will cooperate with Lender and shall provide all information reasonably requested by Lender within 10 days following request.

(b) Borrower Parties shall cooperate with Lender and its advisors, consultants as agents to confirm that general liability insurance and other insurance required for the Project

is being maintained and that no liens or encumbrances attach to the Project, Interest or other Collateral. No property which is security or collateral for the Loan shall be used for the personal use of any of the Borrower Parties.

(c) Borrower must execute and deliver any membership interest assignment or collateral assignment of profits and distributions agreements required or requested by Lender and any other commercially reasonable documents requested by Lender.

(d) Borrower Parties shall sell, or cause to be sold (each a “**ABC Sale**”), all, a portion of, or an undivided interest in that certain improved real property located at \_\_\_\_\_ (“**ABC Home**”) on or before \_\_\_\_\_, 20\_\_\_\_ under the current escrow for the sale of the ABC Home (or by \_\_\_\_\_, 20\_\_\_\_ if the ABC Home is in a new escrow under a different sale arrangement than the current sale agreement) (“**ABC Sale Date**”). Borrower Parties agree that they will not cause an ABC Sale if the net proceeds of such ABC Sale, after paying off the XYZ Mortgage and payment of reasonable closing costs, are not sufficient to pay Lender an amount equal to \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as set forth below. The net proceeds of such ABC Sale, after paying off the XYZ Mortgage and payment of reasonable closing costs, shall be applied and paid at closing, as follows:

(i) First, 100% to Lender until Lender has received \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in full satisfaction of Borrower’s obligations under the Note and all other amounts due and owing to under any of the Loan Documents and the LLC Obligations. For purposes of this Agreement, the term “**LLC Obligations**” means past capital contributions or loans made by Lender related to any of the LLCs; and

(ii) Thereafter, 100% to Borrower.

In the event of an ABC Sale on or before the ABC Sale Date, Lender or its designee shall also purchase Borrower Parties’ interest in ABC 100 for \_\_\_\_\_ Dollar (\$\_\_\_\_\_). Lender will thereafter indemnify Borrower from any further liability for ABC 100, including the debt owed under the XYZ Mortgage related to the ABC 100 Home (defined below). In addition, Borrower Parties shall transfer to Lender or its designee the \_\_\_\_\_ percent (\_\_\_\_%) of Borrower Parties’ \_\_\_\_\_ percent (\_\_\_\_%) interest in ABC Holdings for which Lender has been advancing Borrower monies to allow Borrower Parties to make capital contributions attributable to such interest (the “**LP ABC Interest**”). Borrower Parties will thereafter be relieved of their obligation to repay the advances Lender has previously made to Borrower Parties to date for \_\_\_\_\_ percent (\_\_\_\_%) of Borrower Parties capital contributions to ABC Holdings. Borrower Parties shall maintain their remaining \_\_\_\_\_ percent (\_\_\_\_%) ownership interest in ABC Holdings for which a third party has been advancing Borrower Parties monies to allow Borrower Parties to make capital contributions (the “**TP ABC Interest**”). Borrower Parties shall execute and deliver and/or cause to be executed and delivered to the Lender all documents and undertake all actions which may be reasonably required to give effect to Lender’s rights and options set forth herein.

In the event Borrower Parties fail to conclude the ABC Sale on or before the ABC Sale Date or otherwise default in their obligations under Section 8(d) hereinabove, then Borrower Parties shall have the absolute obligation to convey to Lender or its designee, for no additional consideration, the following: (i) the ABC Home, free and clear of all liens and encumbrances but subject only to the XYZ Mortgage, (ii) all of Borrower Parties interest in ABC 100, and (iii) the LP ABC Interest. Upon the full and complete satisfaction of items (i) through (iii) above, the Note shall be extinguished and Borrower Parties shall retain the TP ABC Interest and Lender shall be responsible for the payment of any transfer fees on the conveyance of the ABC Home, ABC 100 interest and LP ABC Interest to Lender. Borrower Parties shall execute and deliver and/or cause to be executed and delivered to the Lender all documents and undertake all actions which may be reasonably required to give effect to Lender's rights and options set forth herein.

(e) Borrower Parties agree not to sell, or cause to be sold, that certain improved real property located at \_\_\_\_\_ (and commonly referred to as the "**Lot 1000 Home**") on or before the ABC Sale Date, unless Lender in its sole and absolute discretion agrees to such sale.

