CONSTRUCTION LOAN AGREEMENT

This Construction Loan Agreement (this "Agreement"), made and entered as of March 8, 2010, by and between VILLAGE PARKWAY, L.P., a Tennessee limited partnership (the "Borrower"), and MEMPHIS HOUSING AUTHORITY, a Tennessee public body, corporate and politic, organized under the Tennessee Housing Authorities Law, T.C.A. §13-20-101, et. seq. (the "Lender").

WHEREAS, Borrower has applied to Lender for a non-revolving construction loan (the "Construction Loan") for the development and construction of a 116-unit apartment complex known as Village at Cypresswood (the "Project") on certain real property located in Memphis, Shelby County, Tennessee (such real property, including the improvements thereon, herein called the "Property") described on Exhibit A of this Agreement;

WHEREAS, Lender has agreed to make the Loan to Borrower, and Borrower has agreed to accept the Loan, on the terms and conditions hereinafter set forth; and

WHEREAS, simultaneously with the execution of this Agreement and as part of the same transaction, Borrower has executed and delivered to Lender (i) that certain Promissory Note in the principal sum of $3,991,527.00 of even date herewith (the "Note"), and (ii) that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Construction Mortgage) of even date herewith (the "Deed of Trust"), by Borrower in favor of Lender, such Deed of Trust encumbering the Property.

WHEREAS, the Borrower may convey its fee interest in the Property to The Health, Educational and Housing Facility Board of the City of Memphis, Tennessee, a not-for-profit public corporation (the "HEHFB"), and in such an event, the Borrower, as lessee, and the HEHFB, as lessor, will enter into a Pilot Lease Agreement, whereby the HEHFB will lease the Property to the Borrower. If the foregoing occurs, any and all references in this Agreement to the lien evidenced by the Deed of Trust shall be deemed to refer to a lien on the leasehold estate of Borrower, and any and all references in this Agreement to the fee estate of Borrower for the Property shall be deemed to refer to a leasehold estate of Borrower for the Property.

WHEREAS, the Construction Loan shall convert into the Term Loan (as defined in Section 1.5 below) as described herein (the Construction Loan and the Term Loan shall be collectively referred to herein as the "Loan").

NOW, THEREFORE, in consideration of the execution and simultaneous delivery of the Deed of Trust, the Note, this Agreement, and any and all other documents, agreements, instruments or certificates described in or executed pursuant thereto or to be executed after the date hereof, as contemplated by the parties, including but not limited to the Amendment to Deed of Trust and the Term Note (as such terms are defined in Section 1.5 below) (collectively referred to herein as the "Loan Documents"), the parties hereby agree as follows:

1. **The Loan.**

1.1. **General.** Lender shall make the Construction Loan to Borrower to construct the improvements on the Property on the terms and conditions set forth herein. Borrower agrees to execute and deliver the Note. Advances under the Construction Loan shall be made to Borrower or others from time to time pursuant to the terms and conditions described in the Note, this Agreement and the other Loan Documents. Interest shall accrue on all sums advanced from the date of each advance at the rate of interest described in the Note. Principal, interest and any other sums owing under the Loan Documents shall be repaid to Lender in the manner described therein.

1.2. **Disbursements.** All funds may be advanced by check payable to Borrower, or by deposit to Borrower's construction deposit account at a federally insured bank satisfactory to Lender ("Bank"). After the initial disbursement is made at Closing, Lender shall have no obligation to disburse in connection with each draw request (a "Draw Request") an amount in excess of the lesser of (i) one hundred percent (100%) of the draw request, or (ii) the value of the work in place at the time of the draw request as set forth in the AIA Document G702 – 1992 and G703 – 1992 certificates of Borrower's architect. The Lender shall require Borrower to have the right to retain five percent (5%) of the final disbursement until the following requirements are met (in addition to the requirements for all disbursements): (i) receipt by Lender of reports from Borrower's architect and, at Lender's option, the approved construction inspector/consultant for the Project, certifying to the completion of the Project in accordance with the Plans and Specs; (ii) receipt by Lender of a copy of the certificates of occupancy issued by the appropriate governmental official; and (iii) receipt by the Lender of lien affidavits and waivers from the general contractor, satisfactory in form and content to Lender, to render unenforceable any mechanics' and materialmen's liens affecting title to the Project and/or, upon request of Lender, a notice of completion filed in accordance with applicable law and the expiration of the time periods provided by applicable law for the filing of claims for labor or materials. At the option of Lender: (a) each requested advance shall be submitted to Lender in the manner described in Sections 1.2.1-1.2.5 below, (b) disbursements shall be made no more frequently than monthly, and (c) all disbursements shall be made at the address for Lender set forth in Section 8 hereof, or at such other place as Lender may designate.

1.2.1. Notwithstanding anything in the foregoing Section 1.2, Borrower shall submit Draw Requests pursuant to the schedule set forth on Schedule 1.2.1-A attached hereto (the "Draw Schedule"). Each Draw Request shall consist of a "Pre Draw Submission" and a "Final Draw Submission".

1.2.2. Each Pre Draw Submission shall be made by Borrower to Lender via email (with email copies to those persons named in Section 1.2.3 below) no later than the date set forth on the Draw Schedule and shall include all

documentation in substantially the form provided in Schedule 1.2.1-B. The parties hereto agree that Borrower's Pre Draw Submission shall serve as notice to Lender that Borrower is making a Draw Request for a disbursement under the Loan.

