

Exhibit B

REDEVELOPMENT AGENCY OF MIDVALE CITY, UTAH
RESOLUTION NO. 2023-17RDA

**A RESOLUTION PROVIDING CONSENT FOR SUNSET GARDENS, LLC TO
BORROW \$1,760,256 FROM HOUSING OPPORTUNITIES, INC. FOR THE
EAST 72 AFFORDABLE HOUSING PROJECT.**

WHEREAS, on June 7, 2022 the Redevelopment Agency of Midvale City (RDA) Board passed **Resolution No. 2022-08RDA** entering into an affordable housing loan agreement with Sunset Gardens, LLC for the construction of an affordable housing project at 380 E. Fort Union Blvd., Midvale ("East 72"); and

WHEREAS, Sunset Gardens, LLC received a loan commitment from Salt Lake County in the amount of \$1,760,256 for construction financing for East 72; and

WHEREAS, rather than loaning the money directly to Sunset Gardens, LLC, Salt Lake County is granting the money to Housing Opportunities, Inc. with the intent of the funding being passed through to Sunset Gardens, LLC.; and

WHEREAS, Housing Opportunities, Inc. seeks to provide Sunset Gardens, LLC construction financing for East 72 in the amount of \$1,760, 256; and


WHEREAS, Sunset Gardens, LLC is required to receive the consent of the other East 72 lenders, including the Redevelopment Agency of Midvale City, to receive the loan from Housing Opportunities, Inc.; and

NOW THEREFORE BE IT RESOLVED, that based on the foregoing, the Redevelopment Agency of Midvale City's Board of Directors provides consent for Sunset Gardens, LLC, to borrow \$1,760,256 from Housing Opportunities, Inc for the East 72 affordable housing project.

PASSED AND APPROVED this 14th day of November, 2023.

By: 
Marcus Stevenson, Chief Administrative Officer

ATTEST:


Rori L. Andreason, MMC
Secretary



Voting by the RDA Board

Dustin Gettel

"Aye"

☒

"Nay"

☐

Paul Glover

☒

☐

Quinn Sperry

☒

☐

Heidi Robinson

☒

☐

Bryant Brown

☒

☐

LOAN AGREEMENT

Between

HOUSING OPPORTUNITIES, INC.

as Lender

and

**SUNSET GARDENS, LLC,
a Utah limited liability company**

as Borrower

Dated as of [____], 2023

Property Addresses: 380 E. Fort Union Boulevard, Midvale, Utah 84047

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LOAN AGREEMENT

THIS LOAN AGREEMENT (this “**Agreement**”) is entered into as of the [] day of [], 2023, by and between HOUSING OPPORTUNITIES, INC., a Utah nonprofit corporation (“**Lender**”), and SUNSET GARDENS, LLC, a Utah limited liability company (“**Borrower**”), collectively referred to as the “**Parties**”, or individually, a “**Party**”.

RE C I T A L S

A. Borrower has incurred certain costs in connection with the acquisition, development, and financing of a housing project located at approximately 380 East Fort Union Boulevard, Midvale, Utah 84047 to be known as “Sunset Gardens Apartments” (the “**Project**”).

B. Lender has agreed to make a loan to Borrower in the maximum principal amount of [ONE MILLION SEVEN HUNDRED AND SIX THOUSAND TWO HUNDRED FIFTY SIX] AND NO/100 DOLLARS (the “**Loan**”) for the purpose of financing a portion of the costs incurred by Borrower relating to the Project, pursuant to the conditions of this Agreement and all the other Loan Documents, as hereinafter defined.

C. To secure the Loan made by Lender, Borrower agrees to encumber certain real property located at 380 East Fort Union Boulevard, Midvale, Utah 84047 as more particularly defined in Section 1 hereof, the “**Real Property**”).

NOW, THEREFORE, in consideration of the above recitals and in reliance thereon, and in consideration of the mutual covenants and conditions contained herein, and the benefits to be derived by the Parties hereunder, and such other consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Borrower covenant, agree, warrant and represent as follows:

1. **DEFINITIONS.** As used in this Agreement the following terms shall have the meanings set forth opposite each of them:

Closing means the execution of all Loan Documents, the satisfaction of all conditions to Closing, and the recording of the Deed of Trust in the Office of the County Recorder of the county where the Real Property is located.

Collateral means those items and assets specified in the Section of this Agreement entitled “The Collateral” that secures the obligations of Borrower to Lender under the Loan Documents.

Deed of Trust means the Leasehold Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, made by Borrower, as trustor, for the benefit of Lender, granting and conveying to Lender a subordinate lien against and security interest in the Real Property as security and collateral for the Loan.

Default means the occurrence of one or more of the events or conditions specified in Section 9 below, provided there has been satisfied any requirement for the giving of notice, the passing of time or both.

Effective Date means the earlier of (a) the date the Deed of Trust is recorded in the Office of the County Recorder of the county where the Real Property is located or (b) the date Lender authorizes the Loan proceeds to be released to Borrower.

Environmental Laws means any and all applicable current and future treaties, laws, regulations, enforceable requirements, binding determinations, orders, decrees, judgments, injunctions, permits, approvals, authorizations, licenses, permissions, notices or binding agreements issued, promulgated or entered by any Governmental Authority, relating to the environment, to employee health or safety as it pertains to the use or handling of, or exposure to, Hazardous Materials, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants or noxious odors, including the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (“**CERCLA**”), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, the Clean Air Act of 1970 (to the extent it pertains to the use or handling of, or exposure to, Hazardous Materials), as amended, the Toxic Substances Control Act of 1976, the Occupational Safety and Health Act of 1970, as amended, the Emergency Planning and Community Right-to-Know Act of 1986, the Safe Drinking Water Act of 1974, as amended, and any similar or implementing state law, and all amendments or regulations promulgated thereunder.

Governing Instrument means the Certificate of Organization and the Operating Agreement of Borrower, and all other organizational documents of any Borrower who is not a natural person, together with all amendments thereto.

Governmental Authority means any federal, state, county, municipal, local or other governmental entity, agency, court, commission, board, bureau, or instrumentality or regulatory body having jurisdiction over Borrower, the Real Property and the development of the Project.

Governmental Requirement means any law, statute, ordinance, order, rule, or regulation of a Governmental Authority, including without limitation the Americans with Disabilities Act of 1990 (as the same may apply to the Project by virtue of Borrower’s receipt of Loan proceeds from a public entity), and any amendments thereto and regulations promulgated thereunder.

Hazardous Materials means any toxic, radioactive, caustic or otherwise hazardous substance, material or waste, including petroleum, its derivatives, by-products and other hydrocarbons, or any substance having any constituent elements displaying any of the foregoing characteristics, including, without limitation, polychlorinated biphenyls (“**PCBs**”), asbestos or asbestos-containing material, and any substance, waste or material regulated under Environmental Laws. “Hazardous Materials” shall not include commercially reasonable amounts of such materials used in the ordinary course of operation of the Project which are used and stored in accordance with all applicable environmental laws, ordinances and regulations.

Loan Documents means those documents, as hereafter amended, supplemented, replaced or modified, properly executed and in recordable form, if necessary, identified as Loan Documents in Exhibit B attached hereto, together with all other documents, instruments, and agreements evidencing, securing, or in any way related to the Loan.

Maturity Date means [_____ 1, 2068], unless extended in accordance with the terms of the Note.

Note means the Promissory Note of even date herewith executed by Borrower and delivered to Lender in the amount of the Loan evidencing the obligation of the Loan.

Obligations means the unpaid principal amount of, and interest on, the Note and all other obligations and liabilities of Borrower to Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with this Agreement or the other Loan Documents and any other document executed and delivered in connection therewith or herewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including without limitation fees and disbursements of counsel to Lender) or otherwise.

Operating Agreement means Borrower's Amended and Restated Operating Agreement, dated as of October 1, 2022, between Sunset Gardens Management, LLC, a Utah limited liability company (the "**Managing Member**"), and USA Institutional Sunset Gardens LLC, a Delaware limited liability company (the "**Investor Member**").

Personal Property means all equipment, fixtures and other personal property, contracts, plans and specifications, rights, interests, entitlements, and general intangibles owned by Borrower and held for, used, or located on or for the Real Property.

Project means, collectively, the Real Property, any improvements on the Real Property, and the Personal Property.

Real Property means the parcel of land located at approximately 380 East Fort Union Boulevard, Midvale, Utah 84047 and more particularly described in Exhibit "A" attached hereto, together with all easements, rights-of-way, and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments, and appurtenances thereof and thereto.

2. **THE LOAN.**

2.1 **Loan.** Borrower shall borrow from Lender and, subject to the terms and conditions and in reliance upon the representations, warranties, and covenants hereinafter set forth, Lender shall lend to Borrower, the maximum principal sum of [ONE MILLION SEVEN HUNDRED AND SIX THOUSAND TWO HUNDRED FIFTY SIX] AND NO/100 DOLLARS (\$[1,706,256].00)] to be advanced as hereinafter provided and to be paid in the manner and at such time as provided in the Note, together with all additional advances, costs and charges that may become due and owing under any of the Loan Documents. Notwithstanding anything to the contrary set forth in this Agreement, Lender shall be under no obligation to fund all or any portion

of the Loan until the satisfaction by Borrower of each of the conditions set forth in Section 8 of this Agreement. The Loan obligation evidenced by the Note shall be due and payable as set forth in the Note.

2.2 **Subordination.** Lender agrees to execute any and all documents and take all reasonable action to subordinate the Loan to any lender that has a lien senior to Lender as reasonably requested by Borrower.

2.3 **Use of Loan Proceeds.** Borrower may use the Loan proceeds to pay permitting fees, land acquisition costs, and other land related costs.

2.4 **Interest.** Interest will be payable on the outstanding principal of the Loan at the rates set forth in the Note.

2.5 **Disbursement of Loan Proceeds.** Lender shall disburse the proceeds of the Loan to or for the account of Borrower upon receipt and approval of a requisition request of Borrower.

3. **THE COLLATERAL.** Borrower's performance of its Obligations hereunder and with respect to the Loan, including all extensions, renewals, or replacements thereof, shall be secured by the Collateral pursuant to the terms and provisions of the Deed of Trust. The Deed of Trust shall be recorded on the Real Property at Closing. Pursuant to the Deed of Trust, Borrower shall grant to Lender a security interest in the Collateral, which comprises the following:

3.1 The Real Property and all rents, issues, royalties, and profits in connection therewith and all fixtures now owned or hereafter acquired by Borrower and materials which are or may become attached to or become a part of the Real Property, subject only to the Permitted Exceptions, all pursuant to the Deed of Trust.

3.2 The Personal Property and all other personal property of Borrower arising out of or related to the Real Property, and all general intangibles relating to the Real Property.

3.3 All rents, leases, contracts, general intangibles, earnest money deposits, issues, royalties, and profits which arise out of or accrue from the Project.

4. **REPRESENTATIONS AND WARRANTIES TO LENDER.** Borrower represents and warrants to Lender as follows (it being agreed that all representations and warranties of Borrower shall survive the Closing and remain in full force and effect until all Obligations of Borrower to Lender shall have been fully paid and performed):

4.1 **Authorization.** Borrower has taken all requisite action duly and validly to authorize the execution of this Agreement and the Loan Documents, the repayment of the Obligations, and the performance of its obligations hereunder and otherwise in respect of the transactions contemplated hereby.

