

## LOAN AGREEMENT (\_\_\_\_\_)

**Borrower:**

**Lender:**

**Loan Amount:**

**Effective Date:**

**Expected Closing Date:**

**Maturity Date:**

**Recitals.** This Loan Agreement (the “**Loan Agreement**”) is made and entered into as of the Effective Date, by and among Lender, with reference to the following facts:

A. Status of Real Property. Borrower is acquiring fee title to that certain single family residential real property described in Exhibit “A” attached hereto and incorporated herein by reference and commonly known as \_\_\_\_\_ (the “**Property**”). Borrower is acquiring the Property pursuant to that certain agreement for the purchase and sale of the Property (as amended from time to time, the “**Purchase Agreement**”) a copy of which is attached hereto as Exhibit “B”.

B. Loan Request. Borrower has applied to Lender for a first trust deed loan in an amount not to exceed the Loan Amount shown above (“**Secured Loan**”). The Secured Loan shall be used by Borrower for the purpose of acquiring and renovating the Property. As used herein, the term “Home” shall mean the Property and all existing improvements and the improvements to be made thereon. The Secured Loan will be funded as described below.

**Agreement.** Now therefore, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Timing and Funding of Secured Loan. Lender agrees to make the Secured Loan to Borrower on the terms and conditions set forth herein. The Secured Loan shall be evidenced by a Secured Promissory Note (the “**Secured Note**”), this Loan Agreement and the other documents and instruments referred to herein, and the Secured Note shall be secured by, among other things, a \_\_\_\_\_ (the “**Deed of Trust**”). Borrower acknowledges that it has no right to proceeds of the Secured Loan other than to have the same disbursed in accordance with the terms and conditions of this Loan Agreement. The Secured Loan shall be funded by Lender in one disbursement at closing of the acquisition of the Home upon satisfaction of all of Lender’s conditions precedent set out herein. After such initial funding, Lender shall have no obligation whatsoever to fund any other amounts. The Secured Loan is expected to close on or about the Expected Closing Date shown above. The initial funding shall be in the amounts set forth above. The Secured Note shall evidence the entire amount of the Secured Loan from the date of the initial funding. Borrower shall be liable for the full repayment of all principal, interest or other sum evidenced by the Secured Note. In addition, Lender shall have the right to, among other things:

1.1 name Borrower or any constituent member or partner of Borrower as a party defendant in any action, proceeding, reference or arbitration, subject to the limitations of this Section 1;

1.2 assert any unpaid amount due under the Secured Note or the Deed of Trust as a defense or offset against any claim or cause of action against Lender by Borrower, any of its respective constituent members, partners, or any guarantor or indemnitor in connection with the loan;

1.3 exercise self-help remedies (such as setoff) against any real or personal property;

1.4 recover any insurance proceeds, condemnation awards, tenant security deposits, utility deposits, prepaid rents or other similar, funds or payments attributable to the Property which were not paid to Lender or were not otherwise applied as required in the Deed of Trust;

1.5 in accordance with California Code of Civil Procedure §736, recover any costs, expenses or liabilities (including attorneys', experts' and consultants' fees and expenses) incurred by Lender and arising from a breach of any judgment, verdict, order, consent decree or settlement relating to the deposit, storage, disposal, burial, dumping, spilling, leaking, cleanup, characterization, remediation or abatement of toxic or hazardous waste, hazardous materials, hazardous substances or waste products (as defined in any applicable federal or state law) or arising from any other environmental provision (as defined in such §736) in the Deed of Trust relating to the Property or any portion thereof (including, without limitation, any such environmental provision contained in the Deed of Trust or in any environmental-indemnity given to Lender in connection with the loan); or

1.6 in accordance with California Code of Civil Procedure §726.5, waive the security of the Deed of Trust as to any parcel of Property that is "environmentally impaired" or is an "affected parcel" (as such terms are defined in such §726.5) and thereafter exercise against Borrower the rights and remedies of an unsecured creditor to the extent permitted by such §726.5, including reduction of Lender's claim against Borrower to judgment, and any other rights and remedies provided by law.

Nothing in this Section 1 shall release, impair or otherwise affect the validity or enforceability of the Secured Note, the Deed of Trust and the documents evidencing the loan or the perfection or priority of the lien of the Deed of Trust upon the Property.