1.2.3. Following Borrower's Pre Draw Submission, an authorized representative of Lender, Borrower, Borrower's CPA, Architect, Contractor and Construction Inspector shall attend a meeting on-site at the Project on the date specified in the Draw Schedule. At this meeting, Borrower shall deliver to Lender and the other parties named above a Final Draw Submission, which shall include all documentation substantially in the form provided in Schedule 1.2.1-C. The meeting attendees shall diligently and in good faith review the Final Draw Submission at the meeting and attempt to resolve any disputed matters contained therein. If, however, the dispute cannot be resolved at the meeting, (a) the meeting attendees shall strike the disputed amount from the Draw Request, (b) the meeting attendees shall revise the Draw Request so that the total amount requested excludes such disputed amount, (c) each meeting attendee shall initial the changes to the Draw Request, evidencing his or her acknowledgment that the Draw Request submitted in the Final Draw Submission has been revised, and (d) each meeting attendee shall approve or disapprove such revised Draw Request prior to the conclusion of the meeting. If approved, all meeting attendees shall execute the Draw Request on behalf of his or her respective party prior to the conclusion of the meeting (a "Draw Approval").

1.2.4. Lender shall have not more than twenty-five (25) days following a Draw Approval to disburse the requested Loan proceeds to Borrower. Lender and Borrower agree that time is of the essence with respect to the timing of both the Draw Approval process and the funding of the Draw Request. Lender and Borrower also agree that an authorized representative of Lender and Borrower shall be present at each meeting on the dates set forth on the Draw Schedule for review of a Final Draw Submission. In the event an authorized representative of Lender is not present at the meeting, such absence shall serve as a waiver by Lender of any objection to that Draw Request or amounts contained therein, and Lender shall be deemed to have approved that Draw Request. In the event an authorized representative of Borrower is not present at the meeting, such absence shall serve as a waiver by Borrower of any objection to disputed amounts contained in the Draw Request, and Borrower shall be deemed to have approved that Draw Request as modified by the parties in attendance.

1.2.5. Lender understands and agrees that Borrower will incur substantial damages in the event Lender does not fund a Draw Request in the manner specified above, and that such damages may not be quantifiable. As such, in addition to

the other damages and remedies available to Borrower in the event of the failure of Lender to perform in accordance with the Loan Document, Borrower shall be entitled to liquidated damages in the amount of $500.00 per day for each day that Lender has failed to fund a Draw Request commencing on the third (3rd) business day following the date Lender is required to fund a Draw Request hereunder. The referenced liquidated damages shall not be the exclusive remedy of Borrower in the event of default by Lender under this Section.

1.3. **Disbursement and THDA Loan.** Except as provided in the following sentence, no funds may be drawn under this Loan until such time as the THDA Loan (hereinafter defined) funds have been obtained by the Borrower and applied to the Project. Notwithstanding the foregoing, in the event the full amount of the THDA Loan has not been obtained by Borrower and applied to the Project, amounts may be drawn by Borrower under the Loan provided that THDA Loan funds have been obtained and applied to the Project on a pro rata basis (with the Loan funding 30% of such draw and the THDA Loan funding 70% of such draw).

1.4. **Future Advances.** All advances made under the terms of the Deed of Trust shall be deemed obligatory when made whether or not Lender shall have previously been relieved of its obligation to make further advances by reason of any Event of Default (as defined hereinafter). At no time shall Lender be obligated to disburse funds:

1.4.1. in excess of the value of the Project as built, as certified by Borrower's architect in the AIA Document G702 – 1992 and G703 – 1992 certificates or as recommended by Lender's construction inspector/consultant, who, at Lender's option, shall make periodic inspections of the Property, with such inspections being at Borrower's expense; or

1.4.2. if any Event of Default (as defined hereinafter) shall have occurred and is continuing under this Agreement or under any other Loan Document.

1.5. **Term Loan.** The Construction Loan shall convert to a term loan (the "Term Loan") to be evidenced by that certain Term Note, which alters, amends, and restates the Note in the form of Exhibit B attached hereto and incorporated herein (the "Term Note"). In connection with the execution of the Term Note, Lender and Borrower shall execute and cause to be recorded an Amendment to Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, similar in form as Exhibit C attached hereto and incorporated herein (the "Amendment to Deed of Trust").

1.5.1. The following events must occur on or before the Maturity Date (as defined in the Note), in order for Lender to convert the Construction Loan to the Term Loan: (i) construction of the Project has been completed pursuant to the

approved Plans and Specs and in a good and workmanlike manner (without default), all governmental approvals regarding same have been obtained, including certificates of occupancy, and rent stabilization has occurred, (ii) Borrower has delivered to Lender the certified rent roll of the Project which reflects executed leases which are in full force and effect and free from default; and (iii) no Event of Default then exists. Additionally, as a condition to the Conversion (as defined below), the Borrower must cause to be delivered to the Lender a title policy endorsement on the Property insuring the Lender's amended deed of trust lien subject to no exceptions objectionable to the Lender.

1.5.2. The conversion of the Construction Loan to the Term Loan shall herein be referred to as the "Conversion".

2. **Collateral.** The Loan shall be secured by the following described collateral, subject to no encumbrance not acceptable to Lender:

2.1. A deed of trust lien upon the Property and all improvements thereon, all as evidenced by the Deed of Trust and a perfected security interest in all of Borrower's present and hereafter interest in the collateral and items of property described in the security agreement contained in the Deed of Trust.

2.2. A perfected assignment and security interest in all leases and subleases, now existing or hereafter entered into, of the Property or any portion thereof.

2.3. A perfected assignment of and security interest in the contracts and items of property described in the Assignment of Contracts, Agreements and Permits, and such other security agreements, financing statements, and other documents as the Lender and its counsel deem necessary to adequately secure the Indebtedness.

2.4. A perfected security interest in all accounts of Borrower held by Bank, including but not limited to the construction and operating checking accounts held by SunTrust Bank (the "Bank") for the Project and any escrow account for the Project, but not including any Affordability Reserve, as such term is defined in that certain Regulatory and Operating Agreement for Village at Cypresswood, by and between the Lender and the Borrower of even date herewith (the "Regulatory and Operating Agreement") or any other ACC or operating reserve that may be referenced in the Regulatory and Operating Agreement or that certain Agreement of Limited Partnership of Borrower on or about the date hereof (the "Partnership Agreement") (collectively, "Excluded Accounts").