4.2 **Authority/Enforceability.** Borrower is in compliance with all laws and regulations applicable to its organization, existence and transaction of business and has all necessary rights and powers to own, improve and operate the Project as contemplated by the Loan Documents.

4.3 **Financial Information and Condition of Borrower.** All financial information provided by Borrower to Lender is true, correct and complete and fairly presents the financial position of the person or entity which it purports to reflect, and such financial positions have not suffered any material adverse changes between the date of such financial information and the date hereof.

4.4 **Condition of the Real Property.** To the best of Borrower's knowledge, the Real Property and all improvements thereon comply with all material Governmental Requirements, applicable federal, state, or local statutes, ordinances, codes, rules, regulations, orders, or decrees regulating or imposing liability standards of use or conduct concerning zoning, building codes, use of the property or Hazardous Materials.

4.5 **Misstatements.** None of the representations and warranties contained herein or in the Loan Documents or in any document or instrument given or to be given Lender by Borrower contains any misstatement of a material fact or omits to state a material fact necessary to make the statement or statements contained herein or therein not misleading, and Borrower has disclosed to Lender all facts which are material to the Loan, the Loan Documents, the Collateral or any portion thereof or any interest therein.

4.6 **Environmental Matters.** (a) Neither Borrower nor, to the best of Borrower's knowledge, any previous owner, tenant, occupant or user of the Real Property used, generated, released, discharged, stored or disposed of any Hazardous Materials on, under, or about the Real Property, or transported any Hazardous Materials to or from the Real Property, and (b) the Real Property complies with and shall comply with, as required, all Environmental Laws and other laws which affect or govern Borrower's use or development of the Real Property.

4.7. **No Default under Other Agreement.** Borrower is not in default under any other agreement with Lender or with the City of Salt Lake City, Utah to which Borrower is a party.

5. **LOAN COVENANTS OF BORROWER.** Borrower agrees and covenants with Lender that at all times during the term of this Agreement and so long as any Obligations remain owing to Lender by Borrower:

5.1 **Insurance Policies and Certificates.**

(a) Borrower, at its sole expense, shall keep and maintain constantly during the time any of the Obligations remain outstanding, with companies authorized to do business in Utah, which companies and policies shall be satisfactory to Lender and shall be rated A Class IV (or better) in the most recent publication of Best's Key Rating Guide, Property-Casualty, the following:

(i) "All risk" insurance in an amount not less than the full insurable value of the Project on a replacement cost basis (without any deduction for depreciation), or the amount of the Obligations outstanding, whichever is greater, insuring against loss or damage by fire, lightning and other risks included from time to time in what is commonly called extended coverage insurance;

(ii) General public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Project including the adjoining parking area, streets, sidewalks, and passageways to the extent such parking areas, streets, sidewalks and passageways are located in or on the Project, with bodily injury, loss of life and property damage coverage with a “combined single limit” of not less than One Million Dollars (\$1,000,000.00) per occurrence and not less than Two Million Dollars (\$2,000,000.00) for all such occurrences in the aggregate, and an endorsement naming Lender as an additional insured;

(iii) Worker’s compensation insurance in such amounts as required by applicable state law;

(iv) Flood insurance, if, at any time when any of the Obligations remain outstanding, the Project is designated a flood prone or flood risk area pursuant to the Flood Disaster Protection Act of 1973 as amended or supplemented, in such amounts as required by law or Lender, whichever is greater, which insurance and actions of Borrower shall otherwise comply with the requirements of the National Flood Insurance Program as set forth in such Act.

- (b) All hazard and flood insurance policies required by this Agreement shall contain a standard noncontributory lenders’ loss payable clause in favor of and in form acceptable to Lender and to the extent available a waiver of subrogation rights. All such insurance policies shall provide that such policy shall not be canceled, modified or lapse without at least thirty (30) days’ prior written notice to Lender.
- (c) Upon the execution of this Agreement, and thereafter not less than fifteen (15) days prior to the expiration dates of the expiring insurance policies required by this Section 5.1, Borrower shall deliver to Lender originals of the policies bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Lender of such payment.
- (d) Borrower and Lender shall adjust with the insurance companies the loss, if any, under any policies required by this Agreement in the case of any particular casualty resulting in damage or destruction. The proceeds of any such insurance shall be payable to Lender to be applied in accordance with the terms of Section 5.2 hereof.
- (e) If Borrower fails to procure, pay the premium of, or deliver to Lender any of the insurance policies or renewals as required herein, Lender may elect, but shall not be obligated, to effect such insurance and pay the premiums. Borrower shall pay to Lender on demand any premiums so paid with interest thereon at the interest rate specified in the Note from the time of Lender’s payment, and such advance and interest shall be an Obligation secured by the Deed of Trust.
- (f) In the event of foreclosure of the Deed of Trust, or other transfer of title to the Project in the exercise of the remedies provided to Lender in the Loan Documents, the purchaser of the Project shall succeed to all of Borrower’s rights, including any rights to unearned premiums, in and to all insurance policies required by this

Section 5.1, but Borrower shall be entitled to a credit for any such unearned premium with respect to the period after the transfer of title as against any deficiency judgment obtained by Lender, and if no such deficiency exists, to a return of such unearned premium.

- (g) If Lender acquires title to the Project in any manner, it shall thereupon (as between Borrower and Lender) become the sole and absolute owner of all insurance policies required by this Section, with the sole right to collect and retain all unearned premiums thereon.

5.2 Construction of Improvements.

- (a) Borrower shall deliver to Lender, for its review and written approval, copies of all site plans and building plans, including but not limited to schematic, design and construction plans related to any improvements constructed or to be constructed on the Real Property (collectively, “**Plans and Specifications**”).
- (b) Any construction of Borrower Improvements shall be performed and completed in a prompt, diligent and workmanlike manner in accordance with the Plans and Specifications and any and all federal, state, and local laws, statutes, acts, ordinances, rules, regulations and/or other requirements of any applicable Governmental Authority.

5.3 Condemnation and Insurance Proceeds.

- (a) Assignment of Claims. Borrower hereby assigns to Lender all of the right, title, and interest which Borrower has or may have in and to the following (collectively, the “**Claims**”) (i) the proceeds of any award or claim for damages, direct, consequential or of whatever nature, including without limitation from insurance policies, in connection with any condemnation or other taking of or damage or injury to the Project, or any part thereof, including any award or awards for any change or changes of grade or route of streets affecting the Project, or for conveyance in lieu of condemnation; and (ii) all causes of action, whether accrued before or after the date of this Agreement, of all types for damages or injury to or otherwise in connection with all or any part of the Project, or in connection with any transaction financed by funds loaned to Borrower by Lender and secured by any Security Document or other Loan Document, including without limitation causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact.
- (b) Application of Proceeds; No Default. So long as no Default has occurred and is continuing at the time of Lender’s receipt of the proceeds of the Claims (“**Proceeds**”) and no Default occurs thereafter, Lender shall apply the Proceeds in the following order of priority: First, to any expenses incurred by Lender in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, to Borrower if the repair or restoration of the Property has been completed, but to the Obligations in any order without suspending, extending or

reducing any obligation of Borrower to make installment payments if the repair or restoration of the Property has not been completed. Notwithstanding the foregoing, Lender shall have no obligation to make any Proceeds available for the repair or restoration of the Property unless and until all the following conditions have been satisfied: (i) delivery to Lender of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) establishment of an arrangement for lien releases and disbursement of funds acceptable to Lender; (iii) delivery to Lender in form and content acceptable to Lender of all of the following: (a) plans and specifications for the work; (b) a contract for the work, signed by a contractor acceptable to Lender; (c) a cost breakdown for the work; (d) if required by Lender, a payment and performance bond for the work; (e) evidence of the continuation of all Leases unless consented to in writing by Lender; (f) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; and (g) evidence of the satisfaction of any additional conditions that Lender may reasonably establish to protect Lender's security. Borrower acknowledges that the specific conditions described above are reasonable.

- (c) Application of Proceeds; Default. If a Default has occurred and is continuing at the time of Lender's receipt of the Proceeds or if a Default occurs at any time thereafter, Lender may, at Lender's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Lender's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Obligations in any order without suspending, extending or reducing any obligation of Borrower to make installment payments, and may release all or any part of the Proceeds to Borrower upon any conditions Lender chooses.

5.4 Indemnity. Borrower shall assume all responsibility for and hold Lender and any related entity of Lender, their officers, directors and employees harmless from all liability, loss, damage, costs or expenses, (including attorneys' fees and court costs) arising from or as a result of the death of a person or any accident, injury, loss or damage caused to any person, the Project, or the property of any person which shall occur on or adjacent to the Project to the extent directly or indirectly caused by the acts, errors, negligence or omissions of Borrower or its agents, employees, servants or contractor, subcontractors, and sub-subcontractors, whether such damage shall accrue or be discovered before or after termination of this Agreement. Borrower shall defend Lender with counsel selected by Lender.

5.5 Representations Accurate. The representations and warranties made by Borrower shall be and remain true at all times with the same effect as though the representations and warranties had been made at any and all times during the term of this Agreement.

5.6 Notice of Claims. Upon receipt of any notice of pending litigation or the assertion of claim for more than Fifty Thousand Dollars (\$50,000) made by any party arising in connection with the Project, Borrower shall immediately give to Lender notice of such claim.

5.7 **Additional Costs Payable.** Borrower shall pay Lender on demand any expenses suffered, incurred or paid by Lender which relate to (i) the making, servicing, amendment, waiver or “workout” of the Loan, this Agreement or the Loan Documents; (ii) the exercise or defense of Lender’s rights and actions hereunder; or (iii) the Note or Loan Documents, including, without limitation, any charges for surveys, appraisals and inspections, environmental assessments, and reasonable attorneys’ fees, costs or expenses arising out of any of the foregoing.

5.8 **Compliance with Environmental Laws.** Borrower shall comply with, and cause the use and operation of the Project, and all activities of Borrower with respect to the Project, at all times to comply with all applicable Environmental Laws. Borrower shall not cause or permit the presence, use, generation, release, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any Hazardous Materials to or from the Project, except for any such Hazardous Materials, the use or presence of which are necessary to the business activities of Borrower and its tenants, provided that any such use or presence shall occur only under and in compliance with any required governmental permits and otherwise fully comply at all times with all Environmental Laws relating to such use or presence. Borrower shall indemnify, defend and hold Lender harmless from all damages, liabilities, expenses, and costs (including reasonable attorneys’ fees) resulting from the presence or release of Hazardous Materials on the Project.

