



# **RESOLUTION No. 20-068**

## **OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA**

### **RESOLUTION APPROVING A LOAN AGREEMENT WITH THE REGIONAL HOUSING AUTHORITY TO PROVIDE A DEFERRED LOAN TO THE PENN VALLEY LONE OAK SENIOR APARTMENT PROJECT IN THE AMOUNT OF \$898,000 AND DIRECTS THE AUDITOR CONTROLLER TO AMEND THE FY 19-20 BUDGETS FOR THE COUNTY GENERAL FUND AND THE HOUSING – COMMUNITY SERVICES (4/5 AFFIRMATIVE VOTE REQUIRED)**

WHEREAS, the Board of Supervisors established a 2019 Board Objectives A Priority to “Coordinate with local jurisdictions, developers and other partners to maximize leveraging opportunities with new state funding for affordable and workforce housing development;” and

WHEREAS, the Regional Housing Authority (RHA) and Penn Valley Pacific Associates, LP are co-developers of the proposed Lone Oak Senior Apartment project, a thirty-one-unit senior affordable housing project located in Penn Valley, CA (“Project”); and

WHEREAS, the Federal Low-Income Tax Credit program was established by the Tax Reform Act of 1986 to encourage the construction and rehabilitation of low-income rental housing, and the California Tax Credit Allocation Committee (CTCAC) is responsible for allocating tax credits to owners of qualifying residential rental housing projects; and

WHEREAS, CTCAC encourages local government agencies to provide financial assistance to aid in the development and construction of low-income rental housing; and

WHEREAS, the County of Nevada was previously approached by the RHA with a request to provide loans from funds earmarked for affordable housing to the Lone Oak Senior Apartments project; and

WHEREAS, the Project will further the public purpose and Nevada County Board of Supervisors’ Objectives A Priority of addressing affordable housing needs within the County of Nevada; and

WHEREAS, on May 28, 2019, the Nevada County Board of Supervisors, per Resolution 19-238 approved a loan commitment to RHA in furtherance of the Project, allocating the amount of \$898,000 that included an original loan commitment of \$398,000 comprised of \$331,000 from property sales identified in Resolution 17-539, \$67,000 in other housing-related funding from the Health and Human Services Agency, and \$500,000 from the General Fund related to the proceeds from the sale of County property earmarked for affordable housing purposes; and

WHEREAS, the approved loan commitment to RHA in furtherance of the Project was contingent on the developer successfully securing tax credits for the Project through the competitive TCAC process; and

WHEREAS, the Developer has satisfied the condition laid out in the previous resolutions to secure award of Federal tax credits from CTCAC in order to receive the loan amounts indicated by resolution; and

WHEREAS, the loan to RHA will not be secured by a deed of trust as previously understood, as RHA is committing the funding wholly to the Project and is unable to secure the County funds through a deed of trust; and

WHEREAS, the County desires to execute the Loan Agreement and corresponding Promissory Note with RHA in the amount of \$898,000 for a term of fifty-five (55) years from the issuance of the certificate of occupancy at an interest rate of 3% per annum, with the loan principal and interest repaid from residual cash flow from the Project.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Supervisors of the County of Nevada authorizes the Chair of the Board of Supervisors to sign the Loan Agreement and Promissory Note in substantially the same forms attached hereto between the County of Nevada and Regional Housing Authority in the amount of \$898,000 with a repayment term of fifty-five (55) years at an interest rate of 3% per annum, with loan repayments made from residual cash flow from the project.

BE IT FURTHER RESOLVED, that the Health and Human Services Agency Director or his/her designee(s) is authorized to sign any/all amendments to the Loan Agreement and/or other documents necessary to complete the loan transaction.

BE IT FURTHER RESOLVED, that the Chair of the Board of Supervisors directs the Auditor-Controller to release from the General Fund Unassigned Fund Balance in the amount of \$500,000 and to release from the Housing-Community Services Fund Balance the amount of \$380,395; and amend the budgets as follows:

	<u>Fiscal Year 2019/20</u>	
Expenditure:	1607-50601-451-5000/522090	\$398,000
	0101-10206-271-1000/522090	\$500,000
	1607-50601-451-1000/550700	(\$17,605)

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 10th day of March, 2020, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Susan K. Hoek and Richard Anderson.