2.5. Such other loan documents, including, without limitation, the Guaranty Agreement executed by Memphis Land Bank, Inc., a Tennessee non-profit corporation (the "Guarantor") in favor of the Lender, of even date herewith (the "Guaranty

Agreement"), fixture filings, instruments, affidavits, approvals, consents, and opinions as the Lender, in the reasonable exercise of its discretion, may request.

3. **Conditions Precedent.** The following shall be conditions precedent to the making of the Loan:

3.1. **Plans and Specifications.** Borrower must furnish to Lender copies of the plans and specifications for the Project which are certified as true and correct copies by the architect, contractor and Borrower (the "Plans and Specs"). No changes shall be made thereafter in the Plans and Specs without the prior written consent of Lender.

3.2. **Construction, Engineering, Architectural, and Developer Contracts.** Borrower shall furnish to Lender copies of executed site preparation, site development, building and any other contracts for the construction of the Project, together with engineering and architectural contracts, when available.

3.3. **Title.** Lender must be able to obtain, at Borrower's expense, an ALTA mortgage title insurance commitment in the amount of the Loan insuring Lender's deed of trust as a valid first lien on the Property, and free and clear of all defects and encumbrances except such as Lender shall approve. Exceptions for matters of survey, mechanic's liens, parties in possession or taxes and assessments which are due and payable must be deleted. Borrower must furnish the title company with such affidavits or indemnity agreements as the title company shall require to provide the above-referenced coverages.

3.4. **Permits and Licenses.** Borrower shall provide to Lender copies of all permits and licenses required by applicable governmental authorities for the construction of the Project. Borrower shall furnish to Lender evidence of compliance with all zoning ordinances and restrictive covenants which are applicable to the construction of the Project.

3.5. **Appraisal.** Borrower shall furnish to Lender an appraisal for the Project in a form and in an amount which is acceptable to Lender. The appraisal shall be paid for by Borrower and performed by an appraiser acceptable to Lender.

3.6. **Environmental.** Borrower shall furnish to Lender a current "Phase I" report covering the Property which is satisfactory to Lender in form and substance. Borrower and Guarantor shall also furnish a certificate or agreement in form and substance satisfactory to Lender (i) stating that neither Borrower nor Guarantor has knowledge of the presence of any hazardous substances on the Property; any violation of environmental laws; any threatened or pending litigation adversely affecting the Property; any disposal of trash or refuse of any kind on the Property, any evidence of storage tanks for gasoline or other substances on the Property; and (ii) indemnifying Lender from any damages or losses arising from or connected with any hazardous substance on the Property.

3.7. **Survey.** Borrower shall deliver to Lender a current survey of the Property dated within thirty (30) days of closing prepared and certified to Lender by a duly registered land surveyor or engineer satisfactory to Lender, which survey shall disclose: (a) the exact location and (by courses and distances) the exact dimensions of the Property, (b) the exact location of all parcel, lot and street lines, the means of access to the Property, and all utility wires, pipes, and other conduits, easements, encroachments, rights of way and matters affecting the Property, (c) the location of all building setback lines applicable to the Property, (d) the location on the Property of all other existing improvements, and (e) the surveyor's certificate that, except as shown on the survey, the Property is not located within the 100 year flood plain. The survey shall disclose no facts or matters objectionable to Lender or to the title insurance company issuing the mortgage title insurance policy in connection with the Loan.

3.8. **Site Plan.** Borrower shall furnish to Lender three (3) prints of the site plan for the construction of the Project.

3.9. **Soil Report.** Borrower shall furnish to Lender a soil report in form and substance satisfactory to Lender verifying the suitability of the soil for the construction of the Project.

3.10. **Insurance.** Borrower shall furnish to Lender evidence of the existence of all insurance required by Lender, including, but not limited to, owner's and contractor's liability insurance policies for the Project, including builder's risk insurance, worker's compensation insurance and other insurance containing a mortgagee loss payable clause naming Lender as loss payee and containing coverage for comprehensive public liability, personal injury (including bodily injury or death), property damage occurring on the Property or on adjoining streets and sidewalks, vandalism, malicious mischief, fire, theft and extended coverage, issued by a company approved and in a form satisfactory to Lender. Each policy must contain an agreement by the insuror to notify Lender in writing at least thirty (30) days prior to any cancellation or material alteration of such policy. In the event the Property is located in a flood zone, Borrower shall also provide evidence of the existence of flood insurance with coverage in an amount equal to the lesser of the Loan amount or the maximum limit available.

3.11. **Utilities.** Borrower shall furnish to Lender written evidence in a form that is satisfactory to Lender of the availability of all utility services necessary for the construction and use of the Project.

3.12. **Budget.** Borrower shall furnish to Lender a detailed budget for the Project which is acceptable to Lender in form and substance.

3.13. **Organizational Documents.** Borrower shall provide, or cause to be provided, to Lender the following:

(a) one complete and current copy of the filed Certificate of Limited Partnership and all amendments thereto;

(b) one complete and current copy of the Partnership Agreement certified by the secretary of the Borrower and all amendments thereto;

(c) an original certificate of existence or good standing of the Borrower dated within thirty (30) days of closing from the Tennessee Secretary of State;

(d) one complete and current copy of the filed Articles of Incorporation of MLB Cypresswood, Inc., a Tennessee corporation, the general partner of the Borrower (the "General Partner"), and all amendments thereto;

(e) one complete and current copy of the By-laws certified by the secretary of the General Partner and all amendments thereto;

(f) an original certificate of existence or good standing of the General Partner dated within thirty (30) days of closing from the Tennessee Secretary of State;

(g) one complete and current copy of the filed Articles of Incorporation of the Guarantor and all amendments thereto;

(h) one complete and current copy of the By-laws certified by the secretary of the Guarantor and all amendments thereto;

(i) an original certificate of existence or good standing of the Guarantor dated within thirty (30) days of closing from the Tennessee Secretary of State;

(j) certified resolutions of the Borrower and the General Partner, authorizing the Borrower, General Partner, and Guarantor to enter into the Loan transaction and designating the individuals authorized to sign documents in connection therewith; and

(k) incumbency certificate setting forth the names and signatures of the officers of the Borrower, General Partner, and Guarantor.