5.9 **No Merger, Consolidation, Transfer of Assets.**

- (a) Borrower shall not merge into or consolidate with any other entity; make any substantial change in the nature of Borrower’s business as conducted as of the date hereof; acquire all or substantially all of the assets of any other entity; nor sell, lease, transfer or otherwise dispose of all or a substantial or material portion of Borrower’s assets except in the ordinary course of its business.
- (b) Borrower may permit the Real Property and/or Borrower Improvements or any part thereof or any direct or indirect, legal or beneficial interest therein to be Transferred (including, without limitation, through sale or transfer of a majority or controlling interest of the membership interests in Borrower to any other person, including any other member of Borrower), only with the prior written consent of Lender. As used herein, “**Transfer**” or “**Transferred**” means any sale, installment sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law or otherwise. Notwithstanding anything to the contrary contained the Loan Documents, (a) the Investor Member shall be permitted to remove the Managing Member for cause in accordance with the Operating Agreement without the consent of Lender, and (b) the Investor Member may transfer its investor member interests in Borrower in accordance with the terms of the Operating Agreement without the consent of Lender (each, a “**Permitted Transfer**”), (c) no Permitted Transfer shall cause a default under the Loan Documents, (d) Lender shall not receive any fee or other amounts from Borrower in connection with a Permitted Transfer and (e) the Operating Agreement may be amended or modified in connection with a Permitted Transfer without the prior written consent of Lender.

5.10 **Intentionally Omitted.**

5.11 **Intentionally Omitted.**

5.12 **Removal of Mechanics' Liens.** If a claim of lien is recorded that affects the Real Property or Improvements, Borrower shall, within thirty (30) calendar days after Borrower obtains actual knowledge of such recording or within fifteen (15) calendar days of Lender's demand, whichever occurs first: (a) pay and discharge the claim of lien; (b) effect the release thereof by recording or delivering to Lender a surety bond in sufficient form and amount; or (c) provide Lender with other assurances which Lender deems, in its reasonable discretion, to be satisfactory for the payment of such claim of lien and for the full and continuous protection of Lender from the effect of such lien. Borrower shall be responsible for checking the status of the title to the Real Property and the Improvements no less than once every sixty (60) calendar days to determine if any such liens have been recorded.

5.13 **Taxes and Other Liabilities.** Borrower shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real and personal, owed by or relating to Borrower and Borrower's properties (including federal and state income taxes), except such as Borrower may in good faith contest or as to which a bona fide dispute may arise, provided provision is made to the satisfaction of Lender for eventual payment thereof in the event that it is found that the same is an obligation of Borrower.

6. **TITLE INSURANCE.** Borrower, as Borrower's sole expense, shall deliver to Lender at Closing, an extended coverage ALTA 2006 Leasehold Lender's Policy of Title Insurance, in the full amount of the Loan, insuring the Deed of Trust as a valid lien on the Real Property and Borrower's marketable leasehold interest in the Real Property, subject only to those exceptions as approved by Lender (the "**Title Policy**"). The Title Policy shall name Lender, their successors and/or assigned and the named insured.

7. **COSTS AND EXPENSES.** This loan transaction shall be without expense to Lender, except as provided hereinafter. All costs and expenses incurred in connection with the Loan, including, but not limited to, the premium for the Title Policy, recording fees, copies, and costs of all documents, forms, and information furnished to Lender for the Loan, documentary fees, tax service charges, escrow charges, and all direct costs of Lender in connection with the negotiation, closing, and administration of the Loan, shall be paid by Borrower whether or not there is a closing of the Loan.

8. **CONDITIONS TO MAKING LOAN.** Lender shall have no obligation unless the following conditions have been satisfied or waived by Lender:

8.1 **No Liens.** Borrower shall have delivered to Lender such forms and documents as Lender reasonably determines are necessary to verify that there are no existing liens against the Real Property, except for the Permitted Exceptions and that all taxes and assessments which are due and payable have been paid.

8.2 **Material Adverse Change.** There shall be no material adverse change in the financial condition of Borrower from that which existed as of the date of this Agreement.

8.3 Borrower Performance. Borrower shall be in full performance of all of its obligations under the Loan Documents, and no event has occurred which constitutes or would, with the passage of time or giving of notice or both, constitute a Default under any of the Loan Documents and/or this Agreement.

8.4 Status of Real Property. The Real Property shall not have been materially injured or damaged by fire or other casualty or condemnation.

8.5 No Actions. There shall be no actions, suits, or proceedings pending or, to Borrower's knowledge, threatened against or affecting Borrower or the Real Property at law or equity, or before any Governmental Authority, which if adversely determined would impair the ability of Borrower to own and possess the Real Property in accordance with the provisions hereof and to pay when due any amounts which become payable on the Note or under the Loan Documents.

8.6 Compliance with Laws. Borrower shall be in compliance with all federal, state, and local laws, statutes, acts, ordinances, rules, regulations of any applicable Governmental Authority, and, except as disclosed to Lender, all Environmental Laws and requirements governing the Project and the use of Hazardous Materials on or in connection with the Project.

8.7 Execution and Delivery of Documents. Each of the Loan Documents together with all other agreements and documents required by this Agreement, shall have been duly executed and delivered by Borrower in recordable form and the Deed of Trust shall have been recorded in the Salt Lake County Recorder's Office.

8.8 Title Policy. The Title Company shall have executed Lender's closing instruction or escrow letter which letter shall include an acknowledgment from the Title Company that it is in a position to irrevocably issue the Title Policy, subject to Lender's conditions for closing and subject only to the Permitted Exceptions.

8.9 Insurance Policies. Prior to any disbursement of Loan proceeds, Borrower shall have furnished evidence to Lender that Borrower has procured the insurance policies required by this Agreement, accompanied by satisfactory evidence of payment of the premiums charged for the issuance thereof, or certification that the Real Property is not located in a flood prone area as defined by the United States Department of Housing and Urban Development in the Flood Disaster Protection Act of 1973.

8.10 Payment of Fees. Borrower shall have delivered to Lender reimbursement for the reasonable fees and expenses of Lender's counsel incurred in connection with preparation of the Loan Documents and Closing of the Loan, and reimbursement of the fees of Lender's other agents incurred in connection with the Loan and for the Title Policy, and payment to Lender of the Loan origination fee.

8.11 Governing Instruments. Borrower shall have delivered to Lender and Lender has reviewed and approved all Governing Instruments.

8.12 Environmental Reports. Borrower shall have obtained and delivered to Lender such environmental reports and environmental assessments of the Real Property, an environmental

use questionnaire relating to the Real Property, other data, materials, property histories and other information and documentation related to the environmental condition and status of the Real Property and such further environmental assessments, investigations, services and studies as Lender may determine are necessary to determine that the Real Property is free from Hazardous Materials and environmental compliance requirements for the Project which are requested by and are acceptable to Lender. Borrower shall furnish evidence acceptable to Lender that Borrower has received permits and permission of and is in compliance with all applicable federal, state, county and municipal laws, rules, regulations, ordinances for the building permits, any other permit and licenses required for construction and use of the Project, environmental controls and requirements and for Hazardous Materials.

8.13 **Other Borrower's Certificates.** Borrower shall have executed and delivered such additional certificates as may be reasonably requested by Lender to reaffirm the representations and other agreements contained in the Loan Documents.

9. **DEFAULT.** The following shall constitute a Default under this Agreement:

9.1 **Monetary Defaults; Financial Condition.** The occurrence of any of the following without further notice, demand or passage of time:

- (a) Borrower fails to pay when due any installment of principal or of interest on the Note or any other sum required to be paid pursuant to the terms of this Agreement or any Loan Document.
- (b) Any change shall occur in the financial condition or position of Borrower which Lender shall reasonably determine to be materially adverse to Borrower and/or determine to materially increase Lender's risk of non-payment or non-performance due hereunder or due under any other Loan Document.

9.2 **Other Borrower Defaults.** The occurrence of any of the following and Borrower fails to cure such breach within thirty (30) days after Lender gives written notice to Borrower of such breach, or if such breach cannot be cured within thirty (30) day period, such longer time as such breach can be cured by Borrower using due diligence; provided, if a different period or notice requirement is specified for any particular breach under this Agreement or under the Note or under any Loan Document, such specific provision shall control:

- (a) Borrower commits any breach, not involving the payment of moneys, in the due observance or performance of any covenant, condition, or agreement contained in the Note, this Agreement or any Loan Document.
- (b) The breach or default by Borrower of or under any covenant, warranty, agreement, representation, performance or requirement herein contained or contained in any of the Loan Documents, or if any covenant, warranty, agreement, or representation by Borrower shall prove to be false or misleading.

9.3 **Destruction; Damage.** Substantial damage to the Real Property so that in Lender's reasonable judgment the Real Property cannot be restored or rebuilt with available funds to the same condition as the Real Property existed prior to such damage within a reasonable time.

9.4 Bankruptcy or Insolvency. The filing of any petition or the commencement of any case or proceeding by or against Borrower under any federal or state law relating to insolvency, bankruptcy, or reorganization, or the institution of any proceeding against Borrower or any of its material assets in which forfeiture, attachment or replevin of any material asset of Borrower is sought in the proceeding, unless such petition and the case or proceeding initiated thereby is dismissed within thirty (30) days from the date of such filing; or an adjudication that Borrower is insolvent or bankrupt; or the entry of an order for relief under the Federal Bankruptcy Code with respect to Borrower; the filing of an answer by Borrower admitting the allegations of any such petition, case or proceeding; or the appointment of or the taking of possession by a custodian, trustee or receiver for all or any assets of Borrower, unless such appointment is vacated or dismissed or such possession is terminated within thirty (30) days from the date of such appointment or commencement of such possession, but not later than five (5) days before the proposed sale of any assets of Borrower other than in the ordinary course of the business of Borrower.

9.5 Default under Other Indebtedness Secured by the Property. Any default, if such default continues beyond the expiration of any applicable cure period, under any other loan agreement which is secured by the Real Property.

The Defaults herein and the remedies provided to Borrower for curing of such Defaults shall apply to each other document involved in the Loan transaction which is the subject of this Agreement. Notwithstanding anything to the contrary contained in the Loan Documents, the Investor Member shall have the right, but not the obligation, to cure any default of Borrower under the Loan Documents, and Lender agrees to accept cures tendered by the Investor Member, as follows: (a) with respect to any monetary default under the Loan Documents, Lender shall notify the Investor Member in writing of such monetary default, and the Investor Member shall have the applicable cure period allotted to Borrower under the Loan Documents, plus fifteen (15) days, after the receipt of said notice of such monetary default to cure such monetary default; and (b) with respect to any nonmonetary default under the Loan Documents, Lender shall notify the Investor Member in writing of such nonmonetary default, and the Investor Member shall have the applicable cure period allotted to Borrower under the Loan Documents, plus 30 days after the receipt of such notice of such nonmonetary default to cure such default. Lender agrees that the Loan Documents will not be considered to be in default until the expiration of all contractual notice and cure periods provided to Borrower and the Investor Member. To the extent that the Defaults and the remedies provided in each other Loan Document are inconsistent, the terms and conditions of this Agreement shall apply.

10. REMEDIES.

10.1 Acceleration; No Further Disbursements. Borrower agrees that upon the occurrence of any Default, Lender may declare the entire principal balance of the Note then due and payable, and Lender's obligation (if any) to make any further disbursements of proceeds hereunder shall cease.