## 2. Terms of the Secured Loan.

2.1 The Secured Note. The Secured Note provides for "Base Interest" on the principal balance outstanding thereunder from time to time at a rate equal to \_\_\_\_\_ percent (\_\_\_%) for \_\_\_\_\_ of the term of the Loan and \_\_\_\_\_ percent (\_\_\_%) for the \_\_\_\_\_ of the term of the Loan ("**Base Interest Rate**"); provided that, upon an Event of Default, the Secured Note also provides for "Default Interest" at the rate specified in the Secured Note.

2.2 Escrow Instructions. The escrow handling the closing of the sale of the Home shall be instructed that it must disburse \_\_\_\_\_ percent (\_\_\_\_\_% ) of proceeds directly to Lender until Lender is paid in full all amounts owed hereunder.

2.3 Lender Access. Borrower shall provide Lender access to the Home on reasonable advance notice and with copies of all inspections, reports, test results and other information delivered to or received by Borrower from time to time from its employees, agents, representatives (other than privileged communications from Borrower or its legal counsel) architects, engineers, general contractors and any other parties involved in the renovation of the Home, which in any way relate to the Home or the construction or operation of such or any part thereof. Borrower will furnish Lender promptly upon its request with executed copies of all contracts and all subcontracts between Borrower and the general contractor and all of its major subcontractors. Upon reasonable advance notice, from time to time, and in any event no less frequently than monthly, Borrower will allow the Lender and its authorized representatives to inspect and copy the business and financial records of Borrower relating to the Home at all reasonable times.

2.4 Lender Rights of Approval. Lender will be consulted and shall have a right of approval, such approval not to be unreasonably withheld, in regard to the following matters affecting the Home (the "**Material Decisions**").

2.4.1 Entering into any contract, agreement or transaction involving the Home with an affiliate of Borrower or relative of any of Borrower's principals or any other party that is not at arm's length or where Borrower, its principals or their respective affiliates or relatives may receive any rebate, kick-back or "give-up" or

otherwise participate in a reciprocal business arrangement involving any economic expense or loss to Borrower and/or the Home;

2.4.2 Making any material changes to the terms of the Purchase Agreement or incurring or increasing any monetary obligations of Borrower, or secured by the Home; or

2.4.3 Selling, leasing, exchanging, encumbering, mortgaging, hypothecating, or otherwise disposing of the Home, or any part thereof, or any personalty used in connection therewith.

2.5 Term. The term of the Secured Loan shall commence on the Closing Date (as defined below) and shall mature on the earlier of (i) the closing of the sale of the Home, or (ii) the "Maturity Date" specified above, and shall be repayable in accordance with the provisions of the Secured Note and this Loan Agreement. Notwithstanding the foregoing, the terms and conditions of this Loan Agreement and Lender's right to receive principal, Base Interest and any other amounts under the Secured Note will continue in full force and effect until Lender has received all sums owing to Lender under the terms of the Secured Note and this Loan Agreement.

2.6 Fees. Borrower agrees to pay a fee in the amount of \_\_\_\_\_ percent (\_\_\_%) of the Loan Amount to Lender in connection with the Secured Loan, which shall be deemed fully earned and payable upon the closing of the Secured Loan. In addition, upon repayment of the loan in whole or in part, Borrower shall pay to Lender a fee (the "Exit Fee") in an amount equal to \_\_\_\_\_ percent (\_\_\_%) of the original Loan Amount, which Exit Fee shall be due and payable concurrently with repayment of the Secured Loan.

3. No Further Encumbrances. Borrower shall not attempt or allow any sale, transfer, assignment, encumbrance, lease, conveyance, or lease with option to purchase any part, right, title, or interest in the Collateral, whether legal or equitable, without Lender's prior written approval, which approval may be granted or conditioned in Lender's sole and absolute discretion.

4. Loan Documents. Payment of the Secured Note and performance of Borrower's obligations to Lender or its assignee under the Secured Note and this Loan Agreement shall be secured by, among other things, the Deed of Trust, UCC-1 and the Unsecured Environmental Indemnity Agreement. The Deed of Trust shall also contain an assignment of rents and profits and grant Lender a general first priority lien on all personal property and fixtures owned by Borrower used in connection with the Home, as well as a perfected security interest in all bank accounts established by Borrower in connection with the Home.