(f) Borrower Parties shall cause the ABC Home, and all of the Interests and other Collateral to remain free from any adverse lien, security interest, pledge, encumbrance, assignment, transfer or other claim (each, a "**New Lien**"), other than the security interest granted hereby or in the other Loan Documents or which are in existence, of record and disclosed to Lender in writing as of the Effective Date or any future lien, encumbrance or security interest consented to in writing by Lender in its sole and absolute discretion.

(g) Borrower Parties shall execute an unconditional full recourse guaranty in the form of Exhibit C attached hereto and incorporated herein by this reference, guarantying full repayment of all LLC Obligations.

**9. Modification of Loan Documents.** Borrower Parties agree that the Loan Documents are hereby supplemented and modified as follows, which modifications shall supersede and prevail over any conflicting provisions of the Loan Documents:

(a) Modification to Note.

The basic interest rate of the Note shall be reduced from \_\_\_\_\_ percent (\_\_\_\_%) to \_\_\_\_\_ percent (\_\_\_\_%) and the following provision shall be added to the end of Section 3 of the Note:

"In the event Maker fails to pay any of the fixed principal amount of this Note and/or interest (including the payment due upon the Maturity Date), within \_\_\_\_ days of the date such amount is due, then in addition to any other amounts payable hereunder, the entire outstanding balance of the fixed principal amount under this Note shall thereafter bear interest from the date due and shall continue until such overdue payment is paid in full, at the increased rate of

\_\_\_\_\_ percent (\_\_\_%) (“Default Rate”) per annum over and above the interest rate provided for in Section 1 of this Note.”

(b) The term “Maker” shall be amended to add and include “\_\_\_\_\_, as Co-Trustees of \_\_\_\_\_, dated \_\_\_\_\_ and any successor Trustee of said Trust. All references to Maker or Borrower in any of the Loan Documents shall mean and refer to \_\_\_\_\_, individually and as Trustee of \_\_\_\_\_, dated \_\_\_\_\_, and any successor Trustee of said Trust.

(c) Modification of Security Instrument. The Security Instrument is hereby modified by inserting the following at the end of Section 3 of the First Amendment to Security Agreement and Collateral Assignment dated \_\_\_\_\_, 20\_\_:

“Until such time as the Note is repaid in full, pursuant to the terms of the UCC and any other applicable law, as additional collateral for the Loan and the Note, Grantor and/or John Doe, for themselves and their respective successors and assigns hereby irrevocably grant, assign, transfer, hypothecate and deliver to Lender, its successors and assigns, all of rights of Grantor in and to ABC Holdings, LLC, a California limited liability company (“**ABC Holdings**”) and to receive any distributions of cash or property from ABC Holdings (the (“**ABC Collateral**”).

Grantor represents and warrants that it has a \_\_\_\_% membership interest in ABC Holdings. The Grantor shall cause all other members of ABC Holdings to waive any rights of first refusal or offer or other rights or claim to any interest in the ABC Collateral or any other Collateral. Notwithstanding anything to the contrary in the Operating Agreements of any LLC (or any related documents) including without limitation to any right of first refusal or other restrictions on transfer of membership Interests of any LLC, the Borrower Parties’ consent and shall cause any other of the LLCs to consent to the pledge of Grantor’s interest in such LLCs.”

The term “Collateral” as used in the Security Instrument and any other Loan Document shall include the \_\_\_\_\_ Collateral, the XYZ Collateral and the ABC Collateral. The term “LLC” as used in the Security Instrument is hereby amended to mean, ABC 100, ABC 200 and ABC Holdings. Lender would not have entered into the Loan Agreement or accepted the Note, without the collateral assignment of all of the Collateral and Lender will not enter into this Forbearance Agreement without the Borrower Parties agreeing to the modifications set forth herein and agreeing to cause all further acts and agreements to be entered into to carry out the full effect of this Section 9. In the event of a Forbearance Event of Default, Lender shall be entitled to elect to collect one hundred percent (100%) of all distributions or other sums payable to or on the behalf of Borrower Parties under the Operating Agreements for the LLCs, including, but not limited to, the right to receive information concerning its business and affairs, provided,

however, that Lender shall have no obligation to make any capital contributions or additional capital contributions to LLC on behalf of Borrower Parties except as otherwise agreed. The Borrower Parties further covenant and agree that they will not, unilaterally or by agreement, amend, supplement, modify, extend, discharge, waive, or terminate (i) the Operating Agreements for the LLCs (or any related documents) or (ii) any mortgage, deed of trust, loan or other indebtedness of any LLC or any portion thereof to which any Borrower Party is a member, except as set forth herein or, without Lender's prior written consent, and that any attempted amendment, supplement, modification, extension, discharge, waiver or termination without such consent shall be null and void. Additionally, the Borrower Parties agree to provide Lender with prompt notice and a reasonable opportunity to attempt (but not the obligation) to cure any default or breach by any party under (i) or (ii) above.