3.14. **Opinions**. Borrower shall cause to be provided to Lender such opinions of the counsel of Borrower as Lender may require.

3.15. **THDA Loan .** Contemporaneously with the execution of this Agreement, Borrower shall obtain from THDA the THDA Loan on terms and conditions satisfactory to Lender, in its sole and absolute discretion, including, but not limited to, provisions subordinating the THDA Loan , the THDA Loan Documents and the THDA Security Instrument and other security documents executed in connection therewith

to the Loan and the Security Instrument. THDA Loan funds and this Loan shall be applied by Borrower toward the construction of the Project as set forth in this Agreement. As used herein, (a) "THDA" means the Tennessee Housing Development Agency; (b) "THDA Documents" means the THDA Security Instrument, an Intercreditor Agreement among THDA, Lender and Borrower, and all instruments, agreements and documents executed by the Borrower in connection with the THDA Loan ; (c) "THDA Loan " means that certain $10,721,700 loan of Section 1602 funds from the United States Department of Treasury, which shall be subordinate in all respects to the Loan; and (d) THDA Security Instrument" means a second lien deed of trust of even date herewith from Borrower, for the use and benefit of THDA, covering the Property, recorded or to be recorded in the Register's Office for Shelby County, Tennessee, together with any and all amendments thereto and/or modifications thereof, which shall be recorded after the Security Instrument and expressly provide that it is subordinate in all respects to the Security Instrument.

3.16. **Reserves.**

3.16.1. The Borrower shall establish a reserve account for capital replacements (the "Capital Replacement Reserve"), which account shall be funded by monthly deposits of $2,900.00, which amount equals $300.00 per unit per year, following an initial deposit at Conversion of $34,800.00. Withdrawals from such reserve shall be utilized solely to fund capital repairs and improvements and to pay operating expenses deemed necessary by the Borrower. The Capital Replacement Reserve shall be held at a financial institution acceptable to Borrower and Lender and invested at the direction of the Borrower. Borrower grants to Lender a security interest in the Capital Replacement Reserve account and the funds held therein.

3.16.2. The Borrower shall establish and maintain the operating reserve in the initial amount of $200,000.00 (the "Operating Reserve"), to be funded from the Loan proceeds at Conversion. Funds in the Operating Reserve may be used to pay operating expenses with respect to the Project as deemed necessary by the Borrower. The Operating Reserve shall be maintained throughout the Term Loan. In the event the balance of the Operating Reserve is reduced below $100,000.00, the Borrower shall replenish the Operating Reserve from net cash from operations, as defined in the partnership agreement, to the level of $100,000.00 within six (6) months of triggering this obligation. The Operating Reserve shall be held at a financial institution acceptable to Borrower and Lender and invested at the direction of the Borrower. Borrower grants to Lender a security interest in the Operating Reserve account and the funds held therein.

3.16.3. The Borrower shall establish a lease up reserve account (the "Lease Up Reserve"), which account shall be funded at construction completion in the

amount of $125,000.00. Withdrawals from such reserve shall be utilized by the Borrower in its discretion during the initial lease up of the Project. Any amounts remaining in the Lease Up Reserve upon Conversion shall first be used to fund the Operating Reserve to the amount referenced in subparagraph C. above, with any excess distributed to the Borrower as an incentive lease up fee. The Lease Up Reserve shall be held at a financial institution acceptable to Borrower and Lender and invested at the direction of the Borrower.

3.16.4. The Borrower shall establish a reserve account for its Annual Contributions Contract (the "ACC Reserve"), which account shall be funded at Conversion in the amount of $150,000.00. Amount from the ACC Reserve shall be disbursed at such times and for such uses prescribed in Section 5.01 of the Regulatory & Operating Agreement between the Borrower and Lender of even date herewith. The ACC Reserve shall be held at a financial institution acceptable to Borrower and Lender and invested at the direction of the Borrower.

4. **Additional Conditions**. Borrower hereby agrees with Lender as follows:

4.1. Borrower shall conditionally assign to Lender Borrower's interest in the general construction contract executed by the general contractor, and other contracts reasonably required by Lender including, but not limited to engineering, developer, and architectural (collectively, the "Contracts"). Such assignment shall be acknowledged and approved by the other parties to the Contracts, and such acknowledgments shall authorize Lender to use the Plans and Specs, and to exercise the contractual rights of Borrower in the Contracts following the occurrence of any Event of Default.

4.2. Borrower shall cause the construction of the improvements to be carried on continuously, and to complete, free from all mechanics' liens, and in compliance with building restrictions and ordinances, within 12 months from the date of the Note, the improvements in accordance with the respective plans and specifications submitted to Lender. Notwithstanding the above, the deadline for completion shall be extended for any period of time in which construction is prevented or delayed by any governmental moratorium or other similar restriction, provided that such governmental restriction is not imposed as a result of any action or inaction of Borrower, its contractors or agents, and provided that such extension of the deadline is permitted under the THDA Loan.

4.3. Borrower hereby gives Lender the right, during construction of the improvements, to inspect, or employ at Borrower's expense any independent construction consultant to inspect the same and to reject and/or require to be replaced any material or workmanship that does not materially comply with the plans and specifications and to verify costs, value all existing improvements in place, and estimate costs to

complete all proposed improvements. Borrower shall only be obligated to pay the expense of one (1) inspection per month. It is understood and agreed that any inspections made by Lender shall be solely for Lender's protection and Lender shall not thereby incur any liability to the undersigned or to any third parties.

