



Sample Coordinated Funding Provisions  
(for use with non-related party subordinate financing)

1. Development Budget; Construction Documents. Each Lender has approved the Sources and Uses of Funds and budget documents reflecting cash flow during construction for the Development (collectively, the “Development Budget”), which detail the usage and timing of funds provided to the Development from loan and equity sources, as attached to the Senior Loan Documents and the Subordinated Loan Documents, respectively. The Plans and Specifications (the “Plans and Specifications”) for construction of the Development have been prepared by [architect] (the “Architect”) and approved by the Borrower. The Lenders have approved the Plans and Specifications. The Development will be constructed and/or rehabilitated by [contractor] (the “Contractor”) under a Construction Contract dated as of [date] between the Borrower and the Contractor (the “Construction Contract”).
2. Initial Disbursement. On the date hereof (the “Initial Funding Date”), pursuant to an initial disbursement request submitted by the Borrower and approved by each of the Lenders prior to the date hereof, each Subordinated Lender shall disburse its share of its Subordinated Loan funds as shown on the Development Budget (*less* any retainage as provided in the applicable Subordinated Loan Documents) (collectively, the “Initial Disbursement”). All amounts making up the Initial Disbursement shall either be transferred to the Senior Lender by wire transfer for disbursement to the Borrower in accordance with the Loan Agreement or applied by the Subordinated Lender directly by check or wire transfer as agreed to by the Borrower with the written consent of the Senior Lender in connection with the funding of the Initial Disbursement. Any wire transfers to the Senior Lender for the account of Borrower shall be sent to such account as directed by the Senior Lender.
3. Requisitions.
  - a. Requisitions for funds, regardless of funding source, shall be prepared by the Borrower and/or Contractor using the Senior Lender’s Form 2448 (Hard Cost Requisition) or the Senior Lender’s Form 2403 (Soft Cost Requisition). The Borrower shall also submit with the Senior Lender’s requisition forms any additional forms or certifications, including any backup materials that may be required by any Subordinate Lender who is being requested to fund a requisition or by the Investor Limited Partner. The Senior Lender, in reviewing the requisition, will not be required to check or verify the information in any other Lender’s requisition materials, nor will the Senior Lender be required to identify or track, on a line-item basis, the use of funds disbursed by any of the Subordinate Lenders.
  - b. Requisitions submitted by the Borrower shall be made in accordance with the Development Budget, and processed as follows:
    - i. *Monthly Requisition Meetings.* A draft or “pencil” Hard Cost Requisition shall be prepared monthly by the Contractor and distributed for review by the Architect, the Contractor, the Borrower, the Investor, the Senior Lender and the Subordinated Lenders at a monthly meeting held at the job site, at which time the parties will seek to reach agreement on the percentage of completion and amounts requisitioned for various trade items set forth in the proposed requisition. The Borrower shall advise the Lenders and the Investor as to the date and time of such meetings. Representatives of each may attend such meetings and offer comments and/or request

*These sample Coordinated Funding Provisions are provided for informational purposes only. Requirements of individual transactions may vary.*

changes to proposed requisitions.

- ii. *Preparation and Submission of Requisitions.* Based upon agreements reached at the above meeting, the Contractor shall prepare and forward to the Architect, for approval and transmittal to the Borrower, the monthly Hard Cost Requisition, together with all certifications and documents required by the Senior Lender or any Subordinate Lender from whom funds are being requisitioned or by the Investor Limited Partner. Upon receipt of the approved Hard Cost Requisition from the Architect, the Borrower shall prepare a Soft Cost Requisition, together with all certifications and documents required by any Subordinate Lender from whom funds are being requisitioned. The Hard and Soft Cost Requisitions shall be submitted to the Senior Lender, with copies provided to the Subordinate Lenders and the Investor. The submitted requisitions shall be accompanied by a cover letter from the Borrower specifying the sources and amounts required to fund the enclosed Requisition(s).
  - iii. *Objections to Approval of Requisitions.* If any of the Subordinate Lenders objects to the approval of a requisition by the Senior Lender, such objecting party shall notify the Senior Lender, the Borrower and the remaining Subordinate Lenders of its objection within five (5) business days of its submission to the Senior Lender and the Subordinate Lenders. The Borrower and the Senior Lender agree to promptly and reasonably consult with the objecting party regarding such objection and seek a mutual resolution. The Borrower agrees that it shall take any such actions, including those against the Contractor, Architect or any other person, as necessary and appropriate to resolve any construction defects or other issues giving rise to such objection. If the Borrower, the Senior Lender and the objecting party shall be unable to resolve such objection, the Senior Lender shall have the right, but not the obligation, to approve and fund a requisition. Each of the Subordinate Lenders shall, at all times and pursuant to the terms of its respective Subordinate Loan Documents, have the right to refuse to fund its portion of a requisition approved by the Senior Lender and it shall immediately notify the parties hereto in writing of any such refusal.
  - iv. *Requisition Approval and Disbursement of Funds.* Following satisfactory completion of its review, but not less than five (5) business days following submission of an acceptable requisition to the Senior Lender and absent any objection by a Subordinate Lender or the Investor Limited Partner, the Senior Lender shall notify the Borrower, with copies to the Subordinate Lenders, of its approval of the Hard and Soft Cost Requisitions. The share of the approved amount to be borne by a Subordinated Lender shall be as stated in the requisitions as so approved by the Senior Lender and not objected to by such Subordinated Lender as provided in subparagraph (iii) above. Each Subordinate Lender agree to provide the Senior Lender, within ten (10) business days of funding, such documents as reasonably necessary to evidence disbursement of its funds as required by such approved requisition. In the event the Senior Lender elects not to approve a requisition, either in whole or in part, it shall notify the Borrower, the Subordinate Lenders in writing not less than ten (10) business days following of submission of the requisition.
4. Retainage. The Borrower shall submit to the Senior Lender, and the Subordinate Lenders in writing any request for a reduction or release of retainage under the Construction Contract. Such requests shall be submitted not less than ten (10) business days prior to submission of the Hard Cost Requisition seeking payment of the reduced or released retainage amounts. If a Subordinate Lender