**10. Consent to Protective Advances.** Borrower Parties hereby consent and Borrower hereby agrees to repay any Protective Advance (defined below) and any and all other indebtedness owed by Borrower Parties to Lender, now or hereafter arising under the terms hereof, the Loan Documents or in any other instrument constituting security for the Loan, and all other sums of money secured thereby, including, without limitation, any Protective Advances. For purposes of this Agreement the term "**Protective Advances**" means any and all sums advanced or expended by Lender (whether deemed optional or obligatory advances, or otherwise) which Lender deems necessary or appropriate, including but not limited to, sums advanced to pay any of the following:

(a) To complete construction of the Project and market and sell the Project or any portion thereof;

(b) To repair, maintain or otherwise protect the Project or the Collateral or Interests or to prevent waste or destruction or to pay or prevent liens or to defend Borrower's title or Lender's lien priority;

(c) Taxes, assessments or insurance premiums in respect of the Project or to otherwise protect Lender's security interest in the Project, the Interests and any other Collateral;

(d) Amounts in connection with Lender's protection or exercise of its rights or remedies under the Loan Documents;

(e) Escrow fees and premiums for a loan modification endorsement, protective advance endorsement or similar title endorsement and to a Lender or owners title policies issued in connection with the Security Instrument;

(f) All expenses incurred by Lender in connection with (i) the negotiation and preparation of this Agreement and all other documents executed and delivered pursuant hereto, and (ii) the transactions contemplated by this Agreement and all documents executed and delivered pursuant hereto (including, without limitation, recording costs, title and search costs, legal fees and expenses and other closing costs);

(g) All costs associated with builder's risk insurance, general liability insurance and other insurance required for the Project; and



(h) All costs of any advisors, consultants, project managers, on-site construction superintendents and/or other personnel as requested by Lender.

**11. Release of Lender by Borrower Parties.** As a material part of the consideration for Lender's forbearance and execution of this Agreement, Owner and Borrower acknowledges and agrees that they each have no offsets, defenses, claims, or counterclaims against each of Lender and their respective affiliates, officers, directors, employees, affiliates, loan servicing agents, attorneys, representatives, predecessors, successors, or assigns and that if any Borrower Party now has, or ever did have, any such offsets, defenses, claims, or counterclaims, whether known or unknown, at law or in equity, arising from or relating to any alleged act, occurrence, omission or transaction occurring or happening from the beginning of the world through the time of execution of this Agreement, all of them are hereby expressly WAIVED, and the Borrower Parties, hereby RELEASES Lender and its affiliates and all of their respective officers, directors, employees, affiliates, loan servicing agents, attorneys, representatives, predecessors, successors, and assigns from any liability therefor.

Each of the Borrower Parties acknowledges that, subsequent to the execution of this Agreement, it may discover claims that were unknown or unanticipated at the time this Agreement was signed, including unknown or unanticipated claims that arose from, are based upon, or relate to the above recitals the existence of which, if known on the date this Agreement was signed, may have materially affected its decision to execute this Agreement. Each of the Borrower Parties acknowledge that it is assuming the risk that such unknown or unanticipated claims exist and agrees that the release granted by it in this Agreement applies thereto. Each of the Borrower Parties expressly waives the benefits of any state, federal or other law providing that a general release does not extend to claims that a releasing party does not know or suspect to exist in its favor at the time of executing the release that, if known by the releasing party, must or may have materially affected its settlement with the released party. The foregoing is intended to waive claims both known and unknown, and the Borrower Parties hereby waive the benefits of Civil Code Section 1542 which reads as follows:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

This Agreement and the covenants contained in this Section 11 are contractual, and not a mere recital.

