

**CDBG-MIT LOAN AGREEMENT**

**BY AND BETWEEN**

**VIRGIN ISLANDS HOUSING FINANCE AUTHORITY  
As Lender,**

**And**

**JACKSON DEVELOPMENT COMPANY, LLC  
As Borrower**

**December 19, 2024**

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**CDBG-MIT PROGRAM  
LOAN AGREEMENT**

**THIS LOAN AGREEMENT** (this “**Agreement**”) is entered into as of the 19<sup>th</sup> day of December, 2024, (the “**Effective Date**”) by and between the **VIRGIN ISLANDS HOUSING FINANCE AUTHORITY**, an autonomous instrumentality of the Government of the United States Virgin Islands, (“**VIHFA**”), whose address is 3202 Demarara Plaza, Suite 200, St. Thomas, USVI 00802-6447; and **JACKSON DEVELOPMENT COMPANY, LLC**, a Virgin Islands limited liability company (the “**Borrower**”), whose address is PO Box 303217, St. Thomas, VI 00803.

**PRELIMINARY RECITALS:**

**A. WHEREAS**, VIHFA is providing funds from the United States of America, HUD Community Development Block Grant - Mitigation (“**CDBG-MIT**”) Program to qualified borrowers, in accordance with the CDBG-MIT Program (the “**Program**”) under the VIHFA Mitigation Action Plan incorporating Amendment 1, approved by HUD and effective October 16, 2023 (collectively, the “**Action Plan**”, and together with any other formal program guidance issued by VIHFA, the “**Program Description**”), to provide needed assistance for qualified projects to remedy the loss of affordable homeownership due to the damage caused by Hurricanes Irma and Maria and to mitigate against future loss due to environmental threats; and

**B. WHEREAS**, VIHFA has determined to allow CDBG-MIT funds to be used for loans pursuant to the Action Plan; and

**C. WHEREAS**, Borrower has submitted an application to VIHFA, including, but not limited to, the completed printed application, any written responses to any deficiency letter issued by VIHFA, and any written attachments, addenda, and amendments pertaining thereto to utilize CDBG-MIT funds for the renovation and development of a multifamily residential rental project (the “**Project**”) located on certain immovable property more fully described on **Exhibit A - Property Description** attached hereto (the “**Land**”) with the intent that promptly following renovation the Project will be converted to condominium and the condominium units therein will be sold to current residents in accordance with an Affordable Homeownership Program Manual to be approved by VIHFA prior to implementation (the “**Affordable Homeownership Program Manual**”); and

**D. WHEREAS**, based on the Application, Borrower has been awarded a loan by VIHFA as set forth in this Agreement (the “**Loan**”) from funds available under the Action Plan, the proceeds of which shall be used for the Project, as set forth in the Project-Specific Award Agreement among the Borrower, Bellevue & Calabash Affordable Homes, LLC and VIHFA dated December 19, 2024 (“**Award Agreement**”); and

E. **WHEREAS**, in order to secure the Loan awarded to the Borrower, the parties have entered into a certain Mortgage (Construction Security Interest), Assignment of Leases and Rents and Security Agreement (the “**Mortgage**”) securing the collateral described therein (the “**Mortgaged Property**”); and

F. **WHEREAS**, in connection with the LIHTCs that were previously allocated to Borrower’s predecessor in interest under Section 42 of the Code, an Extended Low-Income Housing Commitment Agreement (“**Tax Credit Regulatory Agreement**”) was executed and recorded as a covenant running with the land. The Tax Credit Regulatory Agreement has been or will be amended in connection with the Loan, will be enforceable against the Borrower and its successors, and will allow for the conversion of the Project to condominium and the affordable sale of the condominium units therein; and

G. **WHEREAS**, the parties desire to enter into this Agreement in order to: (i) evidence the terms and conditions of the Loan, and the security therefor; and (ii) ensure compliance by Borrower with the Program Description; and (iii) govern the disbursement of the Loan, and the use of such funds by the Borrower.

## **AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the sufficiency and receipt whereof being hereby acknowledged, VIHFA and Borrower agree as follows:

**Recitals and Defined Terms.** The recitals set forth above are true and correct and are incorporated herein and made a part of this Agreement. As used in this Agreement and the Loan Documents, the following terms shall have the following meanings:

(a) **Affiliate:** With respect to any entity, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or that has a Controlling Interest in, such entity.

(b) **Application:** The application by Borrower to VIHFA for funding under the Action Plan.

(c) **Business Day:** Any day other than a Saturday, Sunday or any other day on which Lender is not open for business.

(d) **CDBG-MIT Regulatory Agreement:** The CDBG-MIT Regulatory Agreement of even date herewith executed by Borrower in favor of VIHFA.

(e) **Code:** The Internal Revenue Code of 1986, as amended.

(f) **Completed Project:** Projects are considered complete only after all units are a 100% construction complete and certificates of occupancy (or other requisite local approval of the completion of rehabilitation) have been issued.

(g) **Compliance Period:** the period specified in the Tax Credit Regulatory Agreement as the Compliance Period.

(h) **Construction Completion:** that date that all necessary title transfer requirements and construction work have been performed and the final drawdown of CDBG-MIT Funds has been disbursed for the project.

(i) **Construction Costs:** the construction costs shown on **Exhibit C**.

(j) **Construction Lender:** N/A.

(k) **Construction Loan:** N/A.

(l) **Construction Loan Mortgage:** N/A.

(m) **“Controlled by”, “under common control with”, or “Controlling Interest”:** (i) the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of a company (or other entity) and includes the definition of “control” in 24 CFR 401.310(a)(2); or (ii) the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; or (iii) the ability to direct in any manner the election of a majority of a company’s (or other entity’s) directors, trustees or members; or (iv) the ability to exercise a controlling influence over the company’s or entity’s management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership, and a managing member of a limited liability company is presumed to be in control of that limited liability company.

(n) **Debt Service Amounts:** Amounts payable under this Agreement, the Note, the Mortgage, or any other Loan Document.

(o) **Default:** the definition set forth in the Mortgage.

(p) **Default Rate:** the definition set forth in the Note.

(q) **Developer:** Jackson Development Company, LLC, a Virgin Islands limited liability company, and its permitted successors and assigns.

(r) **Disbursement Date:** The date of a disbursement of Loan proceeds pursuant to a

Draw Request, it being contemplated by this Agreement that there will be not more than one (1) Disbursement Date per month.

(s) **Draw Request:** A request for disbursement of a portion of the proceeds of the Loan to provide funds for the payment of a portion of the Total Development Costs; each such Draw Request shall be deemed to be an advance under the Note. The Draw Request shall contain claims for labor and materials to the date of the last inspection by the Inspector, and not for labor and materials rendered thereafter, and contain the Inspector's determination or confirmation of the percentage of completion of the Project for the purposes of the Draw Request.

(t) **Eligible Costs:** costs of the Project other than Ineligible Costs.

(u) **Guarantor:** One or more persons or entities acceptable to VIHFA, which may include the general partner or managing member of Borrower, or other Affiliate of Borrower, which has an economic interest in Borrower, or which will otherwise obtain a material financial benefit from the Loan, and which will be required to execute the Operating Deficit Guaranty, the Performance and Completion Guaranty (if applicable), and the Guaranty of Exceptions to Non-Recourse Liability, including but not limited to Jackson Development Company, LLC, a Virgin Islands limited liability company and its permitted successors and assigns.

(v) **Identity of Interest:** An identity of interest relationship exists if any officer, director, board member, or authorized agent of any Project team member (consultant, general contractor, supplier, vendor, vendee, attorney, management agent, seller of the land, etc.):

- (i) is also an officer, director, board member or authorized agent of any other Project team member;
- (ii) has any control over or any financial interest in any other Project team member's firm or corporation;
- (iii) is a business partner of an officer, director, board member, or authorized agent of any other Project team member;
- (iv) has a family relationship through blood, marriage or adoption with an officer, director, board member, or authorized agent of any Project team member; or
- (v) advances any funds or items of value to the Borrower.

(w) **Home:** A condominium unit that is expected to be renovated and sold as part of the Project.