5. Indemnification. Borrower shall indemnify, hold harmless and defend Lender and its members and representatives from and against all claims, injury, damage, loss and liability of any and every kind to any persons or property arising out of or related to (i) the operation, renovation, construction, maintenance and/or sale of the Home or any portion thereof, (ii) all costs arising out of the presence and required remediation of hazardous materials in or on the Property, (iii) any of the business activities of Borrower, including, but not limited to, any written or verbal misstatements or omissions made by Borrower to other lenders and/or the public in connection with the Home, (iv) the previous and other business activities of Borrower, and (v) any other action or inaction of Borrower or its officers, shareholders, members, partners, affiliates or employees or any other matter which is the responsibility of Borrower.

6. Conditions to Closing and Funding. Prior to and as a condition of funding the Secured Loan, each of the following conditions must be satisfied in a manner acceptable to Lender, time being of the essence. Lender may waive any condition in writing, in Lender's sole and absolute discretion. Notwithstanding any other provision of this Loan Agreement or any of the other Loan Documents, and without affecting in any manner the rights of Lender under the other sections of this Loan Agreement, Lender shall not be required to distribute the Secured Loan proceeds unless and until each of the following conditions is satisfied:

6.1 Documents. In addition to this Loan Agreement, the loan documents (herein "**Loan Documents**") listed in Schedule "1" shall have been executed and delivered to Lender. All of said documents shall be prepared by Lender's attorney, the costs of which shall be paid by Borrower.

6.2 Representations and Warranties. Each of the representations and warranties of Borrower made in this Loan Agreement shall be true and correct as of the time of the Closing and there shall exist no Event of Default by Borrower hereunder. Borrower acknowledges and agrees that a breach of any or all of Borrower's representations, warranties and covenants contained herein is a Default (as defined below) under this Loan Agreement entitling Lender to exercise any and all remedies provided for in this Loan Agreement.

6.3 Title and Title Insurance. Concurrently with the Closing of the Secured Loan, Borrower must be the fee owner of the Property, and a title insurance company approved by Lender must be committed to immediately issue an Owner's policy to Borrower and an ALTA Lender's policy of title insurance to Lender (collectively, the "**Title Policy**") with such endorsements as may reasonably be requested by Lender insuring Lender's first priority lien and interest in the Property and other collateral ("**Collateral**") in an amount equal to the maximum principal amount of the Secured Note subject only to (a) non-delinquent real property taxes, and (b) such other matters as are set forth in Exhibit "D" attached hereto (the "**Permitted Exceptions**"), as well as Lender's interest in the other collateral.

6.4 Insurance Policies. Lender shall receive evidence of a policy or policies providing standard insurance in minimum amounts satisfactory to Lender, as well as all coverages shown on Exhibit "C" attached hereto.

6.5 Receipt of all Due Diligence Items. Lender shall have received all of the due diligence items in connection with the Home requested by Lender.

7. No Holdback. Notwithstanding any other provision hereof and/or any other statement or understanding to the contrary, Lender shall not hold back from the initial funding any amounts for renovation of the Home.

8. Escrow.

8.1 Opening of Escrow. For purposes of closing the Secured Loan, Borrower shall open an escrow (the "**Escrow**") with an escrow holder approved by Lender (the "**Escrow Holder**") and shall deliver to Escrow Holder in a timely fashion such instruments and funds as are necessary to close the Escrow and consummate the funding of the Secured Loan in accordance herewith. If there are any requirements reasonably imposed by Escrow Holder relating to the duties or obligations of Escrow Holder, or if Escrow Holder reasonably requires any other additional instructions, Borrower agrees to make such deletions, substitutions and additions to this Loan Agreement and/or the escrow instructions which do not materially change this Loan Agreement or its intent. Any changes requested by Escrow Holder shall be subject to written approval of Lender.

8.2 Deposit of Funds and Closing. All funds deposited into Escrow by Lender shall be immediately deposited by Escrow Holder into an interest bearing account or accounts subject to the control of Escrow Holder in a federally insured bank or savings and loan association; provided, however, that such funds must be readily available as necessary for Escrow to close within the time specified in connection with Lender's delivery of funds into Escrow. The "**Closing(s)**" or "**Closing Date(s)**" shall mean the date(s) on which (i) all of Lender's conditions to Closing shall have been satisfied or waived by Lender and (ii) the Deed of Trust is recorded against the Property.