**12. Non-Interference.** As additional consideration for Lender's agreement to forbear hereunder, which the Borrower Parties have been separately and specially bargained for by Lender, upon the revocation or termination of Lender's agreement to forbear hereunder or upon the occurrence of a Forbearance Termination Event, the Borrower Parties agree that no person acting or claiming by, through, under, or in concert with or for the benefit of any of them shall interfere in any manner with Lender's exercise of its rights and remedies hereunder, under the

Loan Documents, or under applicable law. Without limiting the generality of the foregoing sentence, in consideration for Lender's agreement to forbear notwithstanding the Existing Defaults, the parties desire to successfully negotiate an out-of-court resolution of their differences in an effort to avoid the delay and restraint that would arise from an attempt to reorganize under the provisions of the United States Bankruptcy Code ("**Debtor Relief Proceedings**"). The parties acknowledge that: (i) this Agreement is the culmination of extensive discussions and compromises among the parties hereto; (ii) the resolution of the financial problems of the Loan, as set forth herein, constitutes an alternative to commencing Debtor Relief Proceedings; (iii) this out-of-court workout is more expeditious and economical than the commencement of Debtor Relief Proceedings; (iv) Borrower Parties have represented to Lender that Borrower is not contemplating commencing Debtor Relief Proceedings; and (v) Lender are relying upon this representation in entering into this Agreement. Borrower Parties acknowledge and agree that in any Debtor Relief Proceedings commenced by or against Borrower under Title 11, 11 U.S.C. § 101, et seq. ("**Case**"): (i) they will not contest or in any way otherwise take any action to oppose the lifting of the automatic stay of 11 U.S.C. § 362 to permit Lender to enforce their rights in the Property ("**Lift Stay Order**"); (ii) they waive all rights they may have under 11 U.S.C. § 362; (iii) they hereby consent to the ex parte entry of the Lift Stay Order pursuant to 11 U.S.C. § 362(f); and (iv) at the option of Lender, they hereby agree that they will execute an agreed Lift Stay order on forty-eight (48) hours' notice. Each Borrower Party acknowledges, represents to Lender, and agrees that: (i) it is familiar with the value of the Project; (ii) the Project is not, and is not expected to be, necessary to an effective reorganization within the meaning of 11 U.S.C. § 362(d)(2); and (iii) Borrower does not have, and does not expect to have a likelihood of a successful reorganization of the Project under Title 11, 11 U.S.C. § 101, et seq. Each Borrower Party acknowledges that it understands the consequences of consenting to the entry of the Lift Stay Order and thereby foregoing the benefits of 11 U.S.C. § 362, and that each Borrower Party has agreed to these terms after consultation with, and upon advice of, counsel.

**13. Additional Documents/Further Assurances.** Borrower Parties shall at any time, and from time to time, upon the written request of Lender, sign and deliver or cause the execution and delivery of such further documents and do such further acts and things as Lender may reasonably request to effectuate the purposes of this Agreement.

**14. Authorization of Agreement.** The execution of this Agreement has been duly authorized by all necessary or required action of Borrower Parties, and the individuals and entities executing this Agreement on behalf of the Borrower Parties have been duly authorized and empowered to bind the Borrower Parties by such execution.

**15. Forbearance Termination Events.** Borrower Parties agree that the occurrence of any of the following events shall constitute a Forbearance Termination Event (a “**Forbearance Termination Event**”) under this Agreement and an Event of Default under the Loan Documents, regardless of the reason or reasons for the occurrence of any such event, regardless of whether the occurrence is voluntary or involuntary, and regardless of whether the occurrence of any such event is attributable to, caused by, or results from operation of law or any judgment, order, directive, rule or regulation of any court or any governmental or non-governmental agency or entity:

(a) any representation or warranty of any Borrower Party in this Agreement shall be or become untrue or inaccurate in any material respect;

(b) the failure of any Borrower Party to perform when due any of its respective covenants, agreements or obligations to be performed under Section 8 of this Agreement following the date of this Agreement;

(c) the failure of any Borrower Party to perform when due any of its respective covenants, agreements or obligations to be performed under this Agreement (other than under Section 8) following the date of this Agreement, and the same is not corrected or cured within 10 days after written notice from Lender to Borrower Parties;

(d) Lender receives an Objection as defined in Section 5 above;

(e) Borrower Parties or their respective agents appointed under the provisions of any Uniform Power of Attorney Act, or otherwise (i) institutes or has instituted against such Borrower Party, or any of its property, any bankruptcy, reorganization, receivership, conservatorship, custodianship, sequestration, or other similar judicial or nonjudicial proceedings; (ii) makes, permits or agrees to make or permit an assignment or abandonment, whether or not conditional, of some or all of its property for the benefit of some or all of its creditors; or (iii) commences or permits, voluntarily or involuntarily, liquidation, dissolution, winding up, repossession, levy or foreclosure, upon or of itself or any of its property; or (iv) modifies or otherwise amends \_\_\_\_\_ dated \_\_\_\_\_ in any manner whatsoever that would attempt to limit, restrict, or alter Borrower Parties’ obligations under this Agreement or any of the Loan Documents as amended hereby.