(x) **Indebtedness:** The principal of, interest on, or any other amounts due at any time under the Note, this Agreement or the Mortgage, including late charges, default interest, and advances to protect the security of the Mortgage under the terms of the Mortgage, reasonable attorneys' fees and court costs, and other fees and costs due and payable under the Loan Documents.

(y) **Initial Sale Period:** The period of time beginning with the date the Borrower first

grants a right of first refusal to a tenant of the Project and expiring on the date the last Project tenant either (1) closes on their Unit Sale, if they have elected to exercise their right of first refusal, or (2) waives or is deemed to have waived their right to exercise their right of first refusal.

(z) **Ineligible Costs:** any costs enumerated at 24 CFR §570.207, with the exception of those costs which are permitted under the Territory's waiver, which permits the use of CDBG-MIT for new construction.

(aa) **Inspector:** The licensed architectural or engineering firm approved or appointed by the Borrower (and approved by VIHFA) to inspect the construction and progress thereof prior to disbursements under the Loan.

(bb) **Lender:** The holder of the Note, including without limitation, VIHFA.

(cc) **LIHTC:** Any low-income housing tax credit allowed pursuant to Section 42(h)(4) of the Code.

(dd) **Loan:** The loan to Borrower by VIHFA pursuant to this Agreement.

(ee) **Loan Documents:** The Note; this Agreement; the Mortgage; UCC-Financing Statements covering the fixtures and movable property located at the Project; the CDBG-MIT Regulatory Agreement; the Operating Deficit Guaranty; the Performance and Completion Guaranty of even date herewith by Guarantor in favor of VIHFA; the Guaranty of Exceptions to Non-Recourse Liability of even date herewith by Guarantor in favor of VIHFA; the Subordination Agreement; and such other documents, agreements, instruments or certificates as VIHFA and its counsel may require, including such documents as VIHFA in its sole discretion deems necessary or appropriate to evidence or secure the Indebtedness.

(ff) **Mortgage:** The Mortgage (Construction Security Interest), Assignment of Leases and Rents, and Security Agreement executed by Borrower in favor of VIHFA, which shall (a) constitute a first lien upon the Project, and (b) constitute a first lien upon and security interest in all fixtures and movable property relating to or located in the Project, and (c) secure Borrower's obligations to VIHFA under the Note.

(gg) **Note:** The CDBG-MIT Note, dated the Effective Date, evidencing the Loan.

(hh) **Operating Agreement:** The Operating Agreement of the Borrower.

(ii) **Operating Deficit Guaranty:** The guaranty from the Guarantor covering operating deficits of Borrower as more fully described in such guaranty executed by Borrower and Guarantor in favor of Lender of even date herewith.

(jj) **Organizational Documents:** The Articles of Organization, Operating Agreement,

and/or any other documents required or existing setting forth the organization and operation of the Borrower.

**(kk) Plans and Specifications:** The plans and specifications for the construction of the Project as reviewed and approved by VIHFA prior to the initial Draw Request and all amendments and modifications as approved by VIHFA.

**(ll) Restricted Asset Account (“RAA”):** The deposit account in the name of and controlled by Borrower in which Unit Sales Proceeds, Surplus Cash and other program income will be deposited, together with all interest, cash and other rights and property with respect thereto.

**(mm) Tax Credit Regulatory Agreement:** The Extended Low-Income Housing Commitment Agreement with VIHFA related to the Project, as amended by that certain Amendment to Extended Low-Income Housing Commitment Agreement executed by Borrower and VIHFA and recorded contemporaneously herewith.

**(nn) Territory:** The U.S. Virgin Islands, a territory of the United States of America.

**(oo) Total Development Cost:** The total costs to rehabilitate the Project, including without limitation hard and soft costs and developer fees, as set forth on **Exhibit C - Total Development Costs** attached hereto, as modified and amended from time to time with the consent of VIHFA.

**(pp) Unit Sale:** The sale of a unit following conversion of the Project to condominium.

**(qq) Unit Sales Proceeds:** The cash actually received from a Unit Sale, including the homebuyer’s downpayment and the cash proceeds of the homebuyer’s first-lien acquisition loan.

## SECTION 1 LOAN TERMS AND USE OF FUNDS

**1.1 Principal Amount and Interest.** The principal amount of the Loan is TWENTY MILLION FIVE HUNDRED SEVENTY-ONE THOUSAND FIFTY-FOUR and 00/100 DOLLARS US (\$20,571,054.00), bearing zero percent (0.00%) interest prior to any Default. From and after the occurrence of a Default, the principal amount shall bear interest at the Default Rate. All outstanding principal and accrued interest shall be due and payable by Borrower in accordance with the Note.

### **1.2 Repayment Terms.**

**(a) Maturity.** The Loan shall mature on the earliest to occur of: (i) acceleration following an Event of Default under the Loan Documents that is not cured within any applicable grace or cure period; or (ii) the “Maturity Date”, which shall be 35 years from the Closing Date; provided, however, that the Maturity Date (x) shall be extended for any additional period for which an Borrower agrees in its sole discretion to extend the term of its CDBG-MIT Regulatory Agreement.

**(b) Annual Payments from Restricted Assets Account.** The Loan shall be repaid in accordance with the Note. Principal and interest shall be paid in annual installments due January 1 of each year following the Initial Sale Period (defined below) in an amount equal to (x) all funds in the Restricted Asset Account in excess of (y) \$500,000 or such other amount as shall be specified in the approved Program Manual or otherwise approved in writing by VIHFA, which amount the parties intend shall be sufficient for the liquidity and operation of the Restricted Asset Account. The funding and interim application of the Restricted Asset Account is provided for below in section 1.7. “**Initial Sale Period**” shall mean the period of time beginning with the date Borrower first offers Project tenants the right of first refusal to purchase their Unit and expiring on the date the last Project tenant either (1) closes on the purchase of their unit, if they have elected to exercise their right of first refusal, or (2) waives or is deemed to have waived their right to exercise their right of first refusal.

**(c) Payment from Surplus Cash; No Partnership.** Notwithstanding the requirement of repayment from Surplus Cash, the Loan shall not be construed as a joint venture, partnership or other association between Borrower and VIHFA, other than a debtor/creditor relationship. VIHFA’s right to be paid from Surplus Cash shall terminate at such time as the principal and interest amounts due on the Note are paid in full.

**(d) Surplus Cash and Accounts.**

**(i) Determination of Surplus Cash.** Surplus Cash shall be determined in accordance with the Note.

**(ii) Operating Account and Accounting Requirements.** The Borrower shall establish an Operating Account. During the term of the Loan:

(A) All cash received by the Borrower shall be deposited to the Operating Account, except for (1) proceeds of all development period sources of funds (limited, however, to the amounts included in the Borrower’s final Cost Certification provided for Lender’s subsidy layering review); (2) tenant security deposits; and (3) proceeds required to be deposited to the Restricted Asset Account pursuant to this Agreement and the Note.

(B) All discounts, rebates, commissions or other payments in connection with the Project shall be credited to the Project and shall be deposited to the Operating Account even if such payments are made to the management agent, the Borrower or any Affiliate.

(C) Borrower agrees that these Operational and Accounting Requirements shall be binding on the Borrower, and that the Borrower has provided these Operational and Accounting Requirements to all other parties providing funds to the Project. The provisions of these Operational and Accounting Requirements shall apply, notwithstanding any provision to the contrary in the Borrower’s Organizational Documents and notwithstanding any provision to

the contrary in the Borrower's agreements with any investor or with any other lender.

**1.3 Expenditure of Funds.** Proceeds from the Loan are to be used solely to support the development, rehabilitation, replacement, restoration, and construction of the Project as set forth in the Award Agreement, the Program Description and the Loan Documents. The Loan shall be used solely to reimburse actual Total Development Costs already expended that VIHFA, in its sole but reasonable discretion, determines to be eligible for CDBG reimbursement. Borrower shall use the proceeds of the Loan only for the payment of Eligible Costs. Borrower shall not use any proceeds from the Loan for Ineligible Costs. Borrower acknowledges that VIHFA must comply with the provisions of 2 CFR Part 200 as modified by 24 CFR Section 570.502, and OMB Circular A-87, which allow only costs that are necessary, reasonable, and adequately supported to be charged to the Program. Thus, Borrower acknowledges and agrees that any funds not used in accordance with this standard or applicable CDBG regulations must be repaid to VIHFA by Borrower upon written demand.

