

**CITY OF SAN LUIS OBISPO
PROMISSORY NOTE – IMPACT FEE DEFERRAL
SECURED BY DEED OF TRUST**

\$[*enter amount*]

Date: [*enter date*]

At San Luis Obispo, California

FOR VALUE RECEIVED, [*enter borrower entity/LP name*], a California limited partnership ("**Borrower**"), promises to pay to the order of the **City of San Luis Obispo** ("**City**") a municipal corporation and charter city in the State of California ("**Lender**"), at such place as the Lender may from time to time designate by written notice to borrower, the principal sum of [*enter amount in words*] (*\$enter amount*) ("**Loan**"), together with interest on the unpaid principal balance from time to time outstanding. Until the Loan is paid in full, the Loan will bear interest at an annual simple fixed rate of three percent (3.0%) ("**Interest Rate**"). A breakdown of this value (City Impact Fees) is seen in Exhibit A. Interest hereunder shall not be compounding. Principal and interest shall be payable in lawful money of the United States of America. Interest shall be computed based upon a three hundred sixty-five (365) day year.

1. **Payment; Maturity.** No payments of interest or principal shall be due on this Note prior to the Maturity Date (as defined below), so long as no Event of Default hereunder shall have occurred and be continuing. All unpaid interest amounts shall accrue under this Note. The principal amount of this Note, plus all accrued and unpaid interest, and all other amounts owing hereunder or under the Deed of Trust (defined below) shall be due and payable on [*enter date 20 years from signing date*] (the "**Maturity Date**"). This Note shall be deemed satisfied when the principal amount of this Note, all interest accrued thereon and all other amounts due hereunder and under the Deed of Trust are paid in full.

2. **Security.** This Note is secured by a Deed of Trust, Deed of Trust Covenants, Assignment of Rents, Security Agreement and Fixture Filing by and between Borrower and Lender, dated as of the date hereof (the "**Deed of Trust**") and recorded against Borrower's interest in that certain real property located in San Luis Obispo, California, as more particularly described in the Deed of Trust (the "**Property.**") The terms of the Deed of Trust are incorporated herein by this reference. Borrower agrees to pay all the collection and enforcement costs, expenses and attorneys' fees paid or incurred by Lender or adjudged by a court in any litigation or controversy connected with this Note.

3. **Prepayment.** This Note may be prepaid, at any time, in whole or in part, without premium or penalty.

4. **Application of Payments.** Each payment under this Note shall be applied (a) first, to the payment of accrued interest; (b) second, at the option of Lender, to the payment of any other amounts owing under this Note and the Deed of Trust, other than accrued interest and principal, including, but not limited to, advances Lender may have made for attorney fees or late charges due hereunder; and (c) third, to the reduction of principal of this Note. All payments of principal under this Note shall be applied to the most remote principal installment then unpaid.

Accrued interest shall not be added to the principal balance of the Note; provided, however, upon an Event of Default and acceleration under Section 9.01 of the Deed of Trust, all accrued and unpaid interest shall be added to the principal amount of the Note and interest at the Default Rate shall accrue thereon.

5. **Default Rate; Late Charge.** Upon an Event of Default and acceleration under Section 9.01 of the Deed of Trust, the unpaid principal balance and all accrued interest thereon shall bear interest thereafter at the rate of the Default Rate, but if such interest rate exceeds the Maximum Rate, then such rate shall be reduced to the Maximum Rate. The term “Default Rate” means that Interest Rate plus five percent (5.00%) per annum. In addition, if any payment due under this Note is paid within ten (10) business days after Borrower received written notice of such failure to pay, Borrower shall pay a reasonable later or collection charge equal to five percent (5.00%) of the amount so unpaid. Lender and Borrower agree that the actual damages and costs sustained by Lender due to the failure to make timely payments would be extremely difficult to measure and that the charges specified in this paragraph represent a reasonable estimate by Borrower and Lender of a fair average compensation for such damages and costs. Such charges shall be paid by Borrower without prejudice to the right of Lender to collect any other amounts provided to be paid under this Note or any other agreement or, with respect to late payments, to declare an Event of Default.

6. **Usury.** Notwithstanding anything herein to the contrary, no provision contained herein shall require the payment or permit the collection of interest, including any fees and/or charges, in excess of the maximum non-usurious interest permitted by applicable law (“**Maximum Rate**”). If any interest in excess of the Maximum Rate is provided for, or shall be adjudicated to be so provided or, then Borrower shall not be obligated to pay interest to the extent that it is in excess of the Maximum Rate and any excess interest which may have been collected shall be either applied as a credit against the then unpaid principal amount hereof or refunded to Borrower.