9. Representations, Warranties and Covenants. Borrower makes the following representations, warranties, and covenants to Lender, which shall be deemed to be continuous representations, warranties and covenants, made on and as of the date of closing of the Secured Loan, and at all times thereafter so long as any of Borrower's obligations hereunder have not been satisfied or the Secured Loan or any part thereof shall remain outstanding, and for any applicable statutes of limitation periods relating to the breach thereof.

9.1 Authorization, Execution and Delivery. The execution and delivery of this Loan Agreement and each of the documents referenced in this Loan Agreement, which are to be or have been executed by Borrower, together with the performance of this Loan Agreement in accordance with its terms, are duly authorized and are not in contravention of law or of any agreement or undertaking to which Borrower is party or by which each is bound. Each of such Loan Documents when executed and delivered will constitute a legal, valid and binding obligation of Borrower, enforceable against such party in accordance with its respective terms.

9.2 No Litigation. There is no litigation pending or, to the knowledge of Borrower, threatened against them or the Home which may materially adversely affect the Secured Loan or completion of the renovation of the Home.

9.3 Property Taxes; Fees and Licenses. Borrower has paid or shall pay prior to delinquency any and all license, franchise or other taxes, fees, imposts, duties, or charges levied, assessed, or imposed ("**Property Taxes**") upon the Property. Borrower shall furnish Lender with evidence of payment of Property Taxes at least \_\_\_\_\_ (\_\_\_\_) days prior to the payment due date during the term of the Loan. All utility services and facilities necessary for the Home (including without limitation, gas, electrical, water and sewage services and facilities) are either available at the boundaries of the Property or can be made available at such boundaries without impediment or delay.

9.4 Compliance with Laws. During the term hereof, Borrower, shall comply in all material respects with all applicable government restrictions and regulations and obtain and maintain in good standing all licenses, permits and approvals necessary or advisable in the conduct of Borrower's, business, the renovation of the Home and the sale of the Home as contemplated hereby. Borrower further warrants that the renovation and sale of the Home shall comply with all applicable building and zoning laws, ordinances, codes, rules and regulations. The operation of the Home will not violate any building permits, restrictions of record or any agreement affecting the Property or any part thereof in any material respect.

9.5 Use of Funds. Borrower shall use the Secured Loan only for the payment of or reimbursement for acquisition and renovation costs of the Home.

9.6 Anti-Terrorism Compliance. Borrower represents and warrants that, as of the date hereof, it is not listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, United States Department of the Treasury pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of the Office of Foreign Assets Control, United States Department of the Treasury or pursuant to any other applicable Executive Orders (the "**OFAC Lists**"). The Borrower shall promptly notify the Lender if the Borrower becomes aware that Borrower, or any owner of Borrower is listed on the OFAC Lists or is indicted on, or is arraigned and held over on, charges involving money laundering or predicate crimes to money laundering.

10. Events of Default and Remedies. Borrower shall be deemed to have committed a "**Default**" if any of the following occurs:

10.1 The failure to pay when due any sum owed by Borrower to Lender hereunder and/or under the Secured Note and/or any of the Loan Documents at the time and in the amount due;

10.2 Any material representation or warranty made by Borrower in this Loan Agreement or in any of the Loan Documents, or any documents related to any of the foregoing, on the date as of which made or on the date of any advance hereunder or Borrower commits a material breach of or fails to perform any of the material terms, covenants and conditions of this Loan Agreement, any of the Loan Documents any documents related to any of the foregoing;

10.3 Except as otherwise permitted in the Loan Documents, the interest of Borrower in the Home is assigned, encumbered and/or transferred in any way (including the appointment of a receiver, trustee, conservator or liquidator) in respect of the Property or the Home, which appointment is not dismissed with prejudice within \_\_\_\_\_ (\_\_\_\_) days of appointment, condemnation or other form of governmental taking) without the prior written consent of Lender;

10.4 Borrower makes a general assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors or Borrower files a voluntary petition of bankruptcy or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, liquidation, dissolution or other similar relief for itself under the present or any future applicable federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors;

10.5 If the Deed of Trust executed in connection herewith ceases to provide to Lender the priority, liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby through no fault of Lender;

10.6 The occurrence of a Default as defined in the Secured Note or the Deed of Trust and/or any other Loan Document not otherwise specifically set out in this paragraph and/or

10.7 Borrower fails to timely deliver to Lender any of the reports and financial information and statements required above.