#### **1.4 Security**

(a) Repayment of the Note shall be secured by a Mortgage, Assignment of Leases and Rents, and Security Agreement ("Mortgage"), which Mortgage shall (i) constitute a lien upon the applicable Project and a security interest in all fixtures and personal property relating to or located in such Project, and (ii) secure all obligations to VIHFA under the Loan Documents; and UCC-Financing Statements covering the fixtures and personal property located at the Project; each of which is to be executed and delivered by Borrower at Closing. The Mortgage shall constitute a first-priority lien on the Project.

(b) Each Unit will be released from the Mortgage at the time of Unit Sale, at which time Borrower will provide to VIHFA, as substitute security:

(i) A security interest in sales proceeds and other funds that are retained by Borrower in the Restricted Asset Account as detailed below; and

(ii) a collateral assignment of any seller take-back loan made by the Borrower (a "Financial Assistance Loan") and the proceeds thereof.

**1.5 Note.** The Loan shall be evidenced by the Note. In the event of any conflict, the terms of the Note will supersede this Loan Agreement.

**1.6 Reduction of Loan.** Notwithstanding anything to the contrary contained herein, VIHFA may reduce the principal amounts of the Loan in accordance with the Note.

#### **1.7 Restricted Asset Account; Funding and Interim Application.**

(a) Borrower shall establish a deposit account, to be called the "Restricted Asset Account", to be operated in strict accordance with this Loan Agreement or as further or otherwise provided in the Program Manual approved by VIHFA.

- (b) Borrower shall deposit into the Restricted Asset Account:
- (i) All Net Cash Flow of the Project. “**Net Cash Flow**” means net income from rental operations after payment of all operating expenses.
  - (ii) All Unit Sale Proceeds;
  - (iii) All Financial Assistance Loan repayments;
  - (iv) Any Excess Proceeds as defined in the Declaration of Affordability Covenants and recovered pursuant thereto; and
  - (v) Any other income that it receives in the course of operating the program.
- (c) Funds in the Restricted Asset Account will be used to perform CDBG-MIT eligible activities, and no further draws on the Loan may be made while funds are available in the Restricted Asset Account.
- (d) Annually, some or all of the balance of the Restricted Asset Account will be paid over to VIHFA as Debt Service, as provided above.

**1.8 Term.** The term of this Agreement shall commence upon the Effective Date and terminate upon payment in full of the Indebtedness. All indemnification obligations of Borrower and all other provisions in this Agreement that provide they shall survive a termination of this Agreement shall remain in full force and effect, notwithstanding such termination.

## SECTION 2 BORROWER LIMITATIONS

**2.1 Restrictions On Identity-of-Interest Relationships.** The Borrower must notify VIHFA in writing prior to contracting with any Identity of Interest entity, and the Borrower must include in its audited annual financial statements a disclosure of all amounts paid to Identity of Interest entities. In addition, VIHFA will have the right, in its sole but reasonable discretion, during the term hereof, to require the cancellation of any contract between the Borrower and any Identity of Interest entity other than those listed on Schedule 2.1 of the Loan Agreement. If VIHFA approves any Identity of Interest contract, other than those listed on Schedule 2.1 of the Loan Agreement, that does not provide for subsequent cancellation, Borrower agrees, upon VIHFA’s request, to cause the contract to be modified to provide for cancellation. All current contracts with Identity of Interest entities are identified on Schedule 2.1, attached hereto. Notwithstanding the foregoing, no Identity of Interest relationship may exist between Borrower and any lender providing secured financing to the Project, unless Borrower has received the prior written consent of VIHFA.

SECTION 3  
REQUIRED GUARANTEES AND RESTRICTION ON USE

**3.1 Required Guarantees.** As a condition to disbursement of proceeds, Borrower shall deliver the executed Operating Deficit Guaranty, the Performance and Completion Guaranty of even date herewith by Guarantor in favor of VIHFA; the Guaranty of Exceptions to Non-Recourse Liability of even date herewith by Guarantor in favor of VIHFA. VIHFA may pursue its remedies against any Guarantor without first exhausting its remedies against the Borrower or the Project, or any other Guarantor.

**3.2 CDBG-MIT Regulatory Agreement.**

(a) As a condition to disbursement of proceeds, Borrower will be required to execute and deliver to VIHFA the CDBG-MIT Regulatory Agreement. The CDBG-MIT Regulatory Agreement shall be recorded in the real estate records where the Project is located, and shall be subordinate only to those liens and encumbrances agreed to by VIHFA, in its sole discretion.

(b) The CDBG-MIT Regulatory Agreement shall have a stated term of thirty-five (35) years.

SECTION 4  
REQUIRED RESERVES

**4.1 Replacement Reserve.**

(a) **Reserve for Repairs.** Borrower shall establish and maintain a reserve (“**Replacement Reserve**”) for the payment of costs and expenses incurred by Borrower in connection with fixtures, furniture and equipment, capital improvements, repairs and replacements performed at the Project, including but not limited to, the performance of work to the roofs, chimneys, gutters, downspouts, paving, curbs, ramps, driveways, balconies, porches, patios, exterior walls, exterior doors and doorways, windows, carpets, appliances, fixtures, elevators, and mechanical and HVAC equipment and the replacement of furnishings, fixtures and equipment in the rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities and other public areas accessible by the public or tenants for regular use, and such other items as Lender may approve from time to time in its reasonable discretion (collectively, the “**Repairs**”).

(b) **Disbursement of Reserves.** So long as no Default has occurred and is continuing and no circumstance exists, that with the giving of notice, or passage of time, or both, would constitute a Default, (i) all sums in the Replacement Reserve shall be held in the Replacement Reserve to pay and/or reimburse Borrower for the costs and expenses of Repairs, and (ii) to the extent funds are available for such purpose in the Replacement Reserve, Lender shall provide written consent to reimbursement to Borrower of the amount paid or incurred by Borrower in performing such Repairs within ten (10) days following: (a) the receipt by Lender of a written request from Borrower for consent to disbursement from the Replacement Reserve and a certification by Borrower to Lender that the

applicable item of Repair has been completed; (b) the delivery to Lender of invoices, receipts or other evidence verifying the cost of performing the Repairs; and (c) for disbursement requests (i) in excess of \$10,000.00 with respect to any single Repair, or (ii) for any single Repair that is structural in nature, delivery to Lender of (1) affidavits, lien waivers or other evidence reasonably satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished materials or labor to the Project have been paid all amounts due for labor and materials furnished to the Project; (2) a certification from an inspecting architect or other third party acceptable to Lender describing the completed Repairs and verifying the completion of the Repairs and the value of the completed Repairs; and (3) a new (or amended) certificate of occupancy for the portion of the Improvements covered by such Repairs, if said new certificate of occupancy is required by law, or a certification by Borrower that no new certificate of occupancy is required by law. Lender shall not be required to consent to reimbursement from the Replacement Reserve more frequently than once in any thirty (30) day period. In consenting to any payment from the Replacement Reserve, Lender shall rely entirely on such request from Borrower, and on any bill, statement, or estimate from any third party, without any inquiry into the accuracy, validity or contestability of any such amount. In the event that the amounts on deposit or available in the Replacement Reserve are inadequate to pay the cost of the Repairs, Borrower shall pay the amount of such deficiency.

## SECTION 5 CLOSING AND CONDITIONS TO DISBURSEMENT

**5.1 Closing.** As used herein, “**Closing**” shall mean that day on which all of the Loan Documents are executed and delivered by Borrower, and the Mortgage and CDBG-MIT Regulatory Agreement are filed for record with the appropriate clerk or recorder of deeds where the Project is located or a gap coverage title policy is released evidencing title and a Lender loan title insurance policy acceptable to Lender. Funding of the Loan will not occur until all of the conditions to funding the Loan have been satisfied.

**5.2 Method of Disbursement.** The Loan proceeds shall be disbursed to or on behalf of Borrower in the following manner:

(a) At Closing, an amount equal to \$14,931,685.00 or such greater amount as may be approved by Lender in its reasonable discretion (the “**Initial Draw**”).