4.4. Borrower shall furnish evidence that the Property, and the intended uses of the Property, are in compliance with all applicable laws, covenants, regulations and ordinances.

4.5. The Loan shall be evidenced by a construction loan agreement, promissory note, deed of trust, assignment of rents, security agreement and fixture filing, deposit account control agreement, and guaranty agreement, together with such other required documents as are deemed reasonably necessary by Lender in its sole discretion.

4.6. Borrower shall pay all reasonable expenses incurred in connection with the closing of the Loan in obtaining title examinations, appraisals, surveys, preparation of notes, deeds of trust, other documentation and review of said documents by Lender's attorney whether or not any or all of the Loan is actually made.

4.7. Borrower shall permit no commencement of any work or the delivery of any material on the Property which would constitute "visible commencement of operations" under Tennessee law, until the Note and Deed of Trust have been executed and the Deed of Trust recorded, and until permission to start work or deliver material has been given by Lender. If delivery of materials or construction is in progress to the extent that it constitutes visible commencement of operations under Tennessee law prior to the recordation of the Deed of Trust, receipt of acceptable title insurance coverage specifically insuring Lender against any loss or litigation costs arising from said delivery of materials or visible commencement of operations will be required prior to any disbursement of proceeds.

4.8. Borrower shall pay principal and interest under the Loan as provided in the Note and, upon the Conversion, the Term Note.

4.9. Borrower shall furnish from time to time whenever reasonably requested, a statement showing an itemization of expenditures to date, items due and unpaid, items necessary for completion and items purchased whether or not stored on the job site in form satisfactory to Lender; and to support said statement with receipted bills, affidavits, lien waivers and other satisfactory evidence of payments, cost estimates and/or contracts.

4.10. Borrower hereby agrees that if for any reason the remaining undisbursed Loan balance shall, in Lender's reasonable opinion following the review of the Budget for the Project, be insufficient to pay all amounts presently due and all amounts necessary to be incurred for the completion of the construction project, Borrower will within ten (10) days after request by Lender, provide funds to Lender in the amount

of the estimated deficiency with Lender, which funds shall be provided first before any further disbursement of Loan proceeds shall be made, or at Lender's option make such other provisions for the funding of the estimated deficiency as may be acceptable to Lender.

4.11. Borrower hereby agrees that any funds advanced or deposited and used on the Project by Borrower or any person or entity other than Lender shall in all respects be subordinate in payment to Borrower's obligations under the Note and subordinate in priority to the lien of the Deed of Trust, including without limitation amounts then outstanding and subsequently advanced, and further agrees that this provision shall be immediately, completely, and continuously effective without further evidence, documentation, or action of any kind by any party to this agreement.

4.12. Borrower shall use such funds as are disbursed pursuant to the Loan for the payment of material bills, labor, and for other uses or purposes in and for the construction of the building or improvements for which the Loan has been made.

4.13. Borrower hereby authorizes Lender at any time following the occurrence and continuation of an Event of Default, without the consent of, but with notice to, the undersigned if in Lender's opinion it becomes necessary, to pay bills and/or complete any improvements, using for such purposes the undisbursed net proceeds of the Loan and any deposited funds. Nothing contained herein shall in any way be construed as a covenant by Lender to so pay or complete. Further, at its option, Lender may make all Loan disbursements directly to the general contractor, any subcontractor, laborer, material supplier, or any other entity providing labor, services or materials in connection with the construction of any or all improvements, and the execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable direction and authorization to so disburse the funds. No further direction or authorization shall be necessary to warrant such direct disbursements and all such disbursements shall be secured by the Deed of Trust.

4.14. Borrower shall permit no material change in management, ownership, membership or control of Borrower.

4.15. Borrower shall permit no sale, transfer or conveyance, whether voluntary or involuntary, of the Property or any portion thereof.

4.16. Borrower shall immediately advise Lender in writing if Borrower receives any notice from any laborers, contractors, subcontractors, or materialmen to the effect that such laborers, contractors, subcontractors or materialmen have not been paid when due for any labor or materials furnished in connection with the construction of the improvements to the Property, and if any lien is filed against the Property in connection therewith.

4.17. Borrower shall not violate any federal, state, county or municipal statute, regulation or ordinance which may materially and adversely affect its business operations or the financial condition or value of the Property.

4.18. Borrower shall have executed the THDA Documents.

4.19. Borrower must comply or cause compliance with the following provisions pursuant to 24 C.F.R. 85.36 (i).

4.19.1. Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 C.F.R. chapter 60).

4.19.2. The Copeland "Anti-Kickback" Act (1 8 U.S.C. 874) as supplemented in Department of Labor regulations (29 C.F.R. part 3).

4.19.3. The Davis-Bacon Act (40 U.S.C 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

4.19.4. Borrower shall keep and maintain books, records and other documents relating directly to the receipt and disbursement of the loan funds for a period of at least thirty-six (36) months after HUD closeout of the grant and the resolution of all outstanding issues pursuant thereto. Any duly authorized representative of Lender, HUD or the Comptroller General of the United States shall, at all reasonable times during said period, have access to and the right to inspect, copy, audit, and examine all such books, records and other documents of Borrower directly related to the receipt and disbursement of loan funds until the completion of all close-out procedures between HUD and Lender respecting the loan funds and the final settlement upon conclusion of all issues arising out of the loan funds. Upon receipt of a written request from Lender, Borrower shall provide timely to Lender all information within its control reasonably necessary for Lender to satisfy any reporting obligations of Lender to HUD and any other reporting obligations or any close-out agreement. Such information shall be provided to Lender within five (5) working days of such request or within such longer time as may be practical under the circumstances.