11. Cure by Borrower. Upon the occurrence of a Default under Section 10 above, Lender shall deliver a notice of Default to Borrower, which shall set forth the nature of the obligations that Borrower has not performed and if within a \_\_\_\_ (\_\_\_\_) day period thereafter, Borrower has not cured such Default, then such event shall be an "Event of Default" hereunder, which shall entitle Lender to exercise the remedies set forth herein.

12. Remedies of Lender. Upon the occurrence of an Event of Default hereunder, Lender may, at its option, do any or all of the following:

12.1 Declare all sums due under the Secured Note to be immediately due and payable in full;

12.2 Proceed against any or all of the collateral delivered by Borrower under the Loan Documents;

Exercise all other remedies provided to Lender by this Loan Agreement, the Secured Note, the Deed of Trust or any of the Loan Documents and/or the Uniform Commercial Code as in effect from time to time, or any other applicable laws;

12.3 Except as otherwise provided in this Loan Agreement or by law, to proceed by suit or suits in equity or at law to protect and enforce Lender's rights hereunder, whether for the specific performance of any covenant, condition, agreement or undertaking herein contained, or in aid of the execution of the power herein granted for the foreclosure of Lender's lien pursuant to the Deed of Trust, or for the appointment of a receiver or receivers, or for the enforcement of such other appropriate or legal or equitable remedy as may, in the opinion of Lender's counsel, be most effectual to protect and enforce the rights aforesaid; and

12.4 Except to the extent otherwise specifically provided herein, the terms, covenants and conditions of this Loan Agreement are not intended to supersede the terms, covenants and conditions of the Deed of Trust or the other Loan Documents, but shall be in addition thereto. No right or remedy conferred upon the Lender in this Loan Agreement is intended to be exclusive of any other right or remedy contained in the Secured Note, the Deed of Trust or any of the other Loan Documents or any other agreement between the parties hereto, and every such remedy shall be cumulative and shall be in addition to every other right or remedy contained in this Loan Agreement or now or hereafter available to the Lender at law, in equity, by statute or otherwise. No exercise by Lender of any one right or remedy shall be deemed an election of remedies. No delay by Lender shall constitute a waiver, election or acquiescence with respect to any right or remedy.

12.5 Notwithstanding anything to the contrary contained herein, prior to the exercise of any rights contained in this Section 12 or any similar rights contained in the Deed of Trust or the other Loan Documents, Lender shall use all reasonable efforts to negotiate, in good faith, a deed in lieu of foreclosure with Borrower.

13. Remedies Cumulative; No Waiver. All covenants, conditions, provisions, warranties, guaranties, indemnities and other undertaken obligations of Borrower contained in this Loan Agreement and in the other Loan Documents, or in any document referred to herein or contained in any agreement supplementary hereto or in any schedule given to Lender or contained in any other agreement between Lender and Borrower, heretofore, concurrently, or hereafter entered into, shall be deemed cumulative to and not in derogation or substitution of any of the terms, covenants, conditions or agreements of Borrower herein contained. The failure or delay of Lender to require strict performance by Borrower of any provision of this Loan Agreement or to exercise or enforce any rights, powers or remedies hereunder or under any of the aforesaid Loan Documents shall not operate as a waiver of such



performance, liens, rights, powers and remedies, but all such requirements, liens, rights, powers and remedies shall continue in full force and effect until the Secured Loan owing to Lender has been paid in full.

14. Acceleration of the Obligations. Without in any way limiting the right of Lender to demand payment of any portion of the obligations payable on demand allowed above (the “**Obligations**”), upon or at any time after the occurrence of an Event of Default, all or any portion of the Secured Loan shall, at the option of Lender and without presentment, demand, protest or further notice by Lender, become at once due and payable and Borrower shall forthwith pay to Lender, the full amount of such Secured Loan; provided, that upon the occurrence of a Default (after expiration of any applicable notice and cure period allowed hereunder) all of the Obligations shall become automatically due and payable without declaration, notice or demand by Lender.