(b) Thereafter, upon written request from Borrower, up to ninety percent (90%) of the then-remaining balance of the Loan.

(c) The remaining amount of the Loan shall be disbursed to Borrower *pro rata* upon receipt of a certificate of occupancy (or local equivalent) for each building in the Project; provided that if no certificate of occupancy (or local equivalent) is available under local practice, then such remaining amount of the Loan will be disbursed to Borrower upon receipt by Lender of a certificate of completion from the Project's architect certifying that the Project has been substantially completed in accordance with the plans and specifications of the Project, but for any punch list items not affecting the suitability of the Project for occupancy and for which at least one hundred fifty percent (150%) of the expected cost, as determined by Borrower, has been reserved in an account controlled by Borrower.

**5.3 Conditions to be Met Prior to the Disbursement of any Draws.** Prior to the disbursement of any draws, the following conditions must be satisfied in the sole and absolute discretion of VIHFA; provided, however, that, prior to the disbursement of the Initial Draw, only the conditions in Sections 5.3(a) – (c) and 5.3(h) – (l) must be satisfied:

(a) VIHFA shall have received executed originals of all of the Loan Documents (including a Loan disbursement statement), in form and substance acceptable to VIHFA.

(b) Commencement of construction of the Project has occurred or will occur promptly upon completion of the Closing.

(c) VIHFA shall have received the financial statements of all Guarantors, as required pursuant to the Operating Deficit Guaranty, the Performance and Completion Guaranty (if applicable), and the Guaranty of Exceptions to Non-Recourse Liability, as applicable.

(d) VIHFA shall have received from the Borrower a copy of the construction budget and line-item breakdown of Total Development Costs, including hard and soft costs, along with a sources and uses of funds in the amount of the Total Development Costs, a draw schedule and estimated development timing assumptions.

(e) VIHFA shall have received certificates of insurance as to Builder's Risk and Hazard Insurance in completed value form with extended coverage in the amount of the full value of the Project, as completed, but which shall, in any case, include such insurance coverage sufficient to meet the standards established in Part V, Section 106 of the Fannie Mae U.S. Guide, effective November 3, 2003, as amended from time to time, unless any of such requirements is waived by VIHFA. Such certificates of insurance shall be issued by a company satisfactory to VIHFA, duly endorsed to show the interest of VIHFA under a standard non-contributing mortgagee clause addressed to VIHFA. The policy shall also provide that such policy will not be canceled without thirty (30) days' notice to VIHFA. Borrower agrees that VIHFA shall have the right to take any action necessary to continue said insurance in full force and effect including, but not limited to, paying premiums. Any funds advanced to continue the policies in full force and effect shall be considered as Draw Requests hereunder and shall bear interest from the date of disbursement at the Default Rate and payment of said funds and interest shall be secured by the Mortgage. Notwithstanding Fannie Mae requirements, VIHFA agrees to waive windstorm coverage for the Project, provided that Borrower submits an engineer's documented Probable Maximum Loss (PML) report showing a PML of 10% or less for the Project.

**(f)** VIHFA shall have received a payment and performance bond, letter of credit or funds delivered in escrow (or a combination thereof) from Developer and each subcontractor on the Project, in an amount equal to 100% (in the case of a bond), 25% (in the case of a letter of credit) or 20% (in the case of a cash escrow) of the cost of items the Developer or subcontractor, as applicable, will perform on the Project (such percentage of cost, the “**Security Amount**”). If a subcontractor cannot provide its respective Security Amount, the Developer will provide such Security Amount on such subcontractor’s behalf. The Developer and each subcontractor shall have the option to provide the Security Amount in a bond, letter of credit or funds delivered in escrow or a combination thereof, so long as the total cost of performance is secured.

**(g)** VIHFA shall have received a copy of the general contractor’s contract, the architect’s contract, the development agreement, the management agreement and management plan, the plans and specifications, the site plan and floor plans, an appraisal, utility availability letters, and such other documentation as VIHFA may reasonably require.

**(h)** VIHFA shall have received the vesting deed (act of sale) or ground lease, as applicable, evidencing Borrower’s title or interest in the land and a mortgagee’s policy of title insurance from a title insurance company or agent acceptable to VIHFA, insuring VIHFA’s mortgage lien on the Project, with the standard “preprinted” exceptions deleted, and containing only those exceptions acceptable to VIHFA, in its sole discretion.

**(i)** VIHFA shall have received an ALTA Survey of the current condition of the Land, certified to VIHFA, showing any buildings or other improvements located thereon and platting building setback lines, servitudes, roads, encroachments, any platable exceptions that are acceptable to VIHFA in its sole discretion and any other locatable or visible survey or title-related issues affecting the Land together with a statement as to the flood elevation and zoning for the Land and such other requirements and certification as VIHFA may reasonably require.

**(j)** VIHFA shall have received Borrower’s tax identification number.

**(k)** VIHFA shall have received: (i) an opinion of Borrower’s counsel covering such matters as are reasonably required by VIHFA, including, without limitation, the existence and good standing of Borrower; that the Loan Documents have been duly authorized, executed and delivered by Borrower; the enforceability of the Loan Documents; (ii) copies of Borrower’s Organizational Documents; (iii) good standing certificate for the United States Virgin Islands for Borrower and the managing member of Borrower, and (iv) such resolutions, certificates, and consents as VIHFA deems necessary or proper to authorize the execution and delivery by Borrower of the Loan Documents.

**(l)** VIHFA shall have received federal and state tax lien, judgment, UCC and pending litigation searches for Borrower, and such other parties as VIHFA shall require for each state in which such entity was formed, as well as the Territory in which the Project is located, in each case, dated not more than sixty (60) days prior to the date of the initial disbursement.

**5.4 Conditions to be Met for All Draws.** The following are conditions for all draws and must be satisfied in the sole and reasonable discretion of VIHFA (it being understood and agreed that subject to the provisions contained in Section 4 of this Agreement, VIHFA may withhold from disbursement any amounts required to fund any reserve required by the terms of the Loan Documents):

(a) Borrower shall supply VIHFA with a Draw Request in the form provided by VIHFA requesting disbursement of Loan proceeds for reimbursement of Eligible Expenses. Each Draw Request shall set forth the amount requested (which in no event shall exceed VIHFA's *pari passu* share) and shall be accompanied by partial releases of liens from the general contractor and all major subcontractors to the effect that such amount has been paid for labor and materials supplied to the Project for the immediately preceding draw period and that general contractor and the major subcontractors claim no lien on the Project, and such other evidence as may be required by this Agreement or by VIHFA. By executing and delivering a Draw Request to VIHFA, Borrower agrees and acknowledges that such execution and delivery shall constitute a reaffirmation that the warranties and representations in the Loan Documents are correct and true in all material respects, that all the covenants, terms, and conditions of this Agreement are being and have been complied with, and that no Default has occurred and is continuing as of the date of the Draw Request. VIHFA shall have received for its approval the Draw Request for such disbursement, and any other certifications provided for herein or as requested by VIHFA in its reasonable discretion. For all draw requests submitted for payment of any contractor or supplier with an Identity of Interest relationship with the Borrower, the Borrower's Architect shall submit a certification of cost reasonableness, establishing that such costs are reasonable.

(b) There shall be at all times undisbursed loan funds, which are sufficient to complete the construction of the Project. Each Draw Request from Borrower shall be deemed to be a certification by Borrower to VIHFA that, taking into account any retainage, there will be sufficient funds to complete the Project. VIHFA shall have received from the Inspector or from Borrower a copy of Inspector's report prior to the date of such Draw Request and such report shall be satisfactory to VIHFA in its sole discretion.

(c) VIHFA shall have received an endorsement to the title insurance policy using standard construction loan disbursement endorsements updating the status of title to the date of the current Draw Request and increasing the insurance coverage to an amount equal to the sum of all prior Draw Requests and the current Draw Request, without additional exceptions or objections, except those specifically approved in writing by VIHFA.

(d) VIHFA shall have received evidence that all certificates of insurance as to Builder's Risk and Hazard Insurance remain in effect.