10.2 Remedies Available. Lender shall have the right to enforce any one or more of the remedies provided hereunder or by law or in equity either successively or concurrently, and any such action by Lender shall not be deemed an election of remedies or otherwise prevent Lender from pursuing any further remedy it may have hereunder or at law or in equity. The rights and

remedies of Lender are cumulative. No other party shall have: (i) any interest in any Loan funds withheld by Lender because of any default; or (ii) any right to garnish, or require to compel payment thereof to be applied toward discharge or satisfaction of any claim or lien which it may have.

10.3 Remedies Not Exclusive. Lender shall have the right to enforce any one or more of the remedies provided hereunder or by law or in equity either successively or concurrently, and any such action by Lender shall not be deemed an election of remedies or otherwise prevent Lender from pursuing any further remedy it may have hereunder or at law or in equity. The rights and remedies of Lender are cumulative. No other party shall have: (i) any interest in any Loan funds withheld by Lender because of any default; or (ii) any right to garnish, or require to compel payment thereof to be applied toward discharge or satisfaction of any claim or lien which it may have.

10.4 Protective Advances. All sums expended and expenses incurred by Lender in the exercise of the rights conferred in this Section shall be deemed to be advanced and loaned to Borrower hereunder, and payment thereof shall be secured by the Loan Documents. All such sums and expenses so expended and incurred by Lender shall be deemed to be evidenced by the Note, provided, however, that Lender may demand immediate repayment of sums so expended and that the same shall bear interest at the Default Rate rather than the rate specified in the Note.

10.5 Expenses. Borrower shall pay to Lender upon demand all reasonable costs, expenses and fees (including reasonable attorneys' fees), whether suit be instituted or not, before and after judgment, and for any judicial proceeding at the trial court and appellate levels (and if suit is instituted, such fees as shall be fixed by a judge sitting without a jury) incurred by Lender in protecting or enforcing its rights hereunder, and under all agreements and documentation contemplated hereby, and all expenses of taking possession, holding and disposing of the Collateral and/or incurred in any bankruptcy or insolvency proceeding.

10.6 Standstill. Notwithstanding anything to the contrary set forth herein, or in any of the Loan Documents, so long as USA Institutional Sunset Gardens LLC (or an affiliate thereof), is the Investor Member, Lender will not commence (i) foreclosure proceedings with respect to the mortgaged property under the Loan Documents or exercise any other rights or remedies it may have under the Loan Documents, including but not limited to accelerating the Loan, collecting rent, appoint (or seeking the appointment of) a receiver or exercising any remedies or rights thereunder, or (ii) join with any creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceeding with respect to Borrower (the "**Standstill Restrictions**"). The Standstill Restrictions shall only be applicable during the "Tax Credit Compliance Period", as that term is defined in Section 42 of the Internal Revenue Code.

10.7 Multiple Capacities. Lender and Borrower acknowledge to one another that Lender and/or an affiliate thereof is acting in multiple capacities with respect to the Project including, without limitation, as Lender of the indebtedness secured hereby, as the property management agent, and as the managing member of Borrower. Accordingly, and notwithstanding anything to the contrary in this Agreement or the other Loan Documents, Lender and Borrower agree that nothing in this Loan Agreement or the other loan documents is intended, nor shall it be construed, to abrogate or diminish any obligations that Lender or an affiliate thereof may have

with respect to the Project, Borrower and/or the Investor Member, whether expressly contained in the Operating Agreement or implied by law, for so long as an affiliate of Lender is a managing member of Borrower.

11. MISCELLANEOUS.

11.1 **Loan Documents.** The Loan Documents shall be deemed to incorporate this Agreement, and in the event that the Loan Documents or other agreements, documents or instruments contemplated thereby are assigned by Lender, this Agreement shall be considered assigned in like manner. A breach or default by Borrower of any term or condition of this Agreement or any Loan Document shall constitute a default under this Agreement and each Loan Document.

11.2 **No Third-Party Beneficiaries.** The Loan Documents are made for the sole benefit of Borrower and Lender and their successors and assigns, and no other person is intended to or shall have any rights hereunder, whether as a third party beneficiary or otherwise.

11.3 **Notices and Place for Payment of Obligations.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be given (i) by Federal Express (or other established express delivery service which maintains delivery records), (ii) by hand delivery, or (iii) by certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner:

To Lender: Housing Opportunities, Inc.
3595 South Main Street
Salt Lake City, Utah 84115
Attn: Executive Director

To Borrower: Sunset Gardens, LLC
3595 South Main Street
Salt Lake City, Utah 84115
Attn: Chief Executive Officer

With copies to:

Gilmore & Bell, P.C.
15 West South Temple, Suite 1450
Salt Lake City, Utah 84101
Attention: Claymore Hardman

and to the Investor Member (at the address specified in the Operating Agreement)

Such communications may also be given by electronic transmission, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon receipt, or upon attempted delivery thereof if delivery is refused by the intended

recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means for accomplishing delivery. All Obligations shall be paid to Lender at the address set forth in this Article or such other place as designated by Lender by written notice to Borrower.

11.4 Governing Law. The Loan Documents are executed and delivered in the State of Utah and the law of the State of Utah shall govern their interpretation, construction, and enforcement. Venue shall reside in Salt Lake City, Utah.

11.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. The obligations of Borrower, if there is more than one borrower, under this and all other instruments and agreements contemplated hereby, shall be joint and several.

11.6 Severability; Integration, Form and Substance of Documents; Time of the Essence. Inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement. The Loan Documents supersede all prior agreements, and constitute the entire agreement between the Parties with respect to the subject matter hereof and no modification or waiver shall be effective unless in writing and signed by the party to be charged. All documents and other matters required to be furnished by Borrower shall be satisfactory in form and substance to counsel for Lender. Time is of the essence hereof.

11.7 Assignment. Borrower shall not assign this Agreement, any rights in the Loan, the Loan proceeds or any part of any advance to be made hereunder, the same being personal to Borrower. The rights of Lender under this Agreement are assignable in part or wholly with notice to Borrower, and any assignee of Lender shall succeed to and be possessed of the rights of Lender hereunder to the extent of the assignment made, including the right to make advances to Borrower.

11.8 Attorneys' Fees. In the event either party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing party in such action shall have the right to recover reasonable attorneys' fees and costs from the other party, to be fixed by the court in the same action. The term "legal proceeding" shall include appeals from a lower court judgment as well as proceedings in the Federal Bankruptcy Court, whether or not they are advisory proceedings or contested matters.

11.9 Headings. All descriptive headings of sections and paragraphs in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

11.10 No Agency Relationship. Borrower understands and agrees that Lender, by making this commitment or taking any action hereunder, will not be deemed to be a partner or a joint venture with Borrower, and Borrower will, and does hereby, indemnify, hold harmless, and shall forever defend Lender from any and all damages arising out of any claim that this commitment of loan constitutes a partnership or joint venture between Borrower and Lender and that the sole relationship between Lender and Borrower is that of creditor and debtor.

11.11 Waiver of Defaults. The waiver by Lender of any breach or default by Borrower under any of the terms of any of the Loan Documents shall not be deemed to be a waiver of any

subsequent breach or default on the part of Borrower under the same or any other of the Loan Documents.

11.12 Indemnification. Borrower shall indemnify and hold Lender harmless from and against any and all claims, demands, or obligations which may be asserted in connection with or arising directly or indirectly out of the Loan, the Real Property, the Project or the Improvements, whenever asserted, and for all reasonable expenses (including attorneys' fees) which may be incurred by Lender on account of or arising from any such claim, demand or obligation, except such claims as arise from the gross negligence or willful misconduct of Lender or Lender's agent or employees. This indemnification shall survive the performance of this Agreement and the full satisfaction of all of Borrower's obligations within the contemplation of this Agreement and the other Loan Documents. This indemnification is in addition to any other indemnification given by Borrower or other person or entity with regard to the Loan, the Property, or the construction work.

11.13 No Waiver of Governmental Immunity. Borrower acknowledges that Lender is an agency of the State of Utah and as such is subject to and bound by the provisions of the Utah Governmental Immunity Act, Utah Code Ann. § 63-30-1 (the "Act"). No covenant, provision or agreement contained in the Loan Documents shall be deemed to be a waiver of the rights of Lender under the Act.

11.14 No Discrimination. In the event the Loan is granted, Borrower will not discriminate the basis of race, color, creed, sex, handicap, or national origin in the sale, lease, rental use, or occupancy of the Real Property or the Improvements. Lender shall be deemed to be a beneficiary of these provisions both for and in its own right, and also for the purpose of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit these provisions have been provided, and shall have the right, in the event of any breach or default of these provisions, to maintain any actions at law or in equity or any other proper proceedings.

11.15 Warranty Against Payment of Consideration for Agreement. Borrower warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys.

11.16 Representation Regarding Ethical Standards for Lender Officers and Employees and Former Lender Officers and Employees. Borrower represents that it has not: (1) provided an illegal gift or payoff to any Lender officer or employee or former Lender officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; or (3) knowingly breached any of the ethical standards set forth in Utah Public Employees' and Officers' Act 67-16-1 et seq., U.C.A., as amended and the Municipal Officers' and Employees' Ethics Act 10-3-13 et seq., U.C.A., as amended.

11.17 Money Laundering Activities. Borrower is not (and shall not be) a person with whom Lender is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury of the United States of America (including,

those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such persons. In addition, Borrower hereby agrees to provide to Lender any additional information that Lender deems necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities.

11.18 Lender's Consent. Wherever in this Agreement there is a requirement for Lender's consent or approval or words of similar meaning and/or a document to be provided or an action taken "to the satisfaction of Lender", it is understood by such phrase that Lender shall exercise its consent, right or judgment in a reasonable manner given the specific facts and circumstance applicable at the time.