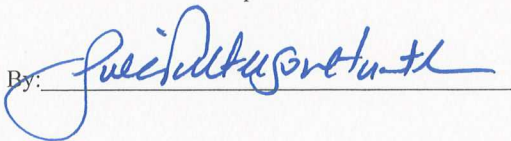
Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER  
Clerk of the Board of Supervisors

By: 

  
Heidi Hall, Chair

3/10/2020 cc: Housing\*  
AC\* (Hold)

3/12/2020 cc: Housing\*  
AC\* (Release)

## LOAN AGREEMENT

THIS AGREEMENT (the "Agreement") IS MADE THIS 10<sup>th</sup> day of March 2020, between the **County of Nevada**, a public subdivision of the State of California, (the "Lender") and the **Regional Housing Authority**, a public body corporate and politic ("Borrower"), collectively, the "Parties."

### RECITALS

- A. Pursuant to that certain Resolution No. 19-238 by Lender dated May 28, 2019, which is attached hereto and incorporated herein as Exhibit A (the "Deferred Loan Commitment Resolution"), Borrower is the recipient of a commitment by Lender of capital funds in the amount of \$898,000.00 (the "County Funds") for the development of the proposed Loan Oak Senior Apartment project, a 31-unit senior affordable housing project located in Penn Valley, CA at 10584 Broken Oak Court, Penn Valley, CA 95946 (the "Project").
- B. Borrower represents that Penn Valley Pacific Associates, a California Limited Partnership duly organized and validly existing is the owner of the Project ("Owner"). Borrower is the Regional Housing Authority (RHA). In the ownership structure, the Managing General Partner is Lone Oak I-BBP, LLC, a California limited liability company, by Building Better Partnerships, Inc., a California Nonprofit Public Benefit Corporation, which is an instrumentality of Borrower/Regional Housing Authority. The Administrative General Partner in the ownership is TPC Holdings VII, LLC, an Idaho Limited Liability Company. The current Limited Partner is Pacific West Communities, Inc., a co-developer with RHA. Collectively, these three entities make up Penn Valley Pacific Associates, LP.
- C. Borrower has agreed to make capital funds loans, including the proceeds from this loan, to Owner for the development and construction of the Project.

NOW, THEREFORE, Lender and Borrower agree as follows:

Section 1 – LOAN. Lender agrees to loan to Borrower, and Borrower agrees to receive the proceeds of the County Funds subject to the following terms and conditions:

a) Borrower and Lender agree that lender shall make the loan of the County Funds to Borrower and Borrower shall accept the loan upon the terms, conditions, covenants, representations and warranties contained herein and agreements entered into in connection herewith. All funds disbursed hereunder shall be evidenced by an unsecured Promissory Note (the "Note") and bear interest at the rate specified in the Note, as attached hereto and incorporated herein as Exhibit B.

b) Borrower agrees to comply with the terms of this Agreement and the



County Resolutions and to not knowingly allow Owner to use the proceeds of the County Funds in a manner or for purposes inconsistent with the Agreement or the County Resolutions pertaining to the County Funds and the Project.

Section 2 – DISBURSEMENTS. Borrower shall submit a disbursement request to Lender. Upon approval of any disbursement request, Lender will disburse said funds directly to Borrower to disburse to Owner. Borrower shall insure that Owner uses such disbursed County Funds only for purposes approved by Lender pursuant to this Agreement and the County Resolution set forth in Exhibit A.

Section 3 – BORROWER REPRESENTATIONS AND COVENANTS.

(a) Borrower hereby represents, warrants, and covenants as follows: (i) it is a nonstock corporation; (ii) it is a public body corporate and politic and has conducted itself at all times in a manner consistent with a tax-exempt organization; and (iii) it has received no notice or other correspondence pertaining to a challenge or potential challenge to its tax-exempt status and it is not aware of any reason why its tax-exempt status (now or with the passage of time) should not continue in full force and effect.