(e) The warranties and representations contained in the Loan Documents are correct and true, in all material respects, all the covenants, terms and conditions of the Loan Documents remain satisfied, and no uncured Default, default, or circumstances or events which upon the lapse of time, the giving of notice, or both, could become a Default, have occurred as of the date of the Draw Request under the Loan Documents.

(f) VIHFA shall have received a certificate of Borrower included with each Draw Request stating that Borrower has satisfied and is in compliance with all of the terms, covenants and conditions of the Award Agreement, the Program, and all laws, rules, regulations, ordinances and codes applicable to the Project, including without limitation CDBG regulations, to the extent not waived in writing. Such certificate shall state that all of Borrower's representations, warranties and covenants contained in the Application and the Loan Documents are true and correct in all material respects as of the Disbursement Date, and Borrower has performed all of its obligations under the Loan Documents, and no Default, or circumstance or event which with notice or the passage of time, or both would constitute a Default under the Loan Documents shall exist as of the Disbursement Date.

(g) If requested by VIHFA, Borrower shall furnish copies, certified by Borrower to be true and correct, of all subcontracts and purchase orders for the provision of labor and materials for the construction of the Improvements and statements from each subcontractor and supplier: stating the amount of its contract and the amount paid to date; and acknowledging full payment (less retainage) of all sums due and payable for all work done and materials supplied.

(h) If requested by VIHFA, Borrower shall furnish to VIHFA evidence reasonably satisfactory to VIHFA that Borrower and general contractor have obtained or can obtain all necessary materials as and when required for the completion of the Project in accordance with the Plans and Specifications.

**5.5 Conditions to be Met Prior to the Disbursement of the Final Draw.** When the Project has been completed, Borrower shall supply VIHFA with the following documents and satisfy the following terms and conditions as well as satisfying all of the conditions and supplying all of the information required under the Loan Documents, prior to final disbursement (including any retainage withheld) of Loan proceeds (it being understood and agreed that subject to the provisions contained in Section 4 of this Agreement, VIHFA may withhold from disbursement any amounts required to fund any reserve required by the terms of the Loan Documents):

(a) Certificates of occupancy for each building and unit in the Project, or its equivalent from the applicable governmental authorities for the Territory or locality in which the Project is located. Certificate from the Borrower's architect or engineering firm that the Project has been completed in substantial compliance with the Plans and Specifications for the Project, and with the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157); the Uniform Federal Accessibility Standards, as set forth in 24 CFR Section 570.614; the Americans with Disabilities Act of 1990; for existing properties build prior to 1978, the Lead-Based Paint Poisoning Protection Act (42 U.S.C. §4831(b)) and the Residential Lead based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856) and implementing regulations at 24 CFR Part 35; and Section 504 of the Rehabilitation Act of 1973.

(b) An acceptable environmental assessment of the Project that complies with the CDBG regulations and requirements and has been approved by VIHFA.

(c) Certificate from the Inspector that the Project has been completed in accordance with the Plans and Specifications in a good and workmanlike manner (the "**Certificate of Completion**").

**(d)** An ALTA “As Built” Survey, certified to VIHFA, showing the buildings and improvements comprising the Project to be within lot lines and building setback lines, all easements, roads, rights of way and matters affecting title, and any other information required by VIHFA.

**(e)** Satisfaction and compliance with all of the terms, covenants and conditions contained in the Application, the Program Description, this Agreement and the other Loan Documents.

**(f)** Compliance with all laws, rules, regulations, ordinances and codes applicable to the Project, including without limitation CDBG regulations, to the extent not waived in writing, applicable to the Project.

**(g)** VIHFA shall have approved the Cost Certification Audit (as defined in the Note) from Borrower and shall have completed the final subsidy layering review of the Project costs in accordance the Note.

**(h)** VIHFA shall have received: (a) current certificates of insurance as required by this Agreement; (b) reserved; (c) an estoppel certificate from any other lenders providing financing for the Project stating that no defaults have occurred and that its loan terms are being complied with; (d) updated financial information from Borrower and each Guarantor, including copies of the most recent year’s tax returns and audited financial statement, and such other information as VIHFA deems necessary; (e) a certificate of Borrower evidencing compliance with all Davis-Bacon requirements; (f) a certificate of Borrower summarizing all actions taken to comply with the Housing and Urban Project Act of 1969 (Section 3); and (f) a warranty from the construction contractor, acceptable to VIHFA in its sole discretion, providing a full guarantee for all workmanship and materials, without regard to whether such work or materials was paid by VIHFA or other funding sources, for a period of not less than twelve (12) months from the date of the Certificate of Completion.

**(i)** Current good standing certificates and certified copies of the Organizational Documents for Borrower, its general partner(s)/managing member(s), Guarantor(s) and such other parties as required by VIHFA.

**(j)** A certificate of Borrower reaffirming the representations and warranties contained in the Loan Documents in all material respects.

**(k)** Lien-free completion of the Project (as evidenced by final lien waivers in form and substance satisfactory to VIHFA and its counsel from the general contractor and all major subcontractors, which may be conditioned on receipt of payments from the final disbursement of Loan proceeds hereunder), and expiration of the lien periods provided by applicable Virgin Islands law, with no liens being filed against the Project.

**(l)** Any approval required by any governmental authority to the extent that any such approval is a condition to the lawful use and occupancy of the Project.

**(m)** A complete list of any contractor(s) or subcontractor(s) who have performed work on, or furnished materials for, the Project.

**5.6 Right to Withhold Funding.** VIHFA may elect to withhold any Draw Request, notwithstanding the substance of any report of the Inspector, or any documentation submitted to VIHFA in connection with a Draw Request, if there is a Default, or if VIHFA reasonably determines at any time that the actual cost budget or progress of construction differs materially from that as shown on the contractor's cost breakdown, or that the percentage of progress of construction of the Project differs materially from that as shown on the Draw Request for the period in question. Furthermore, if any instrument or document submitted by Borrower in connection with any Draw Request shall not, in the reasonable exercise of VIHFA's discretion, comply in all material respects with the conditions and requirements of this Agreement then VIHFA may amend, reduce or withhold funding of any request, as VIHFA, in its reasonable and timely discretion, shall deem proper under the circumstances.

**5.7 Payment of Draw Requests.** If all conditions precedent to VIHFA's obligations hereunder and to the Draw Request have been performed to the reasonable satisfaction of VIHFA, Borrower hereby directs VIHFA to make the Draw Request, in accordance with this Agreement, payable to Borrower or as VIHFA may otherwise elect, and VIHFA shall make each Draw Request in the amount justified by the applications, affidavits, certificates and other evidence submitted to VIHFA under Section 3 hereof. Notwithstanding the foregoing, if the draws are made on a *pari passu* basis, the amount so requested shall not exceed VIHFA's *pari passu* share of the total amount of the Total Development Costs multiplied by the percentage of completion then attained less the aggregate of all amounts theretofore advanced and soft costs approved by VIHFA. The proceeds of each Draw Request hereunder shall be applied solely and exclusively to payment, or to reimbursement of Borrower for payment, of the Total Development Costs and soft costs approved by VIHFA, and Borrower agrees at any time and from time to time, upon request of VIHFA, to exhibit to VIHFA receipts, vouchers, statements, bills of sale or other evidence satisfactory to VIHFA of actual payment of such Total Development Costs approved by VIHFA. Notwithstanding the foregoing, VIHFA may apply any amounts due Borrower hereunder toward satisfaction of any of the terms or conditions of this Agreement, and amounts so applied shall be part of the Loan and shall be secured by the lien of the Mortgage, and all disbursements from any "contingency" categories shall be made at VIHFA's sole and absolute discretion.

## SECTION 6 LOAN COMPLIANCE REQUIREMENTS

**6.1 Applicable Laws.** Borrower agrees to abide by any and all federal, state, parish and municipal laws, codes, ordinances, rules and regulations applicable to the Project, whether presently existing or hereafter promulgated, including without limitation environmental laws, building codes, land use, and zoning codes. Borrower agrees to comply with all Program requirements, HUD regulations and the provisions of 24 CFR Part 570, as amended from time to time, and all federal regulations and policies issued pursuant to these regulations.