11.19 Subordination to Land Use Restriction and Senior Lenders.

- (a) Lender hereby agrees that the Loan and the Loan Documents will be subordinate to:
 - (i) that certain Declaration of Restrictive Covenants and Use Agreement, by Borrower for the benefit of the U.S. Department of Housing and Urban Development ("**HUD**"), relating to the Project (the "**[HUD Land Use] Restriction**"), and
 - (ii) that certain Low-Income Housing Credit Commitment Agreement and Declaration of Restrictive Covenants, by Borrower and Utah Housing Corporation ("**UHC**"), relating to the Project (the "**LIHTC Restriction**"), and
 - (iii) the indebtedness in the maximum principal amount of \$13,192,168 (the "**Senior Loan**") evidenced by a Promissory Note dated as of October 31, 2023, by Borrower in favor of Zions Bancorporation, N.A., dba California Bank & Trust, and
 - (iv) the indebtedness in the maximum principal amount of \$1,000,000 (the "**OWHLF Loan**") evidenced by a Promissory Note dated as of October 31, 2023, by Borrower in favor of Olene Walker Housing Loan Fund ("**OWHLF**"), and
 - (v) that certain Deed Restriction, by Borrower for the benefit of OWHLF, relating to the Project (the "**Land Use Restriction**"), and
 - (vi) the indebtedness in the maximum principal amount of \$1,000,000 (the "**[Second OWHLF] Loan**") evidenced by a Promissory Note dated as of October 31, 2023, by Borrower in favor of OWHLF, and

- (vii) that certain Deed Restriction, by Borrower for the benefit of OWHLF, relating to the Project (the “[OWHLF] Land Use Restriction”), and
 - (viii) the indebtedness in the maximum principal amount of \$1,700,000 (the “**RDA Loan**”) evidenced by a Promissory Note dated as of October 31, 2023, by Borrower in favor of Redevelopment Agency of Midvale City (“**RDA**”), and
 - (ix) the indebtedness in the maximum principal amount of \$3,600,000 (the “**HOI Loan**”) evidenced by a Promissory Note dated as of October 31, 2023, by Borrower in favor of Lender.
- (b) So long as there is no default or event of default under the Senior Loans, Borrower may make periodic payments of principal and interest on the Loan from time to time, as such payments become due and payable, and otherwise in accordance with the Partnership Agreement. No prepayment may be made on the Loan prior to the repayment in full of the Senior Loans. During the occurrence of a default or event of default under the Senior Loans, (i) no payments may be made on the Loan, whether principal, interest, or otherwise, and (ii) without the prior consent of the holder(s) of the Senior Loan(s), Lender shall defer any exercise of remedies hereunder and under the other Loan Documents (other than administrative actions necessary to preserve the ability to exercise remedies) until the repayment in full of the Senior Loan(s). Should Lender receive payment hereunder in violation of the terms of subordination as provided herein and in the other Loan Documents, Lender shall hold such payment in trust for the benefit of the holder(s) of the Senior Loan(s) and shall remit such payment to the holder(s) of the Senior Loan(s) as such holder(s) shall direct.
 - (c) If the Project is sold subject to low-income housing use restrictions as contained in the Deed Restriction or other recorded covenant, any requisite consent of lender to said sale, and to the assumption without penalty of loan obligations by the purchaser and the release of Borrower from such obligations, shall not be unreasonably withheld.
 - (d) OWHLF, UHC, RDA and the holder of the Senior Loan(s) shall be deemed a third-party beneficiary of the subordination provisions provided herein and in the other Loan Documents, with full power and authority to enforce the same against the parties hereto and thereto, even though none of County or any such holder is a party hereto

11.20 Waiver of Right to Trial by Jury. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY

OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

11.21 Utah Statute of Frauds – Notice to Borrower. PURSUANT TO UTAH CODE ANN. §25-5-4, BORROWER IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

11.22 Electronic Signature. The electronic signature of this Loan Agreement by Lender and Borrower shall be as valid as an original signature of such party and shall be effective to bind such party to this Loan Agreement. For purposes hereof: (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”), or other replicating image attached to an electronic mail or internet message.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

LENDER:

HOUSING OPPORTUNITIES, INC., a Utah
nonprofit corporation

By: _____

Name: Janice Kimball

Its: Chief Executive Officer

BORROWER:

SUNSET GARDENS, LLC,
a Utah limited liability company

By: Sunset Gardens Management, LLC, a Utah
limited liability company, its Managing
Member

By: Housing Opportunities, Inc., Utah nonprofit
corporation, its Manager

By: _____
Name: Janice Kimball
Its: Chief Executive Officer

EXHIBIT "A"

Legal Description

Beginning at a point on the South line of 7200 South Street said point being South 0°04'00" West 1218.60 feet along the section line to a street monument at the intersection of 7200 South and 700 East and North 89°42'16" West 2225.94 feet along the 7200 South monument line and South 44.00 feet from the northeast Corner of Section 30, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running; thence South 89°42'16" East 153.35 feet along the south line of said 7200 South; thence South 183.20 feet; thence East 85.89 feet to the west line of Walker Park Lane PUD as found on file in the office of the Salt Lake County Recorder, Book 2008P, Page 194; thence South 0°16'00" West 587.18 feet along said Walker Park Lane PUD to the North line of the Jordan and Salt Lake City Canal; thence South 38°56'45" West 102.32 feet along the north line of said canal to an existing fence line as called for in the Boundary Line Agreement recorded December 27, 1995 as Entry No. 6245052 in Book 7298 at Page 2730; thence North 50°05'48" West 129.29 feet along said fence line to the Southeast Corner of Patricia Ann Cummins property as described in a Warranty Deed recorded March 26, 2002 as Entry No. 8185077 in Book 8580 at Page 1756; thence North 46°04'44" West 101.36 feet along the east line of said Cummins property and along said fence line; thence North 697.50 feet to the point of beginning.

Tax Parcel No. 22-30-251-136-0000

EXHIBIT "B"

Loan Documents

Loan Documents. The documents listed below, numbered 1 through 3, inclusive, and amendments, modifications and supplements thereto which have received the prior written consent of Lender, together with any documents executed in the future that are approved by Lender and that recite that they are "Loan Documents" for purposes of this Agreement are collectively referred to herein as the Loan Documents.

- 1) This Loan Agreement.
- 2) The Promissory Note, made by Borrower and payable to the order of Lender, in the maximum principal amount of \$[1,706,256].
- 3) The Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, executed by Borrower, as trustor, in favor of Lender, as beneficiary, to be recorded against real property located in Salt Lake County, Utah.

WHEN RECORDED MAIL TO:
HOUSING OPPORTUNITIES, INC.
ATTN: Chief Executive Officer
3595 South Main Street
Salt Lake City, Utah 84115

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY
AGREEMENT
AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING is made this [] day of [], 2023, by and between SUNSET GARDENS, LLC, a Utah limited liability company ("**Trustor**"), whose address is 3595 South Main Street, Salt Lake City, Utah 84115 and [] ("**Trustee**"), for the benefit of HOUSING OPPORTUNITIES, INC., a Utah nonprofit corporation (hereinafter called "**Beneficiary**"), whose address is 3595 South Main Street, Salt Lake City, Utah 84115.

Trustor, in consideration of the loan (the "**Loan**") made from Beneficiary to Trustor pursuant to a Loan Agreement, dated as of the date hereof (the "**Loan Agreement**"), between Beneficiary and Trustor, and as further hereinafter described, has granted, bargained, sold, transferred, assigned, and conveyed, and by these presents does grant, bargain, sell, transfer, assign, and convey to Trustee in trust with power of sale all of that certain property located in Salt Lake County, Utah, and described on Exhibit A hereto (the "**Property**"), together with all of Trustor's right, title and interest in and to (i) all improvements now or hereafter located on the Property; (ii) all privileges, easements, rights of way, licenses, franchises, tenements and appurtenances belonging or in any way appertaining to the Property; (iii) all rents, issues, profits, condemnation awards, and option payments in regard to the Property; (iv) all furniture, furnishings, fixtures, maintenance equipment, and all other personal property owned by Trustor now or hereafter located in, or on, used, or intended to be used in connection with the Property (excluding, however, personal property owned by tenants occupying space in the Property); (v) all of the estates, rights and interests of Trustor, whether now owned or hereafter acquired, in the Property; (vi) plans and specifications, licenses, permits, accounts and other intangible property related to the Property; and (vi) the proceeds of any of the above. All of the foregoing are hereinafter referred to as the "**Mortgaged Property**."

This conveyance is made IN TRUST, HOWEVER, in consideration of, and as security for the repayment of, (a) all sums advanced by Beneficiary to Trustor under that certain Promissory Note of even date herewith payable to the order of Beneficiary in the original principal amount of not to exceed [ONE MILLION SEVEN HUNDRED AND SIX THOUSAND TWO HUNDRED FIFTY SIX] AND NO/100 DOLLARS (\$[1,706,256].00) (the "**Note**"), and to secure Trustor's obligation to pay interest at the rate of interest set forth in said Note prior to default, all of which sums are payable as provided therein, with final payment or performance due on or before

[_____ 1, 2068] unless an extension is approved by Lender in accordance with the terms of the Note; (b) the payment of all other sums with interest at the Default Rate thereon as may be advanced or expended by Beneficiary in accordance with this Deed of Trust or any other instrument or agreement securing the Note (the indebtedness of Trustor evidenced by the Note and all such other sums are hereinafter collectively referred to as the “**Indebtedness**”); and (c) the performance of all the covenants and agreements of Trustor contained herein. In the event of any inconsistency between the Note and this Deed of Trust, this Deed of Trust shall control.

This Deed of Trust is upon the express condition that if Trustor shall pay to Beneficiary as and when due and payable all of its indebtedness evidenced by the Note, and all other Indebtedness, and Trustor shall also keep and perform each and every covenant and agreement herein contained, then this Deed of Trust and the estate hereby granted shall cease to be and become void and shall be released of record at the expense of Trustor; otherwise this Deed of Trust shall be and remain in full force and effect.

Trustor represents, warrants, and covenants to and with Beneficiary and Trustee that it is the lawful leasehold owner of the Mortgaged Property, and has good right and full power and authority under all applicable provisions of law to execute this Deed of Trust and to convey the Mortgaged Property pursuant hereto; that the Mortgaged Property is free from all liens, security interests, and encumbrances except those liens or encumbrances previously consented to in writing by Beneficiary (“**Permitted Encumbrances**”); that Trustor will warrant and defend the title to the Mortgaged Property and the lien and priority of this Deed of Trust against all claims and demands of all persons whomsoever, whether now existing or hereafter arising, that this subordinate deed of trust and all of Beneficiary’s rights are subject to the rights of holders of all prior deeds of trust of record.

Trustor further covenants and agrees with Beneficiary and Trustee as follows:

1. **Note, Application of Payments.** Trustor will duly and punctually pay all amounts due and payable under the Note in accordance with the terms of the Note and all other Indebtedness, when and as due and payable. The provisions of the Note are hereby incorporated by reference into this Deed of Trust as fully as if set forth at length herein. All payments received by Beneficiary from Trustor under the Note or this Deed of Trust shall be applied by Beneficiary in such order of application as Beneficiary deems appropriate. Trustor agrees herein that the obligations of Trustor to make the payments required hereunder and to perform and observe agreements on its part contained herein shall be a nonrecourse obligation of Trustor.

2. **Payment of Taxes, Assessments, Other Charges, and Liens.** Trustor shall pay before the date when due, all taxes and assessments, utility charges, and all other charges whatsoever levied upon or assessed or placed against the Mortgaged Property, and shall give to Beneficiary, upon demand, a receipt or receipts evidencing such payment. Trustor shall not create, incur, or suffer to exist any lien, security interest, encumbrance, or charge on the Mortgaged Property or any part thereof, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable, and any Permitted Encumbrances. Trustor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

3. **Compliance with Laws.** Trustor shall comply promptly and fully with all applicable present and future statutes, laws, rules, orders, regulations, and ordinances, and any easements, protective covenants, or other private restrictions affecting the Mortgaged Property, any part thereof or the use thereof, including, without limitation, laws, ordinances, rules or regulations relating to hazardous wastes, hazardous materials, or oil.