15. Other Remedies. Upon and after the occurrence of an Event of Default, Lender shall have and may exercise from time to time, all of the rights and remedies of a secured party under applicable law, and all other legal and equitable rights to which Lender may be entitled, all of which rights and remedies shall be cumulative and shall be in addition to any other rights or remedies contained in this Loan Agreement or any of the other Loan Documents and none of which shall be exclusive. The right to take immediate possession of the Collateral, and to (i) require Borrower to assemble and make the Collateral available to Lender at a place designated by Lender which is reasonably convenient to both parties, and (ii) enter any premises where any of the Collateral shall be located and to keep and store the Collateral on said premises until sold (and if said premises be the Property of Borrower, Borrower agrees not to charge Lender for storage thereof).

16. Cumulative Effect; Conflict of Terms. The provisions of the Loan Documents are hereby made cumulative with the provisions of this Loan Agreement. If any provision contained in this Loan Agreement is in direct conflict with, or inconsistent with, any provision in any of the other Loan Documents, the provision contained in this Loan Agreement shall govern and control.

17. Reimbursement of Expenses. If, at any time or times regardless of whether or not a Default then exists, Lender incurs reasonable legal or accounting expenses or any other costs in connection with (i) the Secured Loan, this Loan Agreement or any of the other Loan Documents, (ii) any litigation, contest, dispute, suit, proceeding or action (whether instituted by Lender, Borrower or any other person) in any way relating to the Secured Loan, this Loan Agreement, the Home, the Property or any of the other Loan Documents or Borrower’s affairs; or (iii) any attempt to enforce any rights of Lender against Borrower; then all such reasonable legal and accounting expenses, other costs and out-of-pocket expenses of Lender shall be charged to Borrower. Notwithstanding the foregoing, in the event of an arbitration between the Lender and Borrower, the arbitrator shall be authorized to award attorneys’ fees to the prevailing party in the arbitration. All amounts chargeable to Borrower under this Section shall be obligations secured by all of the Collateral, shall be payable on demand to Lender, as the case may be, and shall bear interest from the date such demand is made until paid in full at the Base Interest Rate.

18. Arbitration. In the event of any dispute regarding the meaning, instruction, or intent of this Loan Agreement, or of any matter of performance, fact, law, background, circumstance, or other matter of any kind whatsoever relating to this Loan Agreement, the parties stipulate and agree that such dispute shall be decided at the written election of either party by binding arbitration in accordance with the rules of the American Arbitration Association in effect at the time of this Loan Agreement. Discovery shall be available to the parties subject to the approval and control of the arbitrator or arbitrators. The decision by the arbitrator shall be binding on all parties, and may be entered in any court of competent jurisdiction for enforcement. Such a decision may include the payment of all fees and costs of the prevailing party by the losing party. The determination of the “prevailing party” shall be made by the arbitrator. The parties hereto agree that the arbitration shall be concluded within \_\_\_\_\_ (\_\_\_\_) days of the commencement thereof by the initiating party.

19. General Provisions.

19.1 Relationship of Lender and Borrower as Creditor and Debtor Only. It is the express intent of the parties that their relationship is and shall remain that of Lender and Borrower. The Loan is not intended, nor shall it be treated, as a sharing of risk or profit arrangement with Borrower. Borrower and Lender warrant to each other that they shall make no statement, orally or in writing, or take or omit any action which could be implied by an ordinary, reasonable, prudent third party as evidence of a partnership or joint venture between Borrower and Lender. In no

event shall Lender be liable for any of the debts, obligations or liabilities of Borrower or of its owners as a result of the execution and delivery of this Loan Agreement; and in no event shall Lender be liable for any contributions to Borrower.

19.2 Nonwaiver. No failure of Lender to enforce its rights, remedies, or options in the Event of Default shall be deemed to be a waiver of any of its rights, remedies or options hereunder or at law, and Lender may at any time that such Default exists or continues to exist, enforce any or all of its rights, remedies and options arising by reason of such Default. The failure of Lender to insist upon strict performance of any covenant, term, condition or other provision hereof shall not constitute a waiver of Lender's right to demand strict compliance therewith in the future.