(b) Borrower covenants to cooperate with Lender and respond promptly to all requests by Lender necessary to maintain Lender's compliance with and facilitate disbursements of this Agreement and the County Resolutions.

Section 4 - BORROWER'S DEFAULT AND RIGHT TO CURE. Any default in Borrower's performance of any covenant, condition, representation, or agreement set forth herein, the Promissory Note, event of default on the part of the Owner or Partner with respect to other loan documents and agreements for Project, or any failure by Borrower to immediately disburse to Owner County Funds received from Lender, or failure of Borrower to repay Lender pursuant to section 6 ("Repayment") below, shall be a default hereunder. Upon receipt of written notice from Lender of such default

Borrower shall have thirty (30) calendar days from the receipt of such notice to cure such default (except in the case of a default because of failure to disburse County Funds to Owner in which case the period shall be five (5) calendar days) provided, however, that so long as Borrower has commenced to cure within such time, then Borrower shall have a reasonable period thereafter within which to fully cure the default.

Section 5 - LENDER'S REMEDIES. Should Borrower fail to cure a default under this Agreement and/or the Note, in addition to other rights and remedies permitted by the Agreement or applicable law, Lender may choose in its sole discretion to proceed with any or all of the following remedies in any order or combination:

- (a) Bring an action in equitable relief (1) seeking the specific performance by Borrower of the terms and conditions of this Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;
- (b) Bring an action for return of any County Funds disbursed to Borrower that Borrower has not used pursuant to the terms of this Agreement;
- (c) Terminate this Agreement and cease to disburse County Funds;
- (d) Declare the Note immediately due and payable.
- (e) Pursue any other remedy allowed at law or in equity.

WHETHER OR NOT LENDER ELECTS TO EMPLOY ANY OR ALL OF THE REMEDIES AVAILABLE TO IT IN THE EVENT OF A DEFAULT, LENDER SHALL NOT BE LIABLE FOR CONSTRUCTION OF OR FAILURE TO CONSTRUCT OR COMPLETE OR PROTECT THE IMPROVEMENTS OR FOR ANY PAYMENT OF ANY EXPENSE INCURRED IN CONNECTION WITH THE EXERCISE OF ANY REMEDY AVAILABLE TO LENDER OR FOR THE CONSTRUCTION OR COMPLETION OF THE IMPROVEMENTS OR FOR THE PERFORMANCE OR NONPERFORMANCE OF ANY OBLIGATION OF BORROWER. ADDITIONALLY, IN FURTHERANCE OF THIS AGREEMENT BORROWER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS LENDER AND ITS OFFICERS, OFFICIALS, EMPLOYEES, AGENTS AND VOLUNTEERS FROM ANY AND ALL LIABILITIES, CLAIMS, DEMANDS, DAMAGES, LOSSES AND EXPENSES (INCLUDING WITHOUT LIMITATION DEFENSE COSTS AND ATTORNEYS FEES) WHICH RESULT FROM THE NEGLIGENT ACT, WILLFUL MISCONDUCT, OR ERROR OR OMISSION OF BORROWER, EXCEPT SUCH LOSS OR DAMAGE WHICH WAS CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF LENDER.

Section 6 - LOAN TERM/REPAYMENT. This Agreement shall commence on the date set forth above and remain in full force and effect for a period of 55 years from date of issuance of certificates of occupancy for the Project unless and until terminated pursuant to its terms or terminated by Lender pursuant to Section 5(c) above. Repayment of the loan will be executed as specified in the Note.

Section 7 - COMPLIANCE MONITORING. The Parties hereto understand and

agree that the Borrower shall pay, a reasonable annual fee for compliance monitoring during the period of affordability under the HOME Program loan. Should the requirement to pay the Lender for compliance monitoring under the HOME program cease or expire, prior to the repayment of the County Affordable Housing funds, the Borrower agrees to provide all documentation required by the County to ensure affordability compliance and continue to pay the annual monitoring fee to the Lender until such time as this loan agreement is terminated .