4.19.5. Borrower shall make available for examination at reasonable intervals and during normal business hours to Lender and after reasonable notice to Borrower, all books accounts, reports, files and other papers or property with respect to all matters covered by this Agreement, and shall permit Lender to audit, examine and make copies, excerpts or transcripts from such records. Lender may make audits of any conditions relating to this Agreement.

4.19.6. All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15).

4.19.7. HUD requirements and regulations pertaining to patent rights, copyrights and rights in data.

4.19.8. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

4.19.9. HUD General Terms and Conditions attached hereto as Exhibit D.

5. **Representations and Warranties.** In order to induce Lender to enter into this Agreement and to make the Loan in accordance with the terms hereof, Borrower hereby represents and warrants to Lender as follows (which representations and warranties shall be deemed to be restated each time a disbursement of the Loan is made and upon the Conversion):

5.1. **Qualification; Good Standing.** Borrower is qualified to do business, and is in good standing, in all jurisdictions in which qualification is necessary for Borrower to conduct its business as presently conducted.

5.2. **Authorization.** The execution and delivery by Borrower of, and the performance by Borrower of its obligations under, this Agreement, the Note, the Deed of Trust and the other Loan Documents and the THDA Documents have been duly authorized by all necessary organizational action on the part of Borrower and do not and will not (a) violate any provision of any law or any judgment, order or ruling of any court or governmental agency, or (b) be in conflict with, result in a breach of, or constitute, with notice or lapse of time or both, a default under any indenture, agreement or other instrument to which Borrower is a party or by which Borrower or any of its property is bound or under the organizational documents of Borrower.

5.3. **No Litigation.** There are no pending or threatened actions or proceedings before any court or administrative or governmental agency that may have a material adverse effect on the financial condition or business operations of Borrower or the Property, other than those previously disclosed by Borrower to Lender in writing.

5.4. **Taxes.** All federal, state and local tax returns of Borrower required by law to be filed have been completed in full and have been duly filed, and all taxes, assessments and withholdings shown on such returns or billed to Borrower have been paid, and Borrower maintains adequate reserves and accruals in respect of all such federal, state and other taxes, assessments and withholdings. There are no unpaid assessments pending against Borrower for any taxes or withholdings, and Borrower knows of no basis therefor.

5.5. **Consents.** Borrower possesses all permits, memberships, franchises, contracts, licenses, trademark rights, and trade names necessary to enable Borrower to conduct its business operations as now conducted, and no consent, permission, authorization, order or license of any individual, entity or governmental authority is necessary in connection with the execution, delivery, performance or enforcement of any of the Loan Documents.

5.6. **No Default.** There is no event which is, or which with notice or lapse of time or both would be, a default or an Event of Default hereunder, under the Note, the Deed of Trust or under the other Loan Documents and the THDA Documents.

5.7. **Asset Ownership.** Borrower has good and marketable fee simple title to all of its properties and assets, including, without limitation, the Property.

5.8. **Binding Obligation.** The Loan Documents are the legal, valid and binding agreements of Borrower enforceable against Borrower in accordance with their terms and the security interests granted thereunder are perfected first priority security interests in all collateral, including the Property.

6. **Events of Default.** The following events shall constitute an "Event of Default" or "Events of Default" if not cured within any applicable cure period provided herein:

(a) Any representation or warranty made herein or in any other Loan Document shall prove to be false or misleading in any material respect;

(b) Any report, certificate, financial statement or other instrument furnished in connection with this Agreement or any other Loan Document shall prove to be false or misleading in any material respect;

(c) Default in the payment of the principal or interest on the Note or the Term Note, as when due and payable;

(d) Default shall be made with respect to any indebtedness for borrowed money of Borrower, if the effect of such default is to accelerate the maturity of such indebtedness;

(e) Default in the due observance or performance of any covenant, condition, or agreement on the part of Borrower to be observed or performed pursuant to the terms of this Agreement, the Deed of Trust, any other Loan Document, any agreement of record affecting the Property, or any THDA Documents, or the occurrence of a default or Event of Default under the THDA Documents unless cured pursuant to the terms of such documents;

(f) Any lien for labor, services, materials or otherwise is filed against the Property which is not removed within any time period prescribed herein;

(g) Without first obtaining the written consent of Lender, Borrower transfers, sells, conveys, encumbers or assigns all or any portion of the Property;

(h) Borrower, the General Partner, or any Guarantor is dissolved or terminated, ceases to operate its business, becomes insolvent, makes an assignment for the benefit of creditors, or becomes the subject of any voluntary bankruptcy, insolvency or debtor rehabilitation proceeding, or any such involuntary proceeding which is not dismissed within sixty (60) days of filing;

(i) Final judgment for the payment of money shall be rendered against Borrower, and the same shall remain undischarged for a period of thirty (30) days during which execution shall not be effectively stayed;

(j) An administrative or judicial order is entered against Borrower with respect to the Property which, in Lender's reasonable judgment, could materially impair its ability to perform its obligations under the Loan Documents or impair the value of the Property.

At any time following the occurrence and continuation of any such Event of Default, Lender may, at its option, take any or all of the following actions, at the same or different times:

(i) declare the Note (or upon the Conversion, the Term Note) to be forthwith due and payable, whereupon the Note (or upon the Conversion, the Term Note) shall become forthwith due and payable, both as to principal and interest, without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Note (or upon the Conversion, the Term Note) to the contrary notwithstanding;

(ii) take immediate possession of the real property and personal property encumbered by the Deed of Trust;

(iii) perform any work necessary to complete the Project substantially in accordance with the Plans and Specs, and Borrower names and constitutes Lender its true and lawful attorney-in-fact with full power in the Property to complete the improvements in the name of Borrower, pay all bills and expenses incurred thereby (but in such event Lender does not assume responsibility to pay bills owed by Borrower at the time Lender elects to take possession of the Property), and do all other acts on behalf of and in Borrower's name necessary or desirable for the Project's completion, this power being a power coupled with an interest;

(iv) have a receiver appointed as a matter of right without regard to the solvency of Borrower, for the purpose of preserving the Property, preventing waste, to protect the rights accruing to Lender by virtue of this Agreement, the Note, the Deed of Trust, and the other Loan Documents and to perform such activities referred to in sub-paragraph (iii) above; and/or

(v) pursue any and all remedies provided for hereunder and as provided in the Note, the Deed of Trust and the other Loan Documents, or otherwise available in law or in equity.