4. **Environmental Matters.** Except for matters to be remediated during construction and/or maintained in accordance with applicable environmental laws and requirements of the city, county, or state in which the Property is located, Trustor covenants and represents that, to the best of its knowledge, there are no Hazardous Materials (as hereinafter defined) generated, released, incorporated, stored, buried or deposited over, beneath, in or upon the Property, nor will there be, for so long as any of the Indebtedness secured hereby remains outstanding in such amounts as subject to regulation. For purposes of this Deed of Trust, “**Hazardous Materials**” shall mean and include any flammable explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of toxic or hazardous substances, wastes, or materials under any applicable federal or applicable state or local laws, ordinances or regulations dealing with or otherwise pertaining to toxic or hazardous substances, wastes or materials in amounts subject to regulation. Such laws, ordinances and regulations are hereinafter collectively referred to as the “**Hazardous Materials Laws**.”

Trustor shall be solely responsible for, and shall indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence (whether prior to or during the term of the Loan or otherwise and regardless of by whom caused, whether by Trustor or any predecessor in title or any owner of land adjacent to the Mortgaged Property or any other third party, or any employee, agent, contractor or subcontractor of Trustor or any predecessor in title or any such adjacent land owner or any third person) of Hazardous Materials in, on, under or about the Mortgaged Property except for matters to be remediated and maintained by the vapor mitigation system; provided, however, that the foregoing indemnity shall not apply to any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials which arises after the date in which Beneficiary takes title to the Mortgaged Property.

5. **Insurance.**

(a) Trustor or Trustor’s general contractor, as applicable, shall secure and at all times maintain and promptly pay when due all premiums for insurance as required by the Loan Agreement and such other insurance and in such amounts as may from time to time reasonably be required by Beneficiary against the same or other hazards:

(i) Insurance on any buildings and other improvements now existing or hereafter erected on the Property and on the fixtures and personal property contents included in the Mortgaged Property against loss by fire, other hazards covered by the so-called “all-risk” form of policy and such other perils as Beneficiary shall from time to time require, including water damage coverage, in an amount not less than the replacement cost of the Mortgaged Property.

(ii) If the Property or any part thereof is at any time located in a designated official flood-hazardous area, flood insurance insuring any buildings and improvements now existing or hereafter erected on the land and the personal property used in the operation thereof in an amount equal to the lesser of the amount required in paragraph (a)(i) or the maximum limit of coverage made available with respect to such buildings and improvements and personal property under applicable federal laws and the regulations issued thereunder.

(b) **Application of Insurance Proceeds.** Subject to the rights of any lender with a superior interest under a recorded Deed of Trust or similar document or instrument, all sums paid under any insurance policy required in subsections (a)(i) and (ii) shall be paid to Beneficiary (after application of such proceeds to prior lienholders, to the extent of the indebtedness secured by their liens). Beneficiary shall apply such amounts (after first deducting therefrom its expenses incurred in collecting the same including but not limited to reasonable attorneys' fees) to the restoration of the Mortgaged Property pursuant to such conditions as Beneficiary shall in its reasonable discretion require, unless the senior lien holder has applied such proceeds solely to the payment of its lien, in which case Beneficiary may do likewise. No application of insurance proceeds shall extend or postpone the due dates of the installments payable under the Note or change the amount of such installments.

Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents (as defined in the Loan Agreement), in the event of any fire or other casualty to the Mortgaged Property or eminent domain proceedings resulting in condemnation of the Mortgaged Property or any part thereof, Borrower shall have the right to rebuild the Mortgaged Property, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the Loan evidenced by the Note in balance and rebuild the Mortgaged Property in a manner that provides adequate security to Beneficiary for repayment of the Loan or if such proceeds are insufficient then Trustor shall have funded any deficiency, (b) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the Loan Documents. If the casualty or condemnation affects only part of the Mortgaged Property and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to Beneficiary for repayment of the remaining balance of the Loan.

6. **Warranty of Title.** Trustor represents and warrants to Beneficiary that Trustor has good and marketable title to the Property in fee simple, subject only to the lien of ad valorem real property taxes for the current year and future years and those additional matters previously disclosed as Permitted Encumbrances. Trustor, for itself and its successors and assigns, hereby agrees to warrant and forever defend, all and singular, all of the Property and property interest granted and conveyed in trust pursuant to this Deed of Trust, against every person whomsoever lawfully claiming, or to claim, the same or any part thereof under Trustor, subject to the Permitted Encumbrances. The warranties contained in this section shall survive foreclosure of this Deed of Trust, and shall inure to the benefit of and be enforceable by any person who may acquire title to the Mortgaged Property pursuant to any such foreclosure.

7. **Waiver of Homestead and Other Exemptions.** To the extent permitted by law, Trustor hereby waives all rights to any homestead or other exemption to which Trustor would otherwise be entitled under any present or future constitutional, statutory, or other provision of applicable state or federal law.

8. **Due Authorization.** Trustor represents and warrants to Beneficiary that the execution of this Deed of Trust has been duly authorized by all necessary corporate action on the part of Trustor.

9. **Maintenance and Repair of Property.** Trustor will at all times maintain the Mortgaged Property in good condition and repair, and will diligently prosecute the completion of any infrastructure, building or other improvement which is at any time in the process of construction on the Property in full compliance with all building codes and other governmental requirements. Trustor shall constantly maintain and shall not materially alter the Mortgaged Property during the term of this Deed of Trust except as contemplated by the plans and specifications of the Property previously delivered to Beneficiary, replacements and alterations in the normal course of business, and except as required by law or municipal ordinance, without the prior written consent of Beneficiary. Trustor will promptly repair, restore, replace, or rebuild any part of the Mortgaged Property which may be affected by any casualty or any public or private taking or injury to the Mortgaged Property. Any repair, restoration, replacement, or rebuilding shall be consistent with all applicable laws and regulations. All costs and expenses arising out of the foregoing shall be paid by Trustor whether or not the proceeds of any insurance or eminent domain shall be sufficient therefor. Trustor will comply with all statutes, ordinances, and other governmental or quasi-governmental requirements and private covenants relating to the ownership, construction, use, or operation of the Mortgaged Property, including but not limited to any environmental or ecological requirements, legislation or regulations with respect to the Americans with Disabilities Act; provided, that so long as Trustor is not otherwise in default hereunder, Trustor may, upon providing Beneficiary with security reasonably satisfactory to Beneficiary, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, or requirement. Beneficiary and any person authorized by Beneficiary may enter and inspect the Property upon reasonable advance notice during normal business hours and subject to nondisturbance of the tenants and occupants of the Mortgaged Property.

10. **Transfer or Removal of Chattels.** Trustor will not sell, transfer or remove from the Property all or any material part of the Chattels, unless the items sold, transferred, or removed are simultaneously replaced with similar items of equal or greater value.

11. **Notice of Default; Books and Records.** Trustor will prepare or cause to be prepared at its expense and will deliver to Beneficiary, immediately upon becoming aware of the existence of any condition or event which constitutes an Event of Default, written notice specifying the nature and period of existence thereof and what action Trustor has taken or proposes to take with respect thereto. Trustor shall keep and maintain at all times at Trustor's address stated below or at the Mortgaged Property or at such other place as Beneficiary may approve in writing, complete and accurate books of accounts and records in sufficient detail to reflect correctly the results of the operation of the Mortgaged Property and copies of any and all written contracts, leases, and other instruments which affect the Mortgaged Property. Trustor shall permit

Beneficiary or its representatives to examine and inspect such books, records, contracts, leases, and other instruments during ordinary business hours.

12. **Protection of Beneficiary's Security.** Subject to the rights of any lender with a superior interest under any prior recorded Deed of Trust or similar document or instrument, if Trustor fails after thirty (30) days written demand from Beneficiary therefor, to perform or comply with any of the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which affects the Mortgaged Property or the interest of Trustee or Beneficiary therein, or the title thereto, then Beneficiary, at Beneficiary's option, may perform such covenants and agreements, defend against and/or investigate such action or proceedings, and/or take such other action as Beneficiary reasonably deems necessary to protect its interests. Beneficiary shall be the sole judge of the legality, validity, and priority of any claim, lien, encumbrance, tax, assessment, charge, and premium paid by it and of the amount necessary to be paid in satisfaction thereof. Beneficiary is hereby given the irrevocable power of attorney (which power is coupled with an interest) to enter upon the Mortgaged Property as Trustor's agent in Trustor's name to perform any and all covenants and agreements to be performed by Trustor as herein provided. Any amounts or expenses disbursed or incurred by Beneficiary pursuant to this paragraph, or to otherwise enforce any provisions of this Deed of Trust or to preserve any of the rights, powers, or privileges of Beneficiary granted or created hereby, including, without limitation, costs incurred in any appeal, with interest thereon as hereinafter stated, shall become additional Indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree in writing to other terms of repayment, such amounts shall be immediately due and payable, and shall bear interest from the date of disbursement at the default rate of interest stated in the Note. Beneficiary shall, at its option, be subrogated to the lien of any mortgage or other lien, discharged in whole or in part by the Indebtedness or by Beneficiary under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Deed of Trust. Nothing contained in this paragraph shall require Beneficiary to incur any expense or do any act hereunder, and Beneficiary shall not be liable to Trustor for any damages or claims arising out of action taken by Beneficiary pursuant to this paragraph except as a result of Beneficiary's willful misconduct or gross negligence.

13. **Assignment of Rents and Revenues.** To further secure the obligations secured hereunder, Trustor does hereby sell, assign and transfer unto Beneficiary all rents, issues, profits, revenue, and income now due and which may hereafter become due under or by virtue of any leases, tenancies or agreements (collectively "**Rents and Revenues**"), whether written or verbal, for the use or occupancy of the Mortgaged Property or any part thereof, and all proceeds from, evidence of, and benefits and advantages to be derived therefrom, now or hereafter existing, whether or not with Beneficiary's approval. Solely upon an Event of Default, not timely cured, Trustor does hereby appoint irrevocably Beneficiary its true and lawful attorney in its name and stead (with or without taking possession of the Mortgaged Property) to rent, lease or let any improvements located on the Mortgaged Property, and to collect all of said Rents and Revenues arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the leases on the Mortgaged Property, on the condition that Beneficiary hereby grants to Trustor a license to collect and retain such Rents and Revenues (but expressly not including the right to collect any rents more than one (1) month in advance prior to the occurrence of any Event of Default under the Note or Deed of Trust not cured within applicable cure periods. Such license shall be revocable by Beneficiary upon written notice to Trustor at any time upon or

after an Event of Default under the Note or Deed of Trust not timely cured, and immediately upon any such revocation, Beneficiary shall be entitled to receive, and Trustor shall deliver to Beneficiary, any and all Rents and Revenues theretofore collected by Trustor which remain in the possession or control of Trustor under all leases. It is the intention of Trustor to create and grant, and it is the intention of Beneficiary to create and receive, a present and absolute assignment of all of the leases, similar agreements, Rents and Revenue now due or which may hereafter become due, but it is agreed that Beneficiary's right to collect the Rents and Revenues is conditioned upon the existence of an Event of Default under the Note or Deed of Trust not cured within applicable cure periods. Failure of Beneficiary at any time or from time to time to enforce its rights under this Section 13 shall not in any manner prevent its subsequent enforcement, and Beneficiary is not obligated to collect anything hereunder, but is accountable only for sums collected. Nothing contained herein shall be construed as constituting Beneficiary a mortgagee in possession in the absence of the taking of actual possession of the Mortgaged Property by Beneficiary. In the exercise of the powers herein granted to Beneficiary, no liability shall be asserted or enforced against Beneficiary, all such liability being expressly waived and released by Trustor. Notwithstanding anything to the contrary set forth herein, Beneficiary's rights hereunder are expressly subject and subordinate to the prior rights of the holders of all prior deeds of trust, security agreements and assignments of leases and rents of record.