Borrower agrees to pay this annual fee upon request of Lender.

Section 8 - GOVERNING LAW. This Agreement shall be interpreted under and governed by the laws of the State of California.

Section 9 - NO WAIVER. Any waiver by either the Lender or Borrower of any obligation in this Agreement must be in writing. No waiver shall be implied from any failure of the Lender or Borrower to take, or any delay or failure by Lender to take action on any default by Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by Lender or Borrower to any act or omission by the other party shall not be construed to be consent to any other act or omission or to waive the requirement for Lender or Borrower's written consent to future waivers.

Section 10 - ASSIGNMENT. This Agreement may not be assigned by Borrower without the express written consent of Lender. Subject to the foregoing restriction, this Agreement shall inure to the benefit of the Lender, its successors and assigns, and binds Borrower, its successors and assigns.

Section 11 - SURVIVAL. The representations, warranties, and covenants herein shall survive the disbursement of the loan and shall remain in full force and effect until the loan is paid in full.

Section 12 - SEVERABILITY. Invalidation of any one or more of the provisions of this Agreement or the Promissory Note by judgment or court order shall in no way affect any of the other provisions thereof which shall remain in full force and effect.

Section 13 - NOTICES. All notices, requests and demands given to or made upon the respective parties shall be deemed to have been given or made when upon deposit with any overnight delivery service, or three (3) days after deposit with certified mail, return receipt requested, and addressed as follows:

Lender: County of Nevada  
Housing & Community Services  
950 Maidu Ave.  
Nevada City, CA 95959  
Attn: Director

Borrower: Regional Housing Authority  
1455 Butte House Road  
Yuba City, CA 95993  
Attn: Executive Director



Section 14 - BINDING UPON SUCCESSORS. All provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this section does not waive the prohibition on assignment of this Agreement by Borrower without Lender's consent. The term "Borrower" as used in this Agreement shall include all assigns, successors-in-interest, and transferees of Borrower.

Section 15 - RELATIONSHIP OF PARTIES. The relationship of Borrower and Lender under this Agreement is and shall remain solely that of a Lender and Borrower under a loan agreement and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Lender neither undertakes nor assumes any responsibility or duty to Borrower (except as provided herein) or to any third party with respect to the matters described herein. Borrower shall have no authority to act as an agent of Lender or to bind Lender to any obligation.

Section 16 - AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this Agreement must be in writing, and shall be effective only if executed by both Borrower and Lender.

Section 17 - TIME. Time is of the essence in this Agreement.

Section 18 - INTEGRATION. This Agreement contains the entire agreement of the Parties and supersedes any and all prior negotiations.

Section 19 - SEVERABILITY. If any provision of this Agreement shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired by such holding.

Section 20 - THIRD-PARTY BENEFICIARIES. This Agreement is made for the sole benefit of the Borrower and Lender, their successors and assigns and no other person or persons shall have any rights or remedies under or by reason of this Agreement nor shall Lender owe any duty whatsoever to any claimant for labor performed or material furnished in connection with the Project, to apply any undisbursed portion of the loan to the payment of any such claim or to exercise any right or power of Lender hereunder or arising from any default by Borrower.

Section 21 - EXECUTION IN COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; provided, however, that only the counterpart delivered to the Lender shall be deemed the original.

SIGNATURES BEGIN ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the day and year first hereinabove written.