19.3 Notices. All notices, demands, requests, consents, statements, satisfactions, waivers, designations, refusals, confirmation or denials that may be required or otherwise provided for or contemplated under the terms of this Loan Agreement shall be in writing and shall be deemed to have been properly given (a) upon delivery, if delivered in person or by facsimile transmission with originals to follow by overnight carrier; (b) one (1) business day after having been deposited for overnight delivery with Federal Express or other comparable overnight courier service, or (c) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by first class or certified mail, postage prepaid, addressed as set out below. Any party may change its address by notifying the others in writing of the change. Any notice or demand delivered by mail shall be deemed delivered three (3) days after it has been mailed as provided herein.

19.4 Entire Agreement; Modification. This Loan Agreement and the Loan Documents or other instruments referred to herein constitute the entire agreement of the parties and supersede all prior agreements or understandings including but not limited to, any terms sheet entered into by and between Borrower and Lender. No modification or amendment of this Loan Agreement or any Loan Document shall be effective unless set forth in writing signed by Lender and Borrower. All exhibits and schedules attached to this Loan Agreement are incorporated herein by reference. In the event of any conflict between this Loan Agreement and any of the other Loan Documents, this Loan Agreement shall prevail.

19.5 Governing Law. This Loan Agreement shall for all purposes be governed by and construed in accordance with the laws of the State in which the Property is located.

19.6 Executed Counterparts. This Loan Agreement may be executed in one or more counterparts, all of which when fully-executed and delivered by all parties hereto and taken together shall constitute a single agreement, binding against each of the parties. Escrow Holder or any party, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one or more of such counterparts, which shall then constitute one or more original agreements. Any document may be signed and transmitted by telecopy or portable document format (.PDF) email with the same validity as if it were an ink-signed document. Each signatory below represents and warrants by his or her signature that he or she is duly authorized (on behalf of the respective entity for which such signatory has acted) to execute and deliver this instrument and any other document related to this transaction, thereby fully binding each such respective entity.

19.7 Time of Essence. Time is of the essence of this Loan Agreement. If the date on which any notice, act or occurrence required or permitted to occur herein, or if the last day upon which any condition may be satisfied, shall be a Saturday, Sunday or legal holiday, such day or date shall be deemed to have been set for the next business day immediately following such Saturday, Sunday or legal holiday.

19.8 Assignment. Borrower may not assign its rights or obligations under this Loan Agreement or the Loan Documents without the prior written approval of Lender. Any attempted transfer in violation of this provision shall be null and void. Lender shall have the right to assign all or a portion of its interest in the Secured Loan, and all rights and benefits of Lender herein shall inure to the benefit of such assignee hereby consents to Lender sharing financial and Home information with any prospective assignee, so long as Lender receives reasonable assurances from the prospective assignee that such person(s) will utilize the materials only in evaluating the anticipated assignment, and otherwise agrees to maintain the confidentiality of these materials.



19.9 Binding Effect. The terms and provisions of this Loan Agreement shall be binding upon Borrower and its successors and assigns and shall inure to the benefit of Lender and Lender's successors and assigns, and the interests granted herein and in the Loan Documents shall be binding upon all owners of the Property until such time as all sums have been paid under the terms of the Secured Note and this Loan Agreement.

19.10 Severability. If any term, provision, condition or covenant of this Loan Agreement or its application to any party or circumstances shall be held to any extent, invalid or unenforceable, the remainder of this Loan Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

19.11 Further Assurances. Borrower agrees to do or to cause to be done such further acts and things and to execute and deliver or to cause to be executed and delivered such additional assignments, agreements, powers and instruments, as Lender may reasonably require or deem advisable in order to give effect to this Loan Agreement, and upon request by Lender, Borrower shall supply evidence of fulfillment of each of the covenants herein contained concerning which a request for such evidence has been made.

19.12 Usury Savings Clause. Notwithstanding anything to the contrary contained elsewhere in this Loan Agreement or in the Secured Note, Lender and Borrower hereby agree that all agreements between Lender and Borrower with respect to the Secured Loan, whether now existing or hereafter arising, and whether written or oral, are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid to Lender for the use, forbearance or detention of the money to be loaned to Borrower, or for the performance or payment of any covenant or obligation contained herein or therein, exceed the maximum contractual amount permissible under applicable laws. If, due to any circumstance whatsoever, fulfillment of any provision of this Loan Agreement at the time of performance of such provision shall be due shall involve payment of interest in excess of that prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Lender shall ever receive anything of value deemed interest by applicable law which would exceed the highest lawful rate, an amount equal to any excessive interest shall be applied to the reduction of the principal amount owing on the Secured Loan and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance of the Secured Loan, and such other indebtedness, such excess shall be refunded to Borrower. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Secured Loan of Borrower to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the actual rate of interest on account of all such indebtedness is uniform throughout the actual term of the Secured Loan or does not exceed the maximum lawful rate throughout the entire term of the Secured Loan, as appropriate. The terms and provisions of this Section shall control every other provision of this Loan Agreement and all other agreements between Borrower and Lender.