Any reasonable sums expended by Lender pursuant to the provisions of this Section 6 shall become part of the indebtedness secured by the Deed of Trust and the other Loan Documents, shall bear interest from the date of disbursement at the rate provided in the Note, shall be payable upon demand and shall be secured by the Deed of Trust and the other Loan Documents even though such sums, when added to previous balances to Borrower, shall exceed the face amount of the Note. The remedies provided in this Section 6 shall be in addition to any other remedies provided by law and provided in this Agreement, the Note, the Deed of Trust, or other Loan Document.

7. **No Agency.** In no event shall Lender be construed to be Borrower's agent, and in no event is Lender assuming Borrower's responsibility for proper payments to contractor and others.

8. **Notices.** Any notices and/or written consents required under the Loan Documents shall be in writing and shall either be: (a) personally served against a written receipt of delivery; (b) delivered by any nationally recognized overnight courier service (deemed received the next business day after placed in the possession of such service); or (c) posted by certified or express United States Mail, postage prepaid, return receipt requested (deemed received the third business day after being placed in the possession of the Mail). Such notices or consents shall be addressed as follows (which address may be changed by one of the foregoing methods, providing such changes shall not be effective until ten days after given):

8.1. If to Borrower: 2600 Thousand Oaks Boulevard, Suite 3210, Memphis, Tennessee 38118, with a courtesy copy to Dwayne W. Barrett and Hannah K. V. Cassidy, Reno & Cavanaugh, PLLC, Suite 1750, 424 Church Street, Nashville, Tennessee 37219.

8.2. If to Lender: 700 Adams Avenue, Memphis, Tennessee 38105-5002, with a courtesy copy to Dwayne W. Barrett and Hannah K. V. Cassidy, Reno & Cavanaugh, PLLC, Suite 1800, 424 Church Street, Nashville, Tennessee 37219.

9. **Successors and Assigns.** Any reference in this Agreement to any of the parties hereto shall be deemed to include the successors and assigns of such party, and all the covenants, promises, and agreements in this Agreement contained by or on behalf of Borrower or Lender shall bind and inure to the benefit of the respective successors and assigns, whether or not so expressed, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Lender, which may be withheld by Lender in its sole discretion. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto any right, remedy, or claim under or by reason of this Agreement or any covenant, condition, or stipulation hereof, and the covenants, stipulations, and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns. For the avoidance of doubt, no contractor, no subcontractor, no sub-

subcontractor or material supplier shall have any rights hereunder against Lender, or be entitled to protection of any of the covenants herein contained, although such parties may have recourse to Borrower.

10. **Counterparts.** This Agreement may be executed in a number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Agreement is to be deemed an original hereof, and all counterparts collectively are to be deemed but one instrument.

11. **Severability.** In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

12. **Indemnification.** Borrower agrees to protect, indemnify, and defend and save harmless Lender and its directors, officers, agents, and employees from and against any and all liability, expenses, or damage of any kind or nature or from suits, claims, or demands, including reasonable attorney's fees and expenses on account of any matter or thing or action or failure to act by Lender, whether in suit or not, arising out of this Agreement or any other Loan Document or in connection therewith, unless such suit, claim, or damage is caused by the gross negligence or willful misconduct of Lender, its directors, officers, agents, or employees. This obligation on the part of Borrower hereunder shall survive termination of this Agreement and the repayment of the Loan.

13. **Liens; Setoff by Lender.** Borrower hereby grants to the Lender a security interest in any and all of its moneys, securities and other property and the proceeds thereof, and also upon any and all deposits (general or special, matured or unmatured) and deposit accounts, including, but not limited to, the construction and operating checking accounts and escrow accounts held by Bank for the Project, and credits of the Borrower against any bank, savings and loan association, or other financial institution, at any time existing, but not including any Excluded Accounts. All accounts opened and maintained in connection with the Project and in the name of Borrower, including, but not limited to, the construction and operation checking accounts held by Bank for the Project, but not including any Excluded Accounts, shall be held by Bank, and shall be subject to that certain "Deposit Account Control Agreement" executed by Borrower, Lender, and Bank, of even date herewith. As provided in the Deposit Account Control Agreement, upon the occurrence of any Event of Default, the Lender is hereby authorized at any time and from time to time, without notice to Borrower, to issue to Bank a Notice of Exclusive Control (as defined in the Deposit Account Control Agreement), to set off, appropriate, and apply any and all items hereinabove referred to against any or all indebtednesses of the Borrower to the Lender, and to exercise any and all other remedies available to a secured party on default under the Uniform Commercial Code.

14. **Titles and Headings.** The titles and headings of sections of this Agreement are intended for convenience only and shall not in any way affect the meaning or construction or any provision of this Agreement.

15. **APPLICABLE LAW.** THIS AGREEMENT, AND THE TRANSACTIONS CONTEMPLATED HEREUNDER, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TENNESSEE.

16. **JURY TRIAL WAIVER.** BORROWER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION ARISING OUT OF, OR BASED UPON, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT.