**6.2 Uniform Administrative Requirements.** Borrower acknowledges that VIHFA must comply with the Uniform Administrative requirements set forth in 24 CFR Section 570.502, and the Federal Office of Management and Budget "OMB" Circular A-87 and implementing regulations in 2 CFR Part 200, A-128 and A-133. Borrower agrees to supply VIHFA with documentation concerning the Project in order to ensure that VIHFA is in compliance with its responsibilities therein regarding source documentation for all costs incurred.

**6.3 Records.** Borrower shall comply with 24 CFR Section 570.506 and 2 CFR Part 200 regarding records that must be maintained for the Project. Borrower shall maintain all Project financial records, including source documentation to support how CDBG-MIT funds loaned to Borrower hereunder were expended, which includes, but is not limited to, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, and other documentation as may be required by VIHFA or HUD to support the expenditures for this Project. All supporting documents shall be maintained in accordance with the requirements of 2 CFR Part 200 or for such other period required by VIHFA or HUD. The records shall be made available to VIHFA, HUD, and/or any of their authorized representatives, who shall have access to and the right to examine any of the Project records during such period. All record keeping requirements set forth in this Agreement or any record keeping requirements mandated by CDBG-MIT regulations shall survive termination of this Agreement.

**6.4 Monitoring.** Borrower will allow on-site monitoring of the Project by VIHFA or an agent on its behalf, at such times as VIHFA or HUD deems necessary or required, and VIHFA and/or HUD shall have the right, but shall be under no obligation, to conduct any reasonable monitoring to determine compliance with the CDBG-MIT Regulatory Agreement and this Agreement, including but not limited to the right to enter the Project (upon 48 hours prior written notice to the Borrower) to inspect the Project and to inspect the books and records kept regarding the Project, and the right to inquire and receive responses from Borrower regarding the Project and its operation at any time that may be required by VIHFA or HUD.

**6.5 Religious and Political Activities.** Borrower is prohibited from using Loan proceeds or personnel employed in the administration of the Program for sectarian or religious activities, lobbying, political patronage and/or nepotism activities. Borrower further agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code (Hatch Act), 24 CFR Section 570.207(a)(3), or 24 CFR Section 570.200(j).

**6.6 Section 3 of the Housing and Urban Development Act of 1968.** Borrower agrees to comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u) and implementing regulations contained in 24 CFR Part 135 regarding economic opportunities for low and very low -income persons. Borrower shall also keep records demonstrating compliance with the foregoing regulations, including without limitation the provisions of 24 CFR Section 570.506(g)(5).

**6.7 Equal Employment Opportunity.** Borrower agrees to comply with 24 CFR Section 570.607, Executive Order 11246, as amended by E.O. 11375, the implementing regulations in 41 CFR Part 60.

**6.8 Non-Discrimination.** Borrower shall not, on the grounds of race, color, religion, national origin, ethnicity, familial status, sexual orientation or gender, exclude any person from participation in, or deny any person the benefits of, or subject any person to discrimination with respect to, any part of the Project. Borrower shall at all times comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, et seq.) and implementing regulations in 24 CFR Part 1. Borrower shall also not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101, et seq.) and the implementing regulations contained in 24 CFR Part 146, or on the basis of disability as provided in Section 504 of the Rehabilitation Act of 1973, and the implementing regulations contained in 24 CFR Part 8.

**6.9 Fair Housing Act.** Borrower shall comply with the Fair Housing Act (42 U.S.C. §§3601-3620) and Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing) and implementing regulations in 24 CFR Part 107 and keep all records demonstrating compliance with the foregoing.

**6.10 Davis-Bacon Act.** Borrower agrees to comply with 24 CFR Section 570.603, and the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §3141 *et seq.* as it applies to any construction work financed in whole or in part with CDBG-MIT funds. All contracts and subcontracts for construction shall include a provision for compliance with the Davis-Bacon Act and supporting Department of Labor regulations. Borrower shall maintain documentation and records that demonstrate compliance with hour and wage requirements, including contract provisions and payroll records.

**6.11 Copeland “Anti-Kickback” Act.** Borrower agrees to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. §874) as supplemented by the Department of Labor regulations contained in 29 CFR Part 3.

**6.12 Contract Work Hours and Safety Standards Act.** Borrower agrees to comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§3701 to 3708), as supplemented by the Department of Labor regulations contained in 29 CFR Part 5.

**6.13 Handicapped Accessibility Requirements.** The Project shall be accessible to and usable by individuals with handicaps, in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157), the Uniform Federal Accessibility Standards, as set forth in 24 CFR Section 570.614, and the Americans with Disabilities Act of 1990.

**6.14 Resident Aliens.** Borrower agrees to comply with the requirements set forth in 24 CFR Section 570.613 regarding eligibility restrictions for certain resident aliens.

**6.15 Debarment and Suspension.** In connection with this Project, Borrower shall comply with the debarment and suspension requirements set forth in 24 CFR Part 5 and 24 CFR Part 24. Borrower shall not enter into a contract with any person, agency or entity that is debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 or 12689. In the event that Borrower has entered into a contract or subcontract with a debarred or suspended party, no CDBG-MIT funds will be provided as reimbursement for the work done by that debarred or suspended contractor or subcontractor.

**6.16 Environmental Review Requirements.** No choice limiting action with respect to the Project may commence until Borrower has received written approval of its environmental assessment from VIHFA, pursuant to 24 CFR Part 58. Choice limiting actions include, without limitation: closing of the Loan, acquisition of the Project site, demolition on the Project site, grading of the Project site, and commencement of construction. In connection with any construction or improvements to the Project, Borrower must submit an environmental report in form and substance acceptable to VIHFA, which must provide an environmental assessment of such construction in accordance with 24 CFR Part 58, and be approved by VIHFA before commencing such work. Violation of this requirement may result in delay, postponement or cancellation of any payment of Loan proceeds.

**6.17 Lead Based Paint Prohibited.** For existing properties built prior to 1978, Borrower agrees that it shall not use lead-based paint in the Project and shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §4831(b)), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856) and implementing regulations at 24 CFR Part 35. Borrower shall maintain records demonstrating compliance with the foregoing lead-based paint requirements. To the extent that lead-based paint is located in any existing buildings at the Project, Borrower shall provide VIHFA with a plan for handling such lead-based paint in a safe manner, and in accordance with the foregoing regulations, and comply with the plan during any construction at the Project.

**6.18 Historic Preservation.** To the extent applicable, Borrower agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the Project. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that are included on a Federal, State, or local historic property list.

**6.19 Flood Disaster Protection.** Borrower shall obtain a flood zone certificate certifying that the Project is not located in a special flood hazard area (“**Flood Hazard Area**”) as identified by Federal Emergency Management Agency (“**FEMA**”), or if located in a Flood Hazard Area, the designation of the Flood Hazard Area in which the Project is located. Borrower shall comply with all requirements listed in the FEMA Special Flood Hazard Area Flood Maps. Borrower agrees to comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. §4106) and implementing regulations in 44 CFR Parts 59 through 79 in regard to the sale, lease or other transfer of land acquired, cleared or improved under the terms of this Agreement, as it may apply to the provisions of this Agreement.

**6.20 Permits.** Borrower agrees to obtain and maintain all necessary permits for intended improvements or activities for the Project, and for the operation of the Project.

**6.21 Displacement, Relocation, Acquisition and Replacement of Housing.** Borrower and VIHFA expect the Project to require no displacement or relocation. However, to the extent applicable, Borrower shall comply with 24 CFR Section 570.606 and shall keep all records demonstrating compliance with these requirements including, but not limited to, those records required in 24 CFR Section 570.506. Borrower must comply with applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (49 CFR Part 24) and Section 104(d) of the Housing and Community Project Act of 1974 as amended. These requirements are explained in HUD Handbook 1378 and specify the procedures for the acquisition of property and the treatment of tenants located in the Project.

**6.22 Conflict of Interest.** Borrower shall comply with the conflict-of-interest provisions contained in 24 CFR Section 570.611, Section 84.42 and Section 85.36, as applicable.

**6.23 Rehabilitation Act.** Borrower shall comply with Section 504 of the Rehabilitation Act of 1973, and the implementing regulations contained in 24 CFR Part 8.