19.13 Nonliability of Lender. Lender does not undertake or assume any responsibility or duty to Borrower to review, inspect, supervise, pass judgment upon, or inform Borrower or any other party of any matter in connection with any phase of Borrower's business, operations, or condition, financial or otherwise. Borrower shall rely entirely upon its own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Borrower or any other party by Lender in connection with any such matter is for the protection of Lender, and neither Borrower nor any third party is entitled to rely thereon.

19.14 Sophisticated Borrower. The Borrower represents to Lender that the Borrower and its officers, directors, members, managers and controlling persons have a "preexisting personal or business relationship" (as such term is defined in the California Corporate Code §25118) and that the Borrower, by reason of its own business and financial experience or that of its professional advisers, has the "capacity to protect its own interests in connection with the transactions" (as such term is defined in the California Corporate Code §25118) contemplated by this Agreement, the other Loan Documents and all other documents and agreements executed in connection therewith. Borrower further warrants that the Loan Amount was borrowed from Lender solely to acquire or carry on a bona fide business or nonconsumer purpose or commercial enterprise, and/or Borrower is a business or commercial organization. Borrower further warrants that all of the proceeds of this Note shall be used for commercial purposes and stipulates that the Loan Amount shall be construed for all purposes as a commercial loan, and is made for other than personal, family, household or agricultural purposes.

In witness whereof, the parties hereto have executed, or caused their duly authorized representatives to execute, this Loan Agreement as of the date first above written.

**[SIGNATURE PAGES FOLLOW]**

**LOAN AGREEMENT EXECUTION PAGE**

**Borrower:**

\_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Lender:**

\_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

With copy to:

**Exhibits:**

Schedule "1"	LIST OF LOAN DOCUMENTS
Exhibit "A"	REAL ESTATE DESCRIPTION
Exhibit "B"	PURCHASE AGREEMENT
Exhibit "C"	INSURANCE REQUIREMENTS
Exhibit "D"	PERMITTED TITLE EXCEPTIONS

**Schedule “1”**

**LIST OF LOAN DOCUMENTS**

1. Loan Agreement
2. Secured Promissory Note
3. Deed of Trust
4. UCC-1 Financing Statement
5. Consent and Authorization for Loan (Borrower)
6. Environmental Indemnity

**Exhibit "A"**

**REAL ESTATE DESCRIPTION**

- A. Commonly Known As:
- B. More Particularly Described As:

**Exhibit “B”**

**PURCHASE AGREEMENT**

Exhibit “B”



**Exhibit “C”**

**INSURANCE REQUIREMENTS**

Prior to the closing of the Loan, Borrower shall supply to Lender the following documentation, in form and content satisfactory to Lender.

(a) Verification of an insurance policy issued by a company authorized to do business in the State of California and rated “A” or better in the A.M. Best Key Rating Guide, evidencing Lender as loss payee and:

<b><i>Needed:</i></b>	<b><i>Coverage:</i></b>
	Builder’s Risk and Course of Construction fire policy together with liability and extended coverage for the full insurable replacement value of the improvements or loan amount, whichever is less. If such policy contains a co-insurance clause, such policy shall also incorporate an agreed amount endorsement
	Loss of Rents Insurance
	Public Liability Insurance
	Flood insurance if the property lies within an area in which flood insurance is required to be maintained under the Flood Disaster Protection Act of 1973
	Earthquake insurance if the property lies within an active fault area as determined by Lender in its sole discretion
	Lender’s loss payable endorsement (Form BFU or other form as Lender in its sole discretion may approve) in favor of Lender
	Other insurance as circumstances may dictate and Lender may reasonably require.
	After completion, a multi-peril policy including liability is required

(b) Such insurance must be primary and non-contributory with any other insurance carried by Lender.

**Exhibit “D”**

**PERMITTED TITLE EXCEPTIONS**