17. **Jurisdiction.** Lender and Borrower agree that any legal action or proceeding arising out of or relating to the Loan or any of the Loan Documents shall be instituted in a state court sitting in Shelby County, or if applicable, in a United States District Court for the Western District of Tennessee. Notwithstanding the above, Lender shall be permitted to pursue legal action in other jurisdictions or venues if necessary to enforce its rights against any of the collateral securing the Loan.

18. **No Waiver.** No waiver at any time of the provisions or conditions of this Agreement or of any of the other Loan Documents shall be construed as a waiver of any of the other provisions or conditions hereof or thereof, nor shall a waiver of any provision or condition be construed as a right to subsequent waiver of the same provision or condition.

19. **Entire Agreement.** This Agreement and the other Loan Documents executed and delivered contemporaneously herewith or contemplated by the parties to be executed after the date hereof, together with any exhibits and schedules attached hereto, constitute the entire understanding of the parties with respect to the subject matter hereof, and any other prior or contemporaneous agreement, whether written or oral, with respect thereto are expressly superseded hereby. The execution of this Agreement, the Note, and any other Loan Documents by Borrower was not based upon any facts or materials provided by Lender, nor was Borrower induced to execute this Agreement, the Note, or any other Loan Document by any representation, statement, or analysis made by Lender.

20. **Modification.** No modification, waiver, or amendment of any provision of the Loan Documents shall be effective unless in writing and signed by Lender and Borrower.

21. **Interest.** Anything contained in the Loan Documents to the contrary notwithstanding, if for any reason the effective rate of interest on any advances shall exceed the maximum lawful rate of interest, the effective rate of interest shall be deemed reduced to and shall be such maximum lawful rate, and any sums of interest which have been collected in excess of such maximum lawful rate shall be applied by Lender as a credit against the unpaid principal amount due on the Loan.

22. **Miscellaneous.** Time is of the essence of this Agreement. Borrower hereby waives presentment, demand for payment, notice of dishonor and protest except as required by law. All references to Borrower in this Agreement shall include all persons signing herein other than Lender. If there is more than one Borrower, their obligations shall be joint and several.

23. **HUD Compliance.** Borrower acknowledges that Lender is unable to make the Loan without the approval of, and funding from, the U.S. Department of Housing and Urban Development ("HUD"). Borrower agrees to provide Lender with any additional information required by Lender and HUD to fulfill all applicable terms, conditions and requirements of Lender's receipt of funds from HUD in connection with the Loan.

24. **Non-Recourse.** The Loan is a "non-recourse" loan. Accordingly, Lender's source of satisfaction of Borrower's promise to pay principal and interest under the Note shall be limited to the Premises encumbered by the Deed of Trust and Lender's receipt of rent in connection with the leases and the Premises. Except as provided below, Lender shall not seek to procure payment out of any other assets of Borrower or of any person or entity comprising Borrower, and Lender shall not claim or seek judgment for any deficiency remaining after foreclosure on the Premises. Notwithstanding the foregoing, nothing contained in this section shall be deemed to release or impair (i) the validity or enforceability of the Note or the other Loan Document, (ii) the Borrower's promise to pay principal, interest and other amounts due under the Note or the other Loan Documents, or (iii) the security for the Note provided by the Deed of Trust. Nothing contained in this paragraph shall be deemed to preclude Lender from exercising its rights to foreclose on the Premises or to enforce any of Lender's other rights or remedies under the Note or the other Loan Documents. Notwithstanding the provisions of the foregoing, it is expressly understood and agreed that such limitation on liability shall in no way affect or apply to Borrower's or Borrower's partners' continued personal liability for the following: (a) fraud or misrepresentation made in or in connection with this Loan Agreement or any of the other Loan Documents; (b) failure to pay taxes or assessments prior to delinquency, or to pay charges for labor, materials or other charges that can create liens on any portion of the Premises; (c) the misapplication of (i) proceeds of insurance covering any portion of the Premises; or (ii) proceeds of the sale or condemnation of any portion of the Premises; or (iii) rent received by or on behalf of Borrower relating to the leases of the Premises after the occurrence of an Event of Default; (d) the return to Lender of all unearned advance rent relating to the leases of the Premises; (e) the return of, or reimbursement for, all personalty owned by Borrower taken from the Premises by or on behalf of Borrower, out of the ordinary course of business, and not replaced by items of equal or greater value than the original value of any personalty so removed; (f) all court costs and attorneys' fees incurred by Lender and payable by Borrower provided for in the Loan Agreement or in any of the other Loan Documents; and (g) costs and expenses of remediation or restoration of the Premises or any liability in connection with the Premises resulting from the generation, transportation, storage, disposal or use of any hazardous or toxic wastes or substances on or at the Premises, or (ii) any indemnity in connection with the foregoing provided in the Deed of Trust or any of the other Loan Documents.

25. **HUD.** Notwithstanding anything contained in the Loan Documents to the contrary, in the event this Agreement has been executed before HUD has approved funding of the Loan, (a) Lender shall not be required to fund any disbursement requested hereunder until such time as HUD has approved the Loan and has made funds available to Lender to disburse all or any portions of the Loan; and (b) if HUD requires any modifications to the terms of the Loan Documents, the parties agree promptly execute and deliver to Lender upon request amendment or amendments to this Agreement and/or the other Loan Documents evidencing such modifications requested by HUD.

[Signatures on following page]

WITNESS the signatures of the undersigned.

MEMPHIS HOUSING AUTHORITY

ADDRESS:

700 Adams Avenue
Memphis, Tennessee 38105-5002

By: _____
Name: Robert Lipscomb
Title: Executive Director

VILLAGE PARKWAY, L.P., a
Tennessee limited partnership

By: MLB CYPRESSWOOD, INC., a Tennessee corporation, its sole general partner

ADDRESS:

2600 Thousand Oaks Blvd., Suite 3210
Memphis, Tennessee 38118

By: _____
Name: J. Martin Regan, Jr.
Title: Secretary/Treasurer