**LENDER:**

COUNTY OF NEVADA

By: Heidi Hall

Heidi Hall  
Chair, Board of Supervisors

**BORROWER:**

REGIONAL HOUSING AUTHORITY

By: Gustavo Becerra

Gustavo Becerra  
Executive Director

Attest: Julie Patterson-Hunter

JULIE PATTERSON-HUNTER

CLERK OF THE BOARD OF SUPERVISORS



**PROMISSORY NOTE  
UNSECURED**

\$898,000.00

February 25, 2020  
Penn Valley, California

FOR VALUE RECEIVED and pursuant to that certain Loan Agreement dated as of even date herewith entered by Regional Housing Authority, a public body corporate and politic ("Maker") and the County of Nevada, a public entity of the State of California ("Holder"), Maker promises to pay Holder the sum of \$898,000.00 (the "Loan") or so much thereof as may be advanced by Holder pursuant to the Loan Agreement, together with interest on the outstanding principal balance in accordance with and on the terms set forth herein below. Capitalized terms used but not defined herein shall have the same meaning as set forth in the Loan Agreement.

1. Purpose. This Promissory Note ("Note") is associated with the lending of money by Holder to Maker in connection with the development and construction of the proposed Loan Oak Senior Apartment project, a 31-unit senior affordable housing project (the "Project") located in Penn Valley, California, and owned by Penn Valley Pacific Associates, a California limited partnership ("Owner"). This Note shall be unsecured.
2. Interest. Commencing on the date of initial disbursement of all or a portion of the Loan Proceeds and continuing through the date that all indebtedness and other amounts payable under the Loan Agreement and the Note are paid in full, the interest on the Loan shall bear interest at a simple rate of three percent (3%) per year.
3. Term. The term of this Note ("Term") shall commence upon the date of issuance of certificates of occupancy for the Project and shall expire upon the fifty-fifth anniversary of such date (the "Maturity Date").
4. Repayment. Maker shall make annual payments on the outstanding principal and accrued interest equal to 90% of residual receipts, as defined in the "Appendix A" attached hereto and incorporated herein, actually received from Owner (the "Owner Payments"), after bifurcating the Capital Funds that Maker is lending to Penn Valley Pacific Associates, LP from funds that did not originate from the Holder pursuant to that certain Loan Agreement. Maker shall retain 10% of each Owner Payment as an administrative fee. The 90% residual receipts referenced above shall be shared between Holder and another lender in proportion to their respective loans. Total loans are equal to \$1,082,000 (Holder equal to \$898,000 and the other lender equal to \$184,000). The share of residual receipts of Holder shall be 82.99 percent and the share to the other lender shall be 17.01%. Owner Payments are expected to be made out of a portion of residual receipts from the calendar year preceding such relevant payment (and specifically, without limitation, not from proceeds of any sale or refinancing transaction). "Residual Receipts" means for each calendar year during Term, the amount by which Gross Revenue exceeds annual operating expenses for the Development (see Appendix A for full definition) To the extent any payment otherwise required hereunder exceeds 90% of any Owner Payment, any unpaid amounts shall accrue and be paid from future year(s) Owner Payments until paid. All annual payments shall be made in arrears no later than the later of: 1) May 1st of each year with respect to the previous calendar year; or 2) a date falling ten business days after receipt of the relevant Owner Payment by Maker. All

payments made shall be credited first to any accrued but unpaid interest, then to current interest due and owing, and lastly to principal. Interest not paid current shall accrue. All unpaid Loan principal and interest remaining at the Maturity Date shall be immediately due and payable.

Maker shall have the right to make full or partial prepayments under this Note without premium or penalty. Any prepayments shall be applied to reduce the principal balance of the Note.

**Due on Sale, Refinance or Transfer of Property.** Unless Holder agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Loan Documents shall be due and payable upon the transfer, refinance or sale (each a "Transfer") of all or any part of, or interest in, the Property, except any Transfer after which the Property is subject to deed restrictions requiring the Property to continue to be operated as an affordable rental housing development. Notwithstanding the foregoing, following the admission of the limited partner of Borrower, the transfer of a limited partners' limited partnership interest shall not constitute an accelerating Transfer and shall not require the consent of Holder. Moreover, notwithstanding the foregoing, a limited partner of Borrower shall be permitted to remove and replace a general partner thereof for cause in accordance with the Partnership Agreement without the consent of Holder.