7. **Event of Default.** The occurrence of any one or more of the following shall constitute an “Event of Default” hereunder:

a) **Failure to Make Payment of Interest and Principal.** Borrower fails to make any payment as described in this Note as of the Maturity Date.

b) **Failure to Make Other Payments.** Borrower fails to make any payment due under the Note (other than interest and principal payments which are governed by subsection (a) above) within thirty (30) days of the date of written notice from Lender that such payment is due.

c) **Failure to Comply with Governing Documents.** Borrower fails to comply in any material respect with the terms and conditions as set forth in this Note, the Deed of Trust, the Development Impact Fee Deferral Agreement, or the Affordable Housing Agreement between the Borrower and Lender/City dated as of the date hereof to provide affordable rental housing,

and does not cure such failure within thirty (30) days after written notice from Lender; provided, however, if such failure is not capable of cure within said thirty (30) day period, then if Borrower promptly undertakes action to cure such failure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion within one hundred twenty (120) days after the date of the notice from Lender, then Borrower shall not be in default hereunder.

8. **Remedies.** If any Event of Default occurs under this Note or Deed of Trust, then the whole of the principal, interest and charges owing on this Note may be declared immediately due and payable and Lender may exercise all remedies under the Deed of Trust, or at law, in equity or otherwise, including the right to accelerate the payment of the principal, interest and charges owing hereunder and under the Deed of Trust. Borrower agrees to pay immediately upon demand all costs and expenses of Lender, including reasonable attorneys' fees, if, after an Event of Default, it is necessary or desirable for Lender to retain services for collection or protection of Lender's rights under this Note and the Deed of Trust, including but not limited to an attempt to have any stay or injunction prohibiting the enforcement of this Note or Deed of Trust lifted by any bankruptcy or other court.

9. **Waiver of Presentment.** Borrower and all persons liable or to be liable on this Note waive presentment, demand, notice of dishonor, notice of default, delinquency or acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, and notice of protest and nonpayment, grace, notice late charges and diligence in taking any action to collect amounts due to Lender under this Note or proceeding against any of the rights and interest in and to personal or real property, if any, securing payment of this Note.

10. **No Waiver.** Neither Lender's acceptance of one or more installments following an Event of Default, nor any delay on the part of Lender in the exercise of any power or right under this Note or under the Deed of Trust, shall operate as a waiver thereof, and no single or partial exercise of any other power or right shall operate as a waiver thereof.

11. **Miscellaneous.**

a) **Applicable Law.** This Note shall be governed by and construed in accordance with the laws of the State of California. Venue for any action or proceeding arising out of or in connection to this Note shall be the Superior Court for the County of San Luis Obispo.

b) **Severability of Provisions.** Each provision of this Note shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Note is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Note which are valid.

c) **Interpretation.** Unless otherwise specific, in computing any period of time described herein, the term "days" means calendar days, unless the final day of any designated period of time is not a "business day" (as defined below), in which case the period shall run until

the end of the next business day. A “business day” is any day that is not a Saturday, Sunday or legal holiday for national banks located in California. The last day of any period of time described herein shall be deemed to end at 5:00 p.m., Pacific Time.

d) Headings. Headings in this Note are for convenience only and do not define or limit the scope of provisions of this Note.

e) Notices. All notices to be given under this Note must be given in accordance with the Deed of Trust.

12. **Relationship.** At all times, the relationship of Lender and Borrower shall be that of creditor and debtor. The Lender shall not, in any event, be constructed or held to be a partner, joint venture, employee or associate of Borrower in the Conduct of Borrower’s business. Nothing in this Note shall be construed to establish such relationship.

13. **Limitation on Recourse.** Neither Borrower nor Borrower’s officers, partners, officers, directors, employees or agents nor their respective members, officers, partners, officers, directors, employees or agents shall be personally liable for the payment of principal, interest and other amounts which may become due and payable under the Note or the Deed of Trust or the Affordability Agreement. Except in the case of actual fraud or willful misconduct of any such person(s), the sole recourse of the Lender under this Note and Deed of Trust for repayment of the Note shall be the exercise of its rights against the Property.

14. **Subordination.** The indebtedness evidenced by this Note is and shall be subordinate in the right of payment to the prior payment in full of all amounts then due and payable (including, but not limited to, all amounts due and payable by virtue of any default or acceleration or upon maturity) with respect to the indebtedness evidenced by the Senior Financing Documents (as defined below) and any subsequent refinancings thereof. The payee and each subsequent holder of this Note shall be deemed, by virtue of such holder’s acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the subordinate or junior lender under the Senior Financing Documents. The “Senior Financing Documents” shall mean, collectively:

(a)

15. **Amendments.** This Note may not be modified or amended except by an instrument in writing executed by Borrower and Lender.

[Signature appears on the following page]

IN WITNESS WHEREOF, Borrower has executed the Promissory Note as of the date as first written above.

BORROWER:

[*enter LP/ borrower entity*],
a California limited partnership

By: [*enter managing general partner entity name*],
a California nonprofit public benefit corporation,
its managing general partner

By: _____
[*enter CEO name*], CEO

EXHIBIT A

[enter impact fee breakdown table here]