**6.24 Program Requirements.** Borrower and the Project shall comply with all rules and regulations set forth in the Program Description, or applicable to the use of CDBG-MIT funds at all times during the term of this Agreement, the Loan and the CDBG-MIT Regulatory Agreement.

**6.25 Management.** Borrower shall at all times provide for professional management of the Project by a residential rental property manager satisfactory to VIHFA under a contract approved by VIHFA in writing which allows for termination of the manager at will. At any time that Borrower fails to be in compliance with the terms hereof or the CDBG Regulatory Agreement, VIHFA may require that Borrower replace the current manager with a new manager satisfactory to VIHFA.

**6.26 Tenants with Relationships with Borrower.** Borrower shall not allow any relative (whether by blood, marriage or adoption), employee, officer, agent or consultant of Borrower or Developer, or any relative (whether by blood, marriage or adoption) of any shareholder or member or partner of Borrower or Developer, if Borrower or Developer is an entity, to rent or occupy any unit in the Project without first disclosing such relationship to VIHFA accompanied by assurance and documentation to evidence that (a) such relative, employee, officer, agent or consultant is income-qualified and otherwise meets the screening criteria of the Project, and (b) either (i) such person was occupying the Project prior to the date of the Application or (ii) such person's application was processed in the order in which it was received, with no preference being given, consistent with the Project's resident selection criteria and application processing standards and the availability of units in the Project was adequately advertised to the general public. This provision does not apply to an individual who occupies a non-revenue unit as the project manager or maintenance worker.

SECTION 7  
INTENTIONALLY OMITTED

SECTION 8  
**BORROWER'S REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants to VIHFA, as follows:

**8.1 Organization and Standing.** Borrower is a limited liability company duly organized and validly existing under the laws of the U.S. Virgin Islands and duly qualified to do business in the U.S. Virgin Islands. Borrower has full limited liability company power and authority to conduct its business as presently conducted, and Borrower has the full power and authority to enter into and perform under the Loan Documents and to carry out the transactions contemplated hereby.

**8.2 Authority.** The execution, delivery and performance by Borrower of the Loan Documents, and the consummation by Borrower of the transactions contemplated by the Loan Documents, have been duly authorized by all necessary partners. The Loan Documents have been duly executed and delivered by, and constitute valid and binding obligations of Borrower enforceable against it in accordance with their respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies.

**8.3 Noncontravention.** The execution of and performance of the transactions contemplated by the Loan Documents and compliance with the provisions hereof by Borrower will not (a) conflict with or violate any provision of the organizational documents of Borrower, (b) require on the part of Borrower any filing with, or any permit, authorization, consent or approval of, any court, arbitrational governmental authority, administrative agency or commission or other governmental authority, (c) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, security interest or other arrangement to which Borrower is a party or by which Borrower is bound or to which its assets are subject, (d) result in the imposition of any mortgage, lien or security interest upon any assets of Borrower other than in favor of VIHFA, or (e) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Borrower or any of its properties or assets.

**8.4 Governmental Consents.** No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any governmental authority is required on the part of Borrower in connection with the execution and delivery of the Loan Documents that has not been received by Borrower from such governmental authority.

**8.5 Title to Project.** Subject to and except for the Permitted Exceptions (as defined in the Mortgage), Borrower has good fee simple title to the Project, free and clear of any mortgages, liens, or other security interest other than those in favor of VIHFA.

**8.6 Compliance.** Borrower has, in all material respects, complied with all laws, regulations and orders applicable to its present and proposed business and has or will have all material permits and licenses required thereby.

**8.7 Tax Returns, Payments and Elections.** Borrower has filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects.

**8.8 Disclosure.** Neither this Agreement nor any other statements, documents or certificates made or delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.

**8.9 Construction and Compliance with Laws.** To Borrower's knowledge there are no structural defects in the Project and no violation of any applicable zoning, building or any other local, state or federal laws, ordinances and regulations existing with respect to the use and construction thereof; and Borrower shall obtain all licenses, permits and approvals required by all local, state and federal agencies regulating such construction and use and such licenses, permits and approvals shall remain in good standing; and Borrower is and shall remain in compliance, in all material respects, with all laws, regulations, ordinances and orders of all governmental authorities.

**8.10 Financial Statements.** The financial statements of Borrower and any Guarantor delivered to VIHFA are true and correct in all material respects, and fairly present the respective financial conditions of the parties thereof as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no additional borrowings have been made by Borrower since the date thereof other than the borrowing contemplated hereby.

**8.11 Priority of Lien on Personalty.** No chattel mortgage, bill of sale, security agreement, financing statement or other title retention agreement (except those executed in favor of VIHFA has been or will be executed with respect to any movable property, chattel or fixture used in conjunction with the construction, operation, or maintenance of the Project as described.

**8.12 Pending Litigation.** There are no actions, suits or proceedings pending against Borrower or the Project, or, to the knowledge of Borrower, circumstances that could lead to such action, suits or proceedings against or affecting Borrower or the Project, or involving the validity or enforceability of any of the Loan Documents, before or by any governmental authority, except actions, suits and proceedings that have been specifically disclosed to and approved by VIHFA; and to Borrower's knowledge it is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority.

**8.13 Hazardous Waste.** Borrower is in compliance, in all material respects, with all provisions of the Federal Water Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability (“Superfund”) Act of 1980, the Environmental Protection Act, the Resource Conservation and Recovery Act (“RCRA”) and Solid Waste Disposal Act, and other similar federal, state and local statutory schemes imposing liability on Borrower relating to underground tanks and other storage facilities, or the generation, storage, impoundment, disposal, discharge, treatment, release, seepage, emission, transportation or destruction of any sewage, garbage, effluent, asbestos or asbestos - containing materials, polychlorinated biphenyls (PCBs), toxic, hazardous or radioactive materials, petroleum products, pesticides, smoke, dust, or any other form of pollution as such laws are in effect as of the date of this Agreement and with any rules, regulations and orders issued by any federal, state or local governmental body, agency or authority thereunder and with any orders or judgments of any courts of competent jurisdiction with respect thereto, and no assessment, notice of (primary or secondary) liability or notice of financial responsibility, or the amount thereof, or to impose civil penalties has been received by Borrower. Borrower has paid any environmental excise taxes imposed upon it with respect to the Project pursuant to Sections 4611, 4661 or 4681 of the Internal Revenue Code of 1986, as from time to time amended.

**8.14 Other Financing.** The Borrower has not received any other financing for the construction and operation of the Project other than the Loan.

**8.15 Use of the Project.** To the best of Borrower’s knowledge, there is no (a) plan, study or effort by any governmental authority or any non-governmental person or agency that may adversely affect the current or planned use of the Project, or (b) any intended or proposed governmental requirement (including, but not limited to, zoning changes) that may adversely affect the current or planned use of the Project. There is no moratorium or like governmental order or restriction now in effect with respect to the Project and, to the best of Borrower’s knowledge, no moratorium or similar ordinance or restriction is now contemplated.

**8.16 OSHA Matters.** The Borrower has duly complied with, and its properties are in full compliance in all material respects with, the provisions of the Federal Occupational Safety and Health Act, and all rules and regulations thereunder and all similar state and local laws, rules and regulations, and there have been no outstanding citations, notices or orders of noncompliance issued to Borrower relating to its businesses or properties under any such laws, rules or regulations.

**8.17 Availability of Utilities.** All utility services necessary for the operation of the Project for its intended purpose are available at the boundaries of the Project, including water supply, storm and sanitary sewer facilities, and gas, electric and telephone facilities, and Borrower has obtained all necessary permits and permissions required from governmental authorities for unrestricted access to and use of such services in connection with the construction and use of the Project.

**8.18 Availability of Roads.** All roads necessary for the full utilization of the Project for its intended purposes have either been completed or the necessary rights of way therefor have either been acquired by the appropriate local authorities or have been dedicated to public use and accepted by such local authorities and all necessary steps have been taken by Borrower and such local authorities to assure the complete construction and installation thereof.

**8.19 No Default.** There is no material default on the part of Borrower under this Agreement or the Loan Documents, and no event has occurred and is continuing that with notice, or the passage of time, or either, would constitute a Default under any provision thereof.