**Audited Financial Statement.** In connection with the annual repayment of the Note, no later than the later of: 1) May 1st of each year with respect to the previous calendar year; or 2) a date falling ten business days after receipt of the relevant Owner Payment by Maker. Maker shall furnish to Holder an audited statement of the Owner's records, duly certified by an independent firm of certified public accountants, setting forth in reasonable detail the computation and amount of Residual Receipts during the preceding calendar year.

5. **Waiver.** Maker and each surety, endorser, and guarantor waive all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, protests, and notices of protest. If this note or any instrument securing or collateral to it is given to an attorney for collection or enforcement, or if suit is brought for collection or enforcement, or if it is collected or enforced through probate, bankruptcy or other judicial proceeding, then Maker shall pay Holder all costs of collection and enforcement, including reasonable attorney's fees and court costs, in addition to other amounts due.

6. **Acceleration.** On default in the payment of this note or in the performance of any obligation in any instrument securing or collateral to it, the unpaid principal balance and earned interest on this note shall become immediately due at the election of Holder. In the event of any default by Maker under this Note, Maker shall pay, in addition to all principal and interest, all reasonable costs and attorneys' fees necessary to collect the obligation evidenced by this Note, whether or not suit be filed. Failure of Holder to assert any right under this Note shall not be deemed a waiver of such right.

7. **Holder's Rights.** Failure of Holder to assert any right under this Note shall not be deemed a waiver of such right.

8. **Binding Obligation.** This Note shall be binding upon Maker and Maker's heirs, legal representatives, successors, and assigns.

The terms of this Note may only be amended or modified by a written agreement executed by Maker and Holder.

9. California Law. This Note and the legality, validity and performance of the terms hereof shall be governed by, enforced, determined, and construed in accordance with the laws of the State of California.

10. Severability. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

11. Amendment or Modification. The terms of this Note may only be amended or modified by a written agreement executed by Maker and Holder.

12. Notices. All notices given under this Note shall be made in writing and shall be deemed received when delivered in accordance with the Loan Agreement.


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[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, Maker has executed this Note as of the date first written hereinabove.

MAKER:

By:   
Gustavo Becerra, Executive Director  
Regional Housing Authority

The undersigned hereby accepts the foregoing Promissory Note and agrees to perform each and all of the terms thereof on the part of Holder to be performed. Executed as of the date and place first above written.

HOLDER:

By:   
Heidi Hall, Chair  
Nevada County Board of Supervisors

Attest:

Julie Patterson-Hunter  
Clerk of the Board of Supervisors

By: 

## Appendix A Residual Receipts Definitions

**1.1.** “Annual Operating Expenses” means for each calendar year during the term of the Loans, the following costs reasonably and actually incurred for operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: all state and local property and other taxes and annual assessments imposed on the Development; premiums for property damage and liability insurance; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on loans that have been approved by RHASNC and which are secured by deeds of trust; utility services not paid for directly by tenants, including but not limited to water, sewer, trash collection, gas and electricity; maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial, supplies, and others; any annual license or certificate of occupancy fees required for operation of the Development; general administrative expenses including but not limited to advertising and marketing, security services and systems, and professional fees for legal, audit and accounting; property management fees and reimbursements including on-site manager expenses, not to exceed fees and reimbursements which are standard in the industry.

**1.2.** “Gross Revenue” means for each calendar year during the term of the Loans, all revenue, income, receipts and other consideration actually received by Borrower from operation and leasing of the Project development. Gross Revenue includes, but is not limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development; and condemnation awards for a taking of part or all of the Development for a temporary period. Gross Revenue shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Development and the release of funds from replacement and other reserve accounts to Borrower other than for costs associated with the Development. Gross Revenue shall not include tenants’ security deposits, loan proceeds, capital contributions or similar advances.

**1.3.** “Residual Receipts” means for each calendar year during the Term, the amount by which Gross Revenue (as defined above) exceeds Annual Operating Expenses (as defined above) for the Development. Residual Receipts shall also include, unless otherwise provided herein and subject to the rights of senior lenders, condemnation awards for a permanent taking of part or all of the Property or the Project to the extent not utilized to repair or rebuild the Project development.