14. **Condemnation.** Subject to the rights of any lender with a superior interest under a recorded Deed of Trust or similar document or instrument and the obligations of Trustor thereunder, Trustor hereby irrevocably assigns to Beneficiary any award or payment up to the amount of Trustor's Indebtedness under the Note which becomes payable by reason of any taking of the Mortgaged Property, or any part thereof, whether directly or indirectly or temporarily or permanently, in or by condemnation or other eminent domain proceedings or the settlement thereof (hereinafter called "**Taking**"). Except as otherwise provided in Section 5(d) herein, all awards or payments payable as a result of a Taking shall be paid to Beneficiary (in order of the priority of liens encumbering the Mortgaged Property), which after first deducting Beneficiary's expenses incurred in the collection thereof shall be applied to the repair or restoration of the Mortgaged Property, pursuant to such conditions as Beneficiary in its reasonable discretion may require unless the senior lien holder has applied same solely to payment of its lien, in which case Beneficiary may do likewise. No application of any Taking award or payment to repayment of Indebtedness shall postpone the due dates of the payments due under the Note or change the amount of such payments.

15. **Security Interest and Fixture Filing.** This Deed of Trust shall be effective as a fixture filing from the date of recordation hereof in accordance with Section 9a-502 of the Utah enactment of the Uniform Commercial Code. This Deed of Trust shall constitute a security agreement and financing statement with respect to (and Trustor hereby grants Trustee and Beneficiary a security interest in) all fixtures and personal property included in the Mortgaged Property as more specifically described in the granting clause above. Trustor will from time to time, at the request of Beneficiary, execute any and all financing statements or other documents covering such fixtures or personal property (in a form satisfactory to Beneficiary) which Beneficiary may consider necessary or appropriate to confirm, evidence, or perfect Trustee's and/or Beneficiary's security interest. Trustor is the "Debtor" and Beneficiary is the "Secured Party" (as those terms are defined and used in the Uniform Commercial Code, as in effect in the State of Utah) insofar as this Deed of Trust constitutes a financing statement.

16. **Events of Default.** Each of the following occurrences shall constitute an event of default hereunder (herein called an “**Event of Default**”):

(a) Trustor shall fail to pay any portion of the Indebtedness when due or payable not cured within thirty (30) days after written notice.

(b) Trustor shall fail duly to perform or observe any of the covenants or agreements contained in the Note (other than those described in Section 16(a) above), or in this Deed of Trust not cured within sixty (60) days after written notice. In the event failure to perform or observe such covenants is such that it is not reasonably capable of being cured within sixty (60) days, and if Trustor (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the Borrower shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given.

(c) A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on, issued or levied against, the Mortgaged Property or any part thereof and shall not be released, vacated, or fully bonded within ninety (90) days after its entry, issue, or levy and Beneficiary’s written notice and demand therefor.

(d) Trustor shall sell or convey the Mortgaged Property or any interest therein, without Beneficiary’s prior written consent.

(e) Trustor shall make an assignment for the benefit of creditors; or Trustor shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such a receiver, trustee or similar officer shall be appointed without the application or consent of Trustor, and such appointment shall continue undischarged for a period of ninety (90) days; or Trustor shall institute (by petition, application, answer or otherwise) any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution, liquidation or similar proceedings under the laws of any jurisdiction; or any such proceeding shall be instituted against Trustor not dismissed within ninety (90) days thereafter.

(f) (i) Any representation of Trustor made herein or made by Trustor in any submission or document delivered by or on behalf of Trustor in connection with the Indebtedness shall be materially and adversely false when made and shall materially impair Beneficiary’s security, or (ii) a default or an “Event of Default,” however defined, shall occur under any other document or instrument now or hereafter securing repayment of the Note or issued in connection therewith, or evidencing or securing a loan made by any other lender with regard to the Mortgaged Property unless Trustor has commenced cure within the longer of ninety (90) days or the applicable cure periods set forth in such document.

17. **Power of Sale, Remedies.** If an Event of Default shall occur hereunder, Trustor hereby authorizes and empowers Trustee and/or Beneficiary as follows:

(a) Beneficiary may by written notice to Trustor declare all amounts payable under the Note and all other Indebtedness to be immediately due and payable and the same shall be immediately due and payable without further notice or demand of any kind.

(b) Beneficiary is authorized and empowered, without further notice, to file a written Notice of Election and Demand for Sale with Trustee, as provided by law, it being then lawful for said Trustee to foreclose, and Trustee shall foreclose this Deed of Trust. Trustee shall apply the proceeds of the sale in the following order: (i) to all reasonable costs and expenses of the sale, including, without limitation, reasonable Trustee's and attorneys' fees and costs of evidence of title, (ii) to the Indebtedness, and (iii) the excess, if any, to the person or persons legally entitled thereto.

(c) If any of the Indebtedness hereby secured shall become due and payable, Trustee or Beneficiary shall have the right and power to proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction, or under executory or other legal process, or for the enforcement of any other appropriate legal or equitable remedy. Beneficiary also shall have the right to the appointment of a receiver, whether before or after maturity of the Indebtedness hereby secured, as a matter of strict right and regardless of the value of the security for the amount of the Indebtedness or of the solvency of Trustor or any party obligated for the payment of the Indebtedness. Such receiver may be appointed on Beneficiary's ex parte application, by any court of competent jurisdiction, to manage, preserve, protect, and operate the Mortgaged Property and any business or businesses located thereon, to collect the rents, issues, profits, and income thereof, to make all necessary repairs, and to pay all taxes and assessments against the Mortgaged Property and insurance premiums for insurance thereon, and after the payment of the expenses of the receivership, including reasonable attorneys' fees, to apply the net proceeds in reduction of the Indebtedness or in such manner as the court or receiver shall direct. In the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Trustor for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Beneficiary.

(d) Beneficiary may exercise with respect to all fixtures and personal property which are part of the Mortgaged Property, all the rights and remedies accorded upon default to a secured party under the Uniform Commercial Code, as in effect in the State of Utah. If notice to Trustor of intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to Trustor at least ten (10) calendar days prior to the date of intended disposition. Trustor shall pay on demand all reasonable costs and expense incurred by Beneficiary in exercising such rights and remedies, including without limitation, reasonable attorneys' fees and legal expenses.

18. Forbearance not a Waiver; Rights and Remedies Cumulative. No delay by Trustee or Beneficiary in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by Trustee or Beneficiary of any particular provision of this Deed of Trust shall be deemed effective unless in writing signed by the party making such waiver. All such rights and remedies

provided for herein or which Trustee or Beneficiary may have otherwise, at law or in equity, shall be distinct, separate, and cumulative.

19. **Successors and Assigns Bound; Number; Gender; Agents; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the benefit of, the respective successors and assigns of Beneficiary and Trustor. References herein to Trustor or Beneficiary are deemed to include such successors and assigns. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall apply to all genders. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

20. **Notice.** Any notice from Beneficiary or Trustee to Trustor under this Deed of Trust shall be deemed to have been given by the party giving the notice and received by Trustor three (3) days after mailed by certified mail, return receipt requested, to Trustor at the address noted in the first paragraph of this Deed of Trust, or at such other address as Beneficiary may designate in writing to Trustor.

Trustor and Beneficiary each agree to provide copies of any notices delivered under this Trust Deed to the Investor Member (as defined in the Loan Agreement) of Trustor:

USA Institutional Sunset Gardens LLC
777 West Putnam Avenue
Greenwich CT 06830
Attn: David A. Salzman

21. **Governing Law; Severability.** This Deed of Trust shall be governed by the substantive laws of the State of Utah. In the event that any provision or clause of this Deed of Trust conflicts with applicable law or the application thereof under any particular circumstance to any particular person or entity conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provisions or the applicability of such provisions to other persons or entities or to such persons or entities under other circumstances and to this end the provisions of the Deed of Trust are declared to be severable.

22. **Cure by Investor Member.** Notwithstanding anything to the contrary contained in the Loan Documents, the Investor Member shall have the right, but not the obligation, to cure any default of Trustor under the Loan Documents, and Beneficiary agrees to accept cures tendered by the Investor Member, as follows: (a) with respect to any monetary default under the Loan Documents, Beneficiary shall notify the Investor Member in writing of such monetary default, and the Investor Member shall have the applicable cure period allotted to Trustor under the Loan Documents, plus fifteen (15) days, after the receipt of said notice of such monetary default to cure such monetary default; and (b) with respect to any nonmonetary default under the Loan Documents, Beneficiary shall notify the Investor Member in writing of such nonmonetary default, and the Investor Member shall have the applicable cure period allotted to Trustor under the Loan Documents, plus 30 days after the receipt of such notice of such nonmonetary default to cure such default. Beneficiary agrees that the Loan Documents will not be considered to be in default until the expiration of all contractual notice and cure periods provided to Trustor and the Investor Member.

23. **Permitted Transfers.** Notwithstanding anything to the contrary contained the Loan Documents, (a) the Investor Member of Trustor shall be permitted to remove the managing member of Trustor for cause in accordance with the Amended and Restated Operating Agreement of Trustor (the “**Operating Agreement**”) without the consent of Beneficiary, and (b) the Investor Member may transfer its investor member interests in Trustor in accordance with the terms of the Operating Agreement without the consent of Beneficiary (each, a “Permitted Transfer”), (c) no Permitted Transfer shall cause a default under the Loan Documents, (d) Beneficiary shall not receive any fee or other amounts from Trustor in connection with a Permitted Transfer and (e) the Operating Agreement may be amended or modified in connection with a Permitted Transfer without the prior written consent of Beneficiary.

24. **Standstill.** Notwithstanding anything to the contrary set forth herein, or in any of the Loan Documents, so long as USA Institutional Sunset Gardens LLC (or an affiliate thereof), is the Investor Member, Beneficiary will not commence (i) foreclosure proceedings with respect to the mortgaged property under the Loan Documents or exercise any other rights or remedies it may have under the Loan Documents, including but not limited to accelerating the Loan, collecting rent, appoint (or seeking the appointment of) a receiver or exercising any remedies or rights thereunder, or (ii) join with any creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceeding with respect to Trustor (the “**Standstill Restrictions**”). The Standstill Restrictions shall only be applicable during the “Tax Credit Compliance Period”, as that term is defined in Section 42 of the Internal Revenue Code.

25. **Extended Use Agreement.** Notwithstanding any provision contrary in the Loan Documents, Beneficiary acknowledges and agrees that (a) the property is or will be subject to an Extended Use Agreement (as defined below), (b) the recordation of the Extended Use Agreement against the property is permitted under the terms of this Deed of Trust and (c) the lien of the Deed of Trust, and the terms and provision thereof, shall be subordinate to the Extended Use Agreement, regardless of the order of recording of either document. “Extended Use Agreement” means the extended low-income housing commitment, regulatory agreement or restrictive covenants executed or to be executed by Trustor setting forth certain terms and conditions under which the property is to be operated and which shall meet the requirements of Section 42(h)(6)(B) of the Internal Revenue Code of 1986, as amended.