(f) any Borrower Party other than Borrower (i) institutes or has instituted against it, or any of its property, any bankruptcy, reorganization, receivership, conservatorship, custodianship, sequestration, or other similar judicial or nonjudicial proceedings; (ii) makes, permits or agrees to make or permit an assignment or abandonment, whether or not conditional, of some or all of its property for the benefit of some or all of its creditors; or (iii) commences or permits, voluntarily or involuntarily, liquidation, dissolution, winding up, repossession, levy or foreclosure, upon or of itself or any of its property;

(g) failure of Borrower Parties to sell the ABC Home on or before the ABC Sale Date, and to pay the proceeds of such sale to Lender pursuant to Section 8(d) and in such

event, the failure of Borrower Parties to convey the ABC Home, ABC 100 interest and LP ABC Interest to Lender pursuant to Section 8(d);

(h) failure of Borrower to repay the Note in full on or before \_\_\_\_\_;

(i) failure of Borrower to pay the LLC Obligations in full by \_\_\_\_\_;

(j) There exists any New Lien; or

(k) Borrower defaults in the performance of its obligations hereunder or under the Loan Documents (other than the Existing Defaults) occurs under the Loan Documents. (“**New Default**”).

**16. Time is of the Essence.** Time is of the essence with respect to all agreements and obligations of the Borrower Parties contained herein.

**17. Entire Agreement; Written Modifications Only.** This Agreement and the documents referred to herein or contemplated hereby, constitute the sole and entire agreement between the Parties with respect to the subject matter hereof, and there are no other covenants, promises, agreements or understandings regarding the same. This Agreement, including the provisions of this Section 17, may not be modified except by written amendment to this Agreement signed by the Parties affected by the same, and the Parties hereby: (a) expressly agree that it shall not be reasonable for any of them to rely on any alleged, non-written amendment to this Agreement; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Agreement; and (c) expressly agree that it shall be beyond the scope of authority (apparent or otherwise) for any of their respective agents to agree to any non-written modification of this Agreement.

**18. Conditions of Lender’s Obligations.** Each obligation of Lender under this Agreement is subject to the continuing satisfaction of the following conditions, any of which may be waived by Lender, in its sole and absolute discretion: (i) all warranties and representations made by Borrower Parties and/or Owner under this Agreement are true and correct as of the execution of this Agreement and shall remain true and correct thereafter; (ii) no Forbearance Termination Event shall have occurred under this Agreement and (iii) Borrower Parties agree that their respective obligations under the Loan Documents as modified hereby shall continue to be the responsibility and liability of Borrower Parties as primary obligors; provided, however, that notwithstanding any other provision of this Agreement to the contrary, in the event that Borrower Parties shall fail to comply with any term or condition of this Agreement and/or upon the occurrence of any New Default, Lender shall be permitted to commence and complete the Collateral Acceptance and/or foreclosure of the Security Instrument and/or pursue any other rights and remedies at law, in equity or under the Loan Documents

In consideration of Lender’s agreement to comply with the provisions of this Agreement during a Forbearance Termination Event, with respect to Borrower Parties’ continuing obligations to Lender under the Loan Documents, as modified hereby, which are now in default, Borrower Parties represent, acknowledge and agree that (a) Borrower Parties have no defenses,

counterclaims, offsets, or other claims or demands which would tend to alter, modify, diminish or reduce Borrower Parties' obligations owing to Lender under the Loan Documents, as applicable, and/or which would tend to impair or otherwise negatively impact Lender's rights or remedies under the Loan Documents, as applicable, as a result of Borrower Parties' defaults under the Loan Documents, as applicable, except to the extent expressly modified in this Agreement, and (b) all of the Loan Documents, as modified hereby, are and shall remain valid, in full force and effect and enforceable in accordance with their terms, subject to the provisions of this Agreement.

Borrower Parties hereby acknowledge and agree that Borrower Parties shall not be released or excused from any existing, future or continuing liability under the Loan Documents, as applicable, including without limitation the payment and performance of all obligations currently existing and/or hereafter arising under the Loan Documents, as applicable, except as otherwise expressly provided herein with the Collateral Acceptance in connection with the Loan Documents.

**19. No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties hereto and no persons other than the undersigned shall be entitled to claim or receive any benefit by reason of this Agreement.