**8.20 Continuing Nature of Representations and Warranties.** Each of the representations and warranties of Borrower contained in this Loan Agreement shall survive the execution of the Agreement, and shall be continuing until such time as all amounts due VIHFA under the Loan Documents and the other obligations shall have been fully paid.

## SECTION 9 AFFIRMATIVE COVENANTS OF BORROWER

**9.1 Covenants.** While this Agreement is in effect, Borrower covenants and agrees as follows:

(a) If a Default has occurred and is continuing, Borrower shall deliver to VIHFA upon written demand all books and records relating to the Project or its operation.

(b) Borrower authorizes VIHFA to obtain a credit report on Borrower at any time.

**9.2 Borrower to Maintain Bookkeeping System.** Borrower shall maintain a bookkeeping system for the Project in form and content sufficient for VIHFA to conduct reviews, inspections, certifications and reports required by this Agreement. Upon twenty-four (24) hours prior written notification, VIHFA shall have full access during normal business hours to the books, records and contracts pertaining to the Project.

**9.3 Further Assurances and Preservation of Security.** Borrower will perform all acts and execute all documents for the better and more effective carrying out of the intent and purposes of this Agreement as VIHFA shall reasonably require from time to time, and will perform such other acts necessary or desirable to preserve and protect the collateral at any time securing or intending to secure the Note as VIHFA may reasonably require.

**9.4 Current Projections.** Until such time as the Loan has been fully funded by VIHFA, whenever there has been any material change in Borrower's estimates of development costs and/or stabilized cash flow for the Project, including timing of equity pay-ins, Borrower shall provide VIHFA with current financial projections for the Project. Borrower shall promptly provide to VIHFA a copy of every financial communication that Borrower provides to, or receives from, any other provider of funding for the Project.

**9.5 Costs and Expenses.** Borrower shall pay all and reasonable costs and expenses incurred in connection with this Agreement and the Loan, whether or not the Loan is funded, including by way of illustration and not limitation: actual and reasonable fees of VIHFA's attorneys and consultants, recording fees, title insurance costs related to the lender's title policy in favor of VIHFA, escrow fees, flood zone determination fees, survey fees, appraisal costs, environmental and historic property review, and site inspection fees. This obligation shall survive any termination, avoidance or cancellation of this Agreement.

## SECTION 10 MISCELLANEOUS PROVISIONS

**10.1 Assignment.** Borrower shall not assign or transfer any interest in this Agreement without the prior written consent of VIHFA. Any attempt to do so shall be deemed null and void ab initio.

**10.2 No Grant of Vested Rights.** This Agreement shall not be construed as granting or assuring or vesting any land use, zoning, development approvals, permission or rights with respect to property owned by Borrower.

**10.3 No partnership or agency.** Nothing in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of master/servant, principal/agent, employer/employee or joint venture partner between VIHFA and Borrower. Borrower agrees and acknowledges that it shall be responsible for and shall pay any and all applicable compensation, insurance and taxes, including but not limited to Federal income taxes and Social Security on the salary of any positions funded in whole or in part with the proceeds of the Loan.

**10.4 Severability.** This Agreement shall be construed in accordance with the laws of the U.S. Virgin Islands. It is agreed by and between the parties that if any covenant, condition, provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenants, conditions or provisions herein contained.

**10.5 Entire Agreement/Modification.** This Agreement and all its attachments, and all other Loan Documents supersede (a) all prior agreements between VIHFA and the Borrower with respect to the Indebtedness and (b) any other agreements, all representations or statements heretofore made by VIHFA or any of its employees, whether oral or verbal or written, with respect to the Indebtedness. This Agreement may only be modified in writing, signed by both of the parties hereto. In the event of a conflict between the terms of this Agreement and any other Loan Document, the terms of this Agreement shall control.

**10.6 Notices.** All notices and other communications to be made or permitted to be made hereunder shall be in writing and shall be delivered to the addresses shown below or to such other addresses that the parties may provide to one another in accordance herewith. Such notices and other communications shall be given by any of the following means: (a) personal service; or (b) national express air courier, provided such courier maintains written verification of actual delivery. Any notice or other communication given by the means described in subsection (a) or (b) above shall be

deemed effective upon the date of receipt or the date of refusal to accept delivery by the party to whom such notice or other communication has been sent. Any notice or other communication given by the means described in subsection (c) above shall be deemed effective the date on which the facsimile transmission occurs or if such date is not a business day on the business day immediately following the date on which the facsimile transmission occurs.

**VIHFA:** Virgin Islands Housing Finance Authority  
3202 Demarara Plaza, Suite 200  
St. Thomas, USVI 00802-6447  
Attn: Executive Director

with a copy to:

**Borrower:** Jackson Development Company, LLC  
PO Box 303217, St. Thomas, VI 00803

with a copy to:  
Kellerhals Ferguson Kroblin PLLC  
Royal Palms Professional Building  
9053 Estate Thomas

Any addressee may change its address by giving the other parties hereto notice of such change of address in accordance with the foregoing provisions.

**10.7 Performance on Legal Holidays.** In any case where the date of maturity of interest on or principal of the Note shall not be a business day, then payment of such interest and principal, need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption or purchase, and no interest on such payment shall accrue for the period after such date.

**10.8** [Intentionally Omitted].

**10.9 Time is of the Essence.** Time is of the essence of this Agreement.

**10.10 No Third Party Beneficiaries.** No creditor of any party to this Agreement and no other person shall be a third party beneficiary of this Agreement or any other Loan Document or any obligation, account, covenant or agreement created or contemplated under this Agreement or any other Loan Document. Nothing contained in this Agreement shall be deemed or construed to create an obligation on the part of VIHFA to any third party nor shall any third party have a right to enforce against VIHFA any right that Borrower may have under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create an obligation on the part of Borrower to a third party (other than a successor or assignee of VIHFA) nor shall any third party (other than a successor or assignee of VIHFA) have a right to enforce against Borrower any right VIHFA has under this Agreement.

**10.11 Counterparts.** This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

[Signatures on the following pages]





**Schedule 2.1**

**CURRENT OR INTENDED CONTRACTS WITH IDENTITY OF INTEREST ENTITIES**

**General Contractor – Jackson Development Company, LLC**

**Management – JDC Management, LLC**

**EXHIBIT A**  
**Legal Description**

## Legal Description

### **Bellevue:**

PARCEL NO. 9 REMAINDER ESTATE BELLEVUE

NO. 12A CRUZ BAY QUARTER

ST. JOHN, U.S. VIRGIN ISLANDS

AS SHOWN ON PWD MAP NO. D9-7258-T003

## Legal Description

### **Calabash Boom:**

Calabash Boom:

Lease Area "A" on Parcel No. 1 Estate Calabash Boom and Lampricht de Koning

Nos. 9 and 10 Coral Bay Quarter

St. John, Virgin Islands

as shown on PWD No. D9-5176-T91

**EXHIBIT B**  
**TOTAL DEVELOPMENT COSTS**

**Bellevue & Calabash Boom – Budget / Sources & Uses of Funds**

Category	Expense Description	CDBG-MIT Amount	Other Funding Sources Amount	Funding Source Description	Total Amount
Project Direct Cost	Acquisition / Closing	\$ 18,011,438.00	\$ 0.00	CDBG-MIT	\$18,011,438.00
Project Direct Cost	Hard Costs - Bellevue	\$ 5,318,753.00	\$ 0.00	CDBG-MIT	\$5,318,753.00
Project Direct Cost	Hard Costs - Calabash	\$ 2,418,796.00	\$ 0.00	CDBG-MIT	\$2,418,796.00
Project Direct Cost	Soft Costs	\$ 850,000.00	\$ 0.00	CDBG-MIT	\$850,000.00
Project Direct Cost	Financing, Sales, Reserves	\$ 0.00	\$ 4,237,380.00	Buyer First Mortgages	\$0.00
Project Direct Cost	Developer Fee	\$ 1,200,000.00	\$ 2,200,000.00	Buyer First Mortgages	\$1,200,000.00
<b>Total</b>		<b>\$27,798,987.00</b>	<b>\$6,437,380.00</b>		<b>\$34,236,367.00</b>

**EXHIBIT 1: AFFORDABLE HOMEOWNERSHIP PROGRAM MANUAL**

**(see attached)**