26. **Subordinate Deed of Trust.** This Deed of Trust is subordinate and junior to the trust deeds executed by Trustor on or about October 22, 2022 for the benefit of and Zions Bancorporation, N.A., dba California Bank & Trust, the Olene Walker Housing Loan Fund, HOME; the Olene Walker Housing Loan Fund, NHTF, the Redevelopment Authority of Midvale City, and Beneficiary (the “**Prior Trust Deeds**”) which secure the loan and other obligations set forth in the Prior Trust Deeds (the “**Prior Obligations**”). Any default under any of the Prior Trust Deeds, under the Prior Obligations secured thereby, or under any other document or instrument secured by or executed in connection with the Prior Trust Deeds, shall constitute a default under this Deed of Trust and shall entitle Beneficiary to exercise any or all of its rights and remedies for default hereunder or under the other Loan Documents which are secured by this Deed of Trust, and the other security documents and instruments executed in connection with such Loan Documents, regardless of whether beneficiary or such other holder as may exist from time to time of the Prior Obligations has given notice of default or elected to take any action because of such default.

**EXHIBIT A
TO
DEED OF TRUST**

LEGAL DESCRIPTION

Beginning at a point on the South line of 7200 South Street said point being South 0°04'00" West 1218.60 feet along the section line to a street monument at the intersection of 7200 South and 700 East and North 89°42'16" West 2225.94 feet along the 7200 South monument line and South 44.00 feet from the northeast Corner of Section 30, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running; thence South 89°42'16" East 153.35 feet along the south line of said 7200 South; thence South 183.20 feet; thence East 85.89 feet to the west line of Walker Park Lane PUD as found on file in the office of the Salt Lake County Recorder, Book 2008P, Page 194; thence South 0°16'00" West 587.18 feet along said Walker Park Lane PUD to the North line of the Jordan and Salt Lake City Canal; thence South 38°56'45" West 102.32 feet along the north line of said canal to an existing fence line as called for in the Boundary Line Agreement recorded December 27, 1995 as Entry No. 6245052 in Book 7298 at Page 2730; thence North 50°05'48" West 129.29 feet along said fence line to the Southeast Corner of Patricia Ann Cummins property as described in a Warranty Deed recorded March 26, 2002 as Entry No. 8185077 in Book 8580 at Page 1756; thence North 46°04'44" West 101.36 feet along the east line of said Cummins property and along said fence line; thence North 697.50 feet to the point of beginning.

Tax Parcel No. 22-30-251-136-0000

PROMISSORY NOTE (Utah)

US \$[1,706,256].00

Dated: [____], 2023

FOR VALUE RECEIVED, SUNSET GARDENS, LLC, a Utah limited liability company (“**Borrower**”) promises to pay to the order of HOUSING OPPORTUNITIES, INC., a Utah nonprofit corporation (“**HOI**”), the principal sum of [ONE MILLION SEVEN HUNDRED AND SIX THOUSAND TWO HUNDRED FIFTY SIX] AND NO/100 DOLLARS (US \$[1,706,256].00) (the “**Loan**”), with interest on the unpaid principal balance from time to time outstanding at the annual rate set forth in this Note.

1. **Defined Terms.** As used in this Note, (i) the term “**Lender**” means HOI or the holder of this Note, (ii) the term “**Indebtedness**” means the principal of, interest on, and any other amounts due at any time under, this Note, the Security Instrument (as defined in Section 5 hereof) or any other Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of the Security Instrument. “**Event of Default**,” “**Property**,” and other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Security Instrument.

2. **Address for Payment.** All payments due under this Note shall be payable to Lender at 3595 South Main Street, Salt Lake City, Utah 84115, or such other place as may be designated by written notice to Borrower from or on behalf of Lender.

3. **Payment of Principal and Interest.** Principal and interest shall be paid as follows:

(a) Interest shall accrue hereunder from the date the principal sum is advanced by Lender to Borrower (the “**Commencement Date**”). The rate of interest accruing hereunder shall be an annual compounding rate equal to the long-term Applicable Federal Rate published [September 2023 equal to 4.19%] on the outstanding principal balance of the Loan. Interest hereunder shall be computed on the basis of actual days elapsed in a year of three hundred sixty-five (365) days.

(b) Borrower shall make payments on all accrued and unpaid principal and interest on the Loan as subject to the availability of Net Cash Flow (as defined in Borrower’s Amended and Restated Operating Agreement, dated as of October 1, 2022 (the “**Operating Agreement**”), between Sunset Gardens Management, LLC, a Utah limited liability company, and USA Institutional Sunset Gardens LLC, a Delaware limited liability company (the “**Investor Member**”) after payment of the items set forth in Section 11.01(a)(i) through (ix) of the Operating Agreement, annually commencing on the first day of the first month of the year following the Commencement Date. The principal balance, together with any accrued and unpaid interest shall be due and payable in full on or before the earlier of (i) the date on which Borrower sells the Property (as defined in the Deed of Trust), or (ii) [____] 1, 2068] (the “**Maturity Date**”). To the extent any accrued interest otherwise payable is not paid as a result of insufficient available Net Cash Flow, it will accrue and be payable from future Net Cash Flow, provided, however, that all accrued principal and interest shall be due and payable in all respects no later than the Maturity Date. This Note may be prepaid in whole or in part, at any time, without notice or penalty. Partial

prepayments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of Net Cash Flow as required under this Note and the Partnership Agreement.

4. **Application of Payments.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Borrower agrees that neither Lender's acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the subordinate Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date of this Note (the "**Security Instrument**"), and reference is made to the Security Instrument for other rights of Lender as to collateral for the Indebtedness.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note and any other Loan Document shall at once become due and payable, at the option of Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Late Charge.** If any annual amount payable under this Note, subject to the availability of Net Cash Flow as set forth in Section 3 hereof, or under the Security Instrument or any other Loan Document is not received by Lender within thirty (30) days after the amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to three percent (3%) of such amount (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted). Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the loan evidenced by this Note, and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, considering all circumstances existing on the date of this Note, of the additional expenses Lender will incur by reason of such late payment. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 8.

8. **Default Rate.** So long as (a) any installment under this Note remains past due for thirty (30) days or more, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid annual installment or the occurrence of such other Event of Default, as applicable, at a rate (the "**Default Rate**") equal to the lesser of eight percentage points (8.0%) above the rate stated in Section 3(a) and the maximum interest rate which may be collected from Borrower under applicable law. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate. Borrower also acknowledges that its failure to make timely

payments will cause Lender to incur additional expenses in servicing and processing the Loan, that, during the time that any annual installment under this Note is delinquent for more than thirty (30) days, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender's ability to meet its other obligations and to take advantage of other investment opportunities, and that it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any annual installment under this Note is delinquent for more than thirty (30) days or any other Event of Default has occurred and is continuing, Lender's risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate represents a fair and reasonable estimate, considering all circumstances existing on the date of this Note, of the additional costs and expenses Lender will incur by reason of Borrower's delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. **Personal Liability.** Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Security Instrument, any other Loan Document or applicable law. For purposes of this Section 9, the term "**Mortgaged Property**" shall not include any funds that (1) have been applied by Borrower as required or permitted by the Security Instrument prior to the occurrence of an Event of Default or (2) Borrower was unable to apply as required or permitted by the Security Instrument because of a bankruptcy, receivership, or similar judicial proceeding. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Section 9, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

10. **Voluntary and Involuntary Prepayments.** Borrower may prepay this Note at any time. There shall be no prepayment penalty payable in connection with any prepayment made under this Note including any prepayment made from the proceeds of a loan made to Borrower.

11. **Costs and Expenses.** To the fullest extent allowed by applicable law, Borrower shall pay all expenses and reasonable costs, including reasonable fees and out-of-pocket expenses of attorneys (including Lender's attorneys) and expert witnesses and costs of investigation, reasonably incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding.

12. **Forbearance.** Any forbearance by Lender in exercising any right or remedy under this Note, the Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any security for Borrower's

obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

13. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are waived by Borrower and all endorsers and guarantors of this Note and all other third-party obligors.

14. **Loan Charges.** Neither this Note nor any of the other Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the maximum interest rate permitted to be charged under applicable law. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in any Loan Document, whether considered separately or together with other charges provided for in any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

15. **Cure by Investor Member.** Notwithstanding anything to the contrary contained in the Loan Documents, the Investor Member shall have the right, but not the obligation, to cure any default of Borrower under the Loan Documents, and Lender agrees to accept cures tendered by the Investor Member, as follows: (a) with respect to any monetary default under the Loan Documents, Lender shall notify the Investor Member in writing of such monetary default, and the Investor Member shall have the applicable cure period allotted to Borrower under the Loan Documents, plus fifteen (15) days, after the receipt of said notice of such monetary default to cure such monetary default; and (b) with respect to any nonmonetary default under the Loan Documents, Lender shall notify the Investor Member in writing of such nonmonetary default, and the Investor Member shall have the applicable cure period allotted to Borrower under the Loan Documents, plus 30 days after the receipt of such notice of such nonmonetary default to cure such default. Lender agrees that the Loan Documents will not be considered to be in default until the expiration of all contractual notice and cure periods provided to Borrower and the Investor Member.

16. **Commercial Purpose.** Borrower represents that the Indebtedness is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household, or agricultural purposes.

17. **Counting of Days.** Except where otherwise specifically provided, any reference in this Note to a period of “days” means calendar days, not Business Days.

18. **Governing Law.** This Note shall be governed by the law of the jurisdiction in which the Property is located (the “**Property Jurisdiction**”).

19. **Captions.** The captions of the sections of this Note are for convenience only and shall be disregarded in construing this Note.

20. **Notices; Written Modifications.** All notices, demands and other communications required or permitted to be given by Lender to Borrower pursuant to this Note shall be given in accordance with the Security Instrument. Any modification or amendment to this Note shall be ineffective unless in writing signed by the party sought to be charged with such modification or amendment; provided, however, that in the event of a transfer under the terms of the Security Instrument, any or some or all of the modifications to this Note may be modified or rendered void by Lender at Lender’s option by notice to Borrower/transferee.

21. **Consent to Jurisdiction and Venue.** Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

22. **WAIVER OF TRIAL BY JURY.** BORROWER AND LENDER EACH (A) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

23. **Payments on Non-Business Day.** If the date for the making of any payment under this Note is not a Business Day, such payment shall be due and payable on the next succeeding Business Day.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Borrower has signed and delivered this Note or has caused this Note to be signed and delivered by its duly authorized representative. Borrower intends that this Note shall be deemed to be signed and delivered as of the date first written above.

BORROWER:

SUNSET GARDENS, LLC,
a Utah limited liability company

By: Sunset Gardens Management, LLC, a Utah
limited liability company, its Managing
Member

By: Housing Opportunities, Inc., Utah nonprofit
corporation, its Manager

By: _____
Name: Janice Kimball
Its: Chief Executive Officer