**20. Voluntary Agreement.** Borrower Parties represent and warrant to Lender that (i) each is represented by legal counsel of its or his choice in regard to the transaction provided for by this Agreement and that such counsel has explained to each of them the significance of the terms, and the meaning and effect of this Agreement; (ii) each is fully aware and clearly understands all of the terms and provisions contained in this Agreement; (iii) each has voluntarily, with full knowledge and without coercion or duress of any kind entered into this Agreement and the documents signed in connection with this Agreement; (iv) each is not relying on any representations either written or oral, express or implied, made to any of them by Lender other than as set forth in this Agreement; (v) this Agreement essentially reflects a proposal by Borrower Parties made to Lender on their own initiative; and (vi) the consideration received by Borrower Parties to enter into this Agreement and the arrangement contemplated by this Agreement has been actual and adequate.

**21. Severability.** If any one or more of the provisions of this Agreement are deemed unenforceable, the remainder of this Agreement shall, at the sole option of Lender, remain enforceable in accordance with the balance of the terms of the Agreement.

**22. Delay Not a Waiver.** Neither the failure nor any delay on the part of Lender to exercise any right, power or privilege under this Agreement or under any document signed in connection herewith shall operate as a waiver of such right, power or privilege and any single or partial exercise of any such right, power or privilege shall not preclude any other or further exercise thereof.

**23. Successors and Assigns.** This Agreement shall be binding on each Party's successors and assigns, including but not limited to any successor Trustee of \_\_\_\_\_ dated \_\_\_\_\_.

**24. Construction of Agreement.** The following rules of construction are applicable for the purposes of this Agreement and all documents and instruments supplemental hereto unless the context clearly requires otherwise:

(a) All references herein to numbered sections are references to the sections hereof.

(b) The terms “include,” “including,” and similar terms shall be construed as if followed by the phrase “without being limited to.”

(c) Words of masculine, feminine or neutral gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural, and vice versa.

(d) No inference in favor of or against any party hereto shall be drawn from the fact that such party has drafted any portion of this Agreement or any portion of any Loan Document.

**25. Counterparts.** This Agreement may be signed in more than one counterpart, each of which shall be deemed an original and shall be binding upon any Party executing the same and all of which together shall constitute one and the same document. This Agreement shall become effective when all parties hereto have signed a counterpart hereof.

**26. Costs and Expenses.** Borrower shall reimburse Lender for all of its actual out-of-pocket, third party costs and expenses incurred in connection with this Agreement, including without limitation the reasonable attorneys’ fees incurred by Lender.

**27. Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.

**28. Waiver of Jury Trial.** BORROWER PARTIES EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CONTROVERSY OR CLAIM, WHETHER ARISING IN TORT OR CONTRACT OR BY STATUTE OR LAW, BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONJUNCTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS (INCLUDING, WITHOUT LIMITATION, THE VALIDITY, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF OR THEREOF), OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION HERewith OR THEREWITH. EACH PARTY ACKNOWLEDGES AND AGREES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER ENTERING INTO THIS AGREEMENT AND LENDER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THIS WAIVER. ANY PARTY TO THIS AGREEMENT IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 28 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL.

**29. Confidentiality.** Except as required to be disclosed pursuant to court order or California Evid. Code §§ 1123 and 1152 or as disclosed to Lender's respective attorneys, accountants, investors and/or participants, if any, Lender and Borrower Parties agree that they, and their respective employees, agents, contractors and representatives will hold in strictest confidence the terms and existence of this Agreement, any and all discussions between the parties or their respective agents, employees or attorneys in connection with this Agreement and any information obtained from Lender or its respective employees, agents, attorneys or representatives with respect to either Lender's activities, whether obtained before or after the effective date of this Agreement, and will not use information or disclose the same to any other person without the express written consent of the other parties. Borrower Parties hereby agree that they shall indemnify and hold Lender harmless from any losses and/or costs incurred by either Lender hereby agree that they shall be liable to each other for any actual losses and/or costs (including without limitation reasonable attorneys' fees) reasonably incurred by the other party as a direct result of such party's breach of this Section 29.

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

**LENDER:**

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

**BORROWER:**

\_\_\_\_\_

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

\_\_\_\_\_

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

**OWNER:**

\_\_\_\_\_

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

\_\_\_\_\_

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



**EXHIBIT A**  
**ARTICLES OF ORGANIZATION**

**[Articles of Organization Attached]**

**EXHIBIT “B”**  
**OPERATING AGREEMENT**

**[Operating Agreement Attached]**

**EXHIBIT “C”**  
**GUARANTY**