shall not have disapproved such release or reduction within ten (10) business days after the submission of the Borrower's request, such release or reduction shall be deemed approved by that Subordinate Lender, provided that a Subordinated Lender shall not be required to release any of its loan funds held as retainage unless it shall expressly approve such release. If any of the Subordinate Lenders objects to the reduction or release of retainage, the objecting party shall so notify the Senior Lender, the Borrower and the remaining Subordinate Lenders. The Borrower and the Senior Lender agree to promptly and reasonably consult with the objecting party regarding such objection and seek a mutual resolution. The Borrower agrees that it shall take any such actions, including those against the Contractor or Architect, as necessary and appropriate to resolve any construction defects or other issues giving rise to such objection. If the Borrower, the Senior Lender and the objecting party shall be unable to resolve such objection, the Senior Lender shall have the right, but not the obligation, to agree to a reduction or release of retainage. Each of the Subordinate Lenders shall, at all times and pursuant to the terms of its respective Subordinate Loan Documents, have the right to (i) refuse to reduce or release that portion of its loan proceeds held as retainage despite any approval of such request by the Senior Lender, or (ii) reduce or release that portion of its loan proceeds held as retainage despite any denial of such request by the Senior Lender.

5. Change Orders. All Change Orders shall be subject to the review and approval of the Senior Lender pursuant to the Senior Loan Documents. Any Change Order submitted by the Borrower to the Senior Lender shall simultaneously be submitted to the Subordinate Lenders and the Investor, together with any supporting documentation provided the Senior Lender. The Subordinate Lenders and the Investor may request additional supporting documentation from the Borrower as each may reasonably determine necessary to evaluate such Change Order. The Borrower agrees to provide the Subordinate Lenders, the Investor and the Senior Lender such additional supporting documentation promptly upon any such request. If a Subordinate Lender or the Investor shall not have disapproved such Change Order within ten (10) business days following submission, such Change Order shall be deemed approved by that Subordinate Lender or Investor, as the case may be. If any of the Subordinate Lenders or the Investor objects to a Change Order, the objecting party shall so notify the other parties hereto in writing. The Borrower and the Senior Lender agree to promptly and reasonably consult with the objecting party regarding such objection and seek a mutual resolution. If the Borrower, the Senior Lender and the objecting party shall be unable to resolve such objection, the Senior Lender shall have the right, but not the obligation, to approve and fund the Change Order. Each of the Subordinate Lenders shall, at all times and pursuant to the terms of its respective Subordinate Loan Documents, have the right to (i) deny approval and funding of a Change Order from its loan proceeds, despite any approval of such request by the Senior Lender, or (ii) approve and use its loan proceeds to fund a Change Order despite any denial of such change order by the Senior Lender; provided, however, that a Subordinate Lender may not fund any Change Order not approved by the Senior Lender if such funding would, in the Senior Lender's judgment, jeopardize the availability of the low income tax credits authorized for the Development under Section 42 of the Internal Revenue Code of 1986, as amended, applying the provisions of Section 42(h)(4)(B) thereof, for use in connection with the Development. Notwithstanding the aforementioned right to deny Change Orders, the Subordinate Lenders expressly acknowledge and agree that a Subordinate Lender may not declare a default by the Borrower for failure to obtain approval of a Change Order, and that remedies by a Subordinate Lender in connection with a denied Change Order are limited to the withholding of Subordinate Loan proceeds associated therewith and to withhold the release of any retainage amount held by the Subordinate Lender.