

AMENDED AND RESTATED AFFORDABILITY COVENANT AGREEMENT
(Hillcrest Court Apartments)

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This Amended and Restated Affordability Covenant Agreement (the "Agreement") is dated as of May 6, 2019, and is between the County of San Bernardino, a political subdivision of the State of California (the "County"), and Hillcrest Court Apartments, LLC, a California limited liability company("Owner").

RECITALS

1. The Owner holds fee title to that certain real property located at located at 15430 Culebra Road, Victorville, California, improved with an affordable housing project commonly referred to as Hillcrest Court Apartments, which is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

2. The County and the Victorville Redevelopment Agency entered into that certain Neighborhood Stabilization Program Agreement for Multi-Family Housing dated July 27, 2010, as amended from time to time (the "NSP Loan Agreement") under which the County provided a loan in the principal amount of Six Million Fifty Thousand Dollars (\$6,050,000) (the "NSP Loan").

3. The NSP Loan is evidenced by that certain Promissory Note dated December 10, 2010 (the "NSP Promissory Note"), secured by that certain Deed of Trust with Assignment of Rents, dated as December 10, 2010 and recorded in the Official Records as Document No. 2011-0147792 on April 13, 2011, including the NSP Affordability Covenant Agreement attached thereto as Exhibit B (the "Original NSP Deed of Trust"). The NSP Loan Agreement, the NSP Promissory Note, the Original NSP Deed of Trust, the NSP Affordability Covenant Agreement (attached to the NSP Deed of Trust as Exhibit B), (collectively, the "County NSP Documents"), were assigned to the Owner pursuant to that certain Assignment and Assumption Agreement (County NSP Documents and CHAS Use Restrictions- Hillcrest Apartments) dated as of January 18, 2018 and recorded in the Official Records on March 01, 2018 as Document No. 2018-0074836 (the "NSP Assignment Agreement").

4. The Victorville Redevelopment Agency made a loan to the Borrower's predecessor in interest in the amount of Six Hundred Twenty Thousand Dollars (\$620,000) (the "CHAS Loan"). The CHAS Loan has since been repaid but the Property is subject to: (1) that certain Affordable Housing Agreement dated November 16, 2010 and recorded in the Official Records as Document No. 2011-0147793 on April 13, 2011, as amended by that certain First Amendment to Affordable Housing Agreement dated June 8, 2011 and recorded in the Official Records as Document No. 2011-0265378 on June 29, 2011; that certain Second Amendment to Affordable Housing Agreement dated June 19, 2013 and recorded in the Official Records as Document No. 2013-0295462 on July 03, 2013, and the NSP Assignment Agreement; and (2) that certain Declaration of Affordability Covenants recorded in the Official Records as Document No. 2013-0295464 (the "CHAS Affordability Covenants"). The Affordable Housing Agreement and its amendments, together with the CHAS Affordability Covenants, are hereinafter collectively referred to as the "CHAS Use Restrictions".

5. This Agreement is subordinate only to the CHAS Use Restrictions.

6. At the time the Owner acquired the Project, the Owner assumed the NSP Loan in the approximate principal amount of Five Million Six Hundred Eighty-Two Thousand Eighty Dollars and Sixty-Eight Cents (\$5,682,080.68) plus accrued interest. As of the date of this Agreement, the NSP Loan has accrued interest in the amount of One Million Two Thousand Five Hundred Fifty-Six Dollars and Fifty-Nine Cents (\$1,002,556.59) for a total current outstanding principal balance of Six Million Six Hundred Eighty-Four Thousand Six Hundred Thirty-Seven Dollars and Twenty-Seven Cents (\$6,684,637.27).

7. The Housing Authority of the County of San Bernardino (the "Authority") provided the Owner a loan in the amount of Eight Hundred Four Thousand Four Hundred Eighty-Nine Dollars (\$804,489) to assist in the acquisition of the Project (the "Authority Loan").

8. The Owner desires to refinance the debt on the Project to pay off specified debt and to support operations of the Project. The Owner is requesting the County's consent to obtain a refinancing loan from Greystone Servicing Corporation, Inc. in an amount not to exceed \$2,500,000 (the "Greystone Loan").

9. The parties entered into that certain Amendment to NSP Loan Agreement to implement and effectuate the purpose of the NSP Loan Agreement under which : (1) The County documented the County's consent to the Greystone Loan; (2) the County required special repayments of the Authority Loan and the NSP Loan; (3) the County restructured the NSP Loan; (4) the County required the term of the NSP Affordability Covenant Agreement be extended; and (5) made conforming non-substantive changes to effectuate the purpose of the NSP Loan Agreement as modified.

10. The Parties also entered into an Amended and Restated NSP Promissory Note, of even date herewith, in the principal amount of Six Million Six Hundred Eighty Four Thousand Six Hundred Thirty-Seven Dollars and Twenty-Seven Cents (\$6,684,637.27), evidencing the NSP Loan (the "Amended and Restated NSP Note").

11. These recitals refer to and utilize certain capitalized terms which are defined in Section 101 of the NSP Loan Agreement. Capitalized terms used in this Agreement, but not defined, shall have the meaning set forth in the NSP Loan Agreement.

12. The County is requiring the execution recordation of this Agreement in order to implement the requirements of the NSP Governing Regulations for the entire NSP Term and thereafter restrictions concerning affordability, operation, and maintenance that are set forth in this Agreement and in the related documents evidencing the NSP Loan.

13. In consideration of receipt of the assistance under the NSP Loan Documents, and to ensure that the entire Project will be used and operated in accordance with these conditions and restrictions set forth herein, the County and the Owner desire to enter into this Agreement.

THEREFORE, the County and the Owner hereby agree as follows:

ARTICLE 1.
DEFINITIONS

1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Actual Household Size" means the actual number of persons in the applicable household.

(b) "Adjusted Income" means the lower of: (1) the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income, or (2) the total anticipated annual income of all persons in a household as initially calculated in accordance with 24 C.F.R. 92.203(a)(1) and, for subsequent calculations, in accordance with 24 C.F.R. 92.203(b)(1). In the event that no such program exists, the County shall provide the Owner with a reasonably similar method of calculation of adjusted income as provided in said Section 6914.

(c) "Agreement" means this Regulatory Agreement and Declaration of Restrictive Covenants.

(d) "Assumed Household Size" shall have the meaning set forth in Section 2.2(e). The definition is utilized to calculate affordable rent and is not intended to be a limit on the number of persons occupying a Unit.

(e) "CDBG" means the Community Development Block Grant Program established under Title I of the Housing and Community Development Act of 1974, as amended.

(f) "County" means County of San Bernardino, a political subdivision of the State of California;

(g) "HCD" means the California Department of Housing and Community Development.

(h) "HUD" means the United States Department of Housing and Urban Development.

(i) "Lower Income Household" means a household with an Adjusted Income that does not exceed the qualifying limits for lower income households, adjusted for Actual Household Size, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by the State of California Department of Housing and Community Development.

(j) "Lower Income Rent" means the lesser of (1) the Section 8 Fair Market Rent for a comparable unit as established by HUD under 24 CFR §888.111; or (2) the rent established by HUD under 24 CFR §92.252 for a unit occupied by a family with less than one hundred twenty percent (120%) of the Area Median Family Income.

(k) "Median Income" means median gross yearly income, adjusted for Actual Household Size as specified herein, in the County of San Bernardino, California, as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County will provide Borrower with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

(l) "NSP Deed of Trust" means the Original NSP Deed of Trust as defined in Recital 3 as modified by that certain Modification Agreement executed by the Parties, of even date herewith.

(m) "NSP Governing Regulations" means, the following collectively:

(1) NSP Notice, including the Notice of Funding Availability for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act of 2009 (Notice FR-5321-N-01, published May 5, 2009) and corrections under Notice FR-5321-C-02, published June 11, 2009; Notice FR-5321-C-03, published November 9, 2009; and Notice FR-5321-C-04, published January 29, 2010, and any subsequent published amendments (collectively the "NSP Notices");

(2) The NSP Regulations under 24 C.F.R. 570 et seq. (the "NSP Regulations"); and

(3) The CDBG Regulations under 24 C.F.R. Part 570 subparts A, C, D, J, K, and O, as applicable (the "CDBG Regulations").

(n) "NSP Loan Documents" means this Agreement together with the NSP Loan Agreement, the NSP Deed of Trust, the Amended and Restated NSP Note and any other document or agreement evidencing the NSP Loan.

(o) "NSP Program" means the Neighborhood Stabilization Program 2, created under Division B, Title III of the Housing and Economic Recovery Act of 2008, as extended under American Reinvestment and Recovery Act of 2009.

(p) "NSP Term" means the period beginning on April 13, 2011 and ending on the twentieth (20th) anniversary thereof April 13, 2031. After the expiration of the NSP Term, for the purposes of the NSP Regulations, the Development will no longer be considered an existing NSP assisted rental project.

(q) "Project Improvements" means the approximately sixty-seven (67) units of multifamily affordable rental housing, including the Manager's Units, all common areas, amenities, plans, entitlements, appurtenances, improvement easements, buildings and fixtures associated with the Property.

(r) "Property" has the meaning set forth in Recital 1 of this Agreement.

(s) "Rent" means the total of monthly payments by the Resident of a Unit (other than the manager's Unit) for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed

by Owner which are required of all residents, other than security deposits; the cost of an adequate level of service for utilities paid by the Resident, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Resident.

(t) "Resident" means a household occupying a Unit in the Project.

(u) "Term" means the term of this Agreement, which commences as of the date of this Agreement and, unless terminated earlier pursuant to this Agreement, ends fifty-five (55) years from the date hereof or May 31, 2074 (subject to extensions agreed upon by the Parties).

(v) "Unit" means one (1) of the sixty-seven (67) multifamily affordable rental units (including one Manager's Unit) located at the Project.

ARTICLE 2. AFFORDABILITY COVENANTS

2.1 Occupancy Requirements.

(a) Low Income Units. Sixty-seven (67) Units shall be rented to and occupied by or, if vacant, available for occupancy by Low Income Households.

(b) Manager's Unit. One (1) two-bedroom Unit shall be available for designation as the manager's unit.

2.2 Allowable Rent.

(a) Low Income Rent. Subject to Section 2.3 below, the rent charged to Residents of the Low Income Units shall be the Lower Income Rent, adjusted for Assumed Household Size.

(b) No Additional Fees. The Owner shall not charge any fee, other than Rent, to any resident of the Units for any housing or other services provided by the Owner pursuant to the NSP Loan Documents.

(c) Initial and Subsequent Rents. Initial Rents for all Units shall be approved the County prior to occupancy. All Rent increases shall also be subject to approval by the County. No later than November 1 of each calendar year, the County shall provide the Owner with a schedule of permissible maximum Lower Income Rents for the succeeding year. Under no circumstance may Owner raise rents above the permissible maximum rents as allowed under the annual rent schedule provided by the County.

(d) Assumed Household Size. In calculating the allowable Rent for the Units, the "Assumed Household Sizes" shall be determined pursuant to the terms of Health and Safety Code Section 50052.5(h) (as shown in the second column), unless the Development receives an

allocation of Low Income Housing Tax Credits, in which instance the imputed household size would be as listed in the third column below:

<u>Number of Bedrooms</u>	<u>Assumed Household Size</u>	<u>Tax Credit Household Size</u>
One	2	1.5
Two	3	3
Three	4	4.5

2.3 Increased Income of Residents.

(a) Low Income Household. If, upon recertification of a Resident's income the Owner determines that a former Lower Income Household's income has increased and exceeds the qualifying income for Lower Income Households, the Resident may continue to occupy the Unit. Upon expiration of the Resident's Lease for such year, the Owner shall:

(1) With 60 days' advance written notice, increase such Resident's Rent to the lesser of (i) one-twelfth (1/12) of thirty percent (30%) of the actual Adjusted Income of the Resident, and (ii) the fair market rent (subject to 24 C.F.R. 92.252(i)(2) regarding low income housing tax credit requirements), and

(2) Rent the next available Unit to a Very Low Income Household at Rent not exceeding the maximum Rent specified in Section 2.2, as applicable, to comply with the requirements of Section 2.1 above.

(b) Non-Qualifying Household. If, upon recertification of the income of a Resident, the Owner determines that a Lower Income Household has an Adjusted Income exceeding the maximum qualifying income for a Lower Income Household, such Resident shall be permitted to continue occupying the Unit and upon expiration of the Resident's lease and upon sixty (60) days written notice, the Rent may be increased to the lesser of one-twelfth (1/12th) of thirty percent (30%) of actual Adjusted Income of the Resident, or fair market rent and the Owner shall rent the next available Unit to a Lower Income Household to meet the requirements of Section 2.1 above.

(c) Termination of Occupancy. Upon termination of occupancy of a Unit by a Resident, such Unit shall be deemed to be continuously occupied by a household of the same income level as the initial income level of the vacating Resident, until such Unit is reoccupied, at which time the income character of the Unit shall be redetermined to meet the occupancy requirements of Section 2.1 above.

2.4 Resident Selection.

(a) Before leasing any vacant Units in the Project, the Owner must provide the County for their concurrent review and approval the Owner's written marketing and resident selection plan.

(b) The Owner shall not discriminate against any applicants for tenancy on the basis of source of income or rent payment (for example, without limitation, Temporary Assistance for Needy Families (TANF) or Section 8), and the Owner shall consider a prospective

Resident's previous rent history of at least one (1) year, or such other time period the Owner deems reasonable, as evidence of the prospective Resident's ability to pay the applicable Rent. The ability to pay shall be demonstrated if the prospective Resident can document that the prospective Resident's gross income is at least two (2) times the prospective rent. The Owner, in the reasonable exercise of its discretion, may waive the requirement that the prospective Resident's gross income equal at least two (2) times the prospective rent, and admit prospective Residents with lower gross incomes.

2.5 Lease Provisions. The Owner shall include in leases for all Units provisions which authorize the Owner to immediately terminate the tenancy of any household one or more of whose members misrepresented any fact material to the household's qualification as a Lower Income Household, as applicable. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 3.1 below, and that, if the household's income increases above the applicable limits for a Lower Income Household, as applicable, such household's Rent may be subject to increase.

2.6 Condominium Conversion. During the Term of this Agreement, the Owner shall not convert any of the Units in the Project to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property.

2.7 Units Available to the Disabled. In compliance with Section 504 of the Rehabilitation Act of 1973 (29 USC 794, et seq.), a minimum of five percent (5%) of the Units shall be fully accessible to households with a mobility impaired member and an additional two percent (2%) of the Units shall be fully accessible to hearing and/or visually impaired persons.

ARTICLE 3. INCOME CERTIFICATION AND REPORTING

3.1 Income Certification. The Owner will obtain, and complete, as a condition to initial occupancy and maintain on file annually thereafter, income certifications from each Resident renting any of the Units. The Owner shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain the three (3) most current savings and checking account bank statements; (e) obtain an income verification form from the applicant's current employer; (f) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (g) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Resident income certifications shall be available to the County upon request.

3.2 Annual Report to the County. The Owner shall submit to the County: (a) not later than the ninetieth (90th) day after the close of each calendar year, or such other date as may be requested by the County, a statistical report, including income and rent data for all Units, an assessment of compliance with the approved Management Plan, an evaluation of the

Management Agent; and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the County.

3.3 Additional Information. The Owner shall provide any additional information reasonably requested by the County. The County shall have the right to examine and make copies of all books, records or other documents of the Owner which pertain to the Project.

3.4 Records. The Owner shall keep and maintain on the Project, or elsewhere with the County's' written consent, complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the County to inspect records, including records pertaining to income and household size of Residents, Rent charged Residents and affirmative marketing requirements. All Resident lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the County, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the County. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years. The Owner hereby agrees and acknowledges that the Owner is subject to the audit requirements set forth in 24 C.F.R. 570.502

3.5 Annual Operating Budget. The Owner, at least sixty (60) days prior to the end of each of the Owner's fiscal year, shall furnish the County an Annual Operating Budget. Upon receipt by the County of the proposed Annual Operating Budget, the County shall promptly review the same and approve or disapprove it within ten (10) working days. If the Annual Operating Budget is not approved by the County, the County shall set forth in writing and notify the Owner of the County's' reasons for withholding such approval. The Owner shall thereafter submit a revised Annual Operating Budget for County approval, which approval shall be granted or denied within ten (10) working days in accordance with the procedures set forth above.

3.6 Approval of Use of Reserve Funds. The Owner agrees to create and maintain the reserves required by the Approved Financing (as defined in the NSP Loan Agreement) and the reserves in the amounts approved by the County as part of the Project Budget submitted by the Owner. Prior to the use of funds from the reserves, the Owner must submit a written request to withdraw funds from the reserve account. The written request shall specify the amount requested and state how the funds will be used. The County shall approve such request within thirty (30) days of receipt of the written request for use of reserves; such request shall not be unreasonably withheld. If the County fails to approve a request within the thirty (30) days, such request shall be deemed approved.

3.7 On-site Inspection. The County shall have the right to perform an on-site inspection of the Project at least one (1) time per year upon forty-eight hours (48) prior notice. The Owner agrees to cooperate in such inspection.

ARTICLE 4. OPERATION OF THE PROJECT

4.1 Residential Use. The Project shall be operated only for residential use as permanent senior and multifamily rental housing.

4.2 Compliance with the NSP Loan Documents. The Owner shall comply with all the terms and provisions of the NSP Loan Documents.

4.3 Taxes and Assessments. The Owner shall pay all real and personal property taxes, assessments, if any, and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Project; provided, however, that the Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Owner exercises its right to contest any tax, assessment, or charge against it, the Owner, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

4.4 Property Tax Exemption. Owner shall not apply for a property tax exemption for the Property under any provision of law except California Revenue and Taxation Section 214(f) or (g), without the prior written consent of the County. The County hereby agrees and acknowledges no consent is required for an application for property tax exemption under California Revenue and Taxation Section 214(f) or (g), or successor codes.

4.5 Nondiscrimination.

(a) All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. Owner shall not give preference to any particular class or group of persons in renting the Units, except to the extent that the Units are required to be leased to Very Low Income Households or Lower Income Households.

(b) There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(c) Notwithstanding the preceding paragraph, with respect to familial status, the preceding paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the preceding paragraph.

(d) The provisions of this Section shall run with the land and survive termination of this Agreement.

4.6 Section 8 Certificate Holders. The Owner will accept as residents, on the same basis as all other prospective residents, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective residents, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Units by such prospective Residents.

ARTICLE 5. PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities. The Owner is responsible for all management functions with respect to the Project, including without limitation the selection of residents, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County shall have no responsibility over management of the Project. The Owner shall retain a professional property management company, approved by the County in its reasonable discretion, to perform its management duties hereunder. A resident manager shall also be required. Prior to the commencement of construction of the Project, the Owner shall submit a proposed management plan to the County for approval by the County. The County shall approve or disapprove (with written explanation for disapproval) of the proposed management plan by notifying the Owner in writing within sixty (60) days of the date of submission to the County.

5.2 Management Agent; Periodic Reports. The Project shall at all times be managed by an experienced management agent reasonably acceptable to the County, with demonstrated ability to operate residential facilities like the Project in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Owner shall submit for the County's approval the identity of any proposed Management Agent and on-site resident manager. The Owner shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent and on-site resident manager as is reasonably necessary for the County to determine whether the proposed Management Agent or on-site resident manager meets the standard for a qualified Management Agent or on-site resident manager set forth above. If the proposed Management Agent or on-site resident manager meets the standard for a qualified Management Agent or on-site resident manager set forth above, the County shall approve the proposed Management Agent or on-site resident manager by notifying the Owner in writing. Unless the proposed Management Agent or on-site resident manager is disapproved by the County within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

5.3 Performance Review. In addition to the reporting requirements under Section 3.2 above, the County reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by the County) review of the management practices and financial status of the Project. The purpose of each periodic review will be to enable the County to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement. The Owner shall cooperate with the County in such reviews.

5.4 Replacement of Management Agent or On-Site Resident Manager.

(a) If, as a result of a periodic review, the County determines, in its reasonable judgment, that the Project is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the County shall deliver notice to the Owner of its intention to cause replacement of the Management Agent or on-site resident manager, including the reasons therefor. Within fifteen (15) days of receipt by Owner of such written notice, the County staff and the Owner shall meet in good faith to consider methods for improving the financial and operating status of the Project. If, after a reasonable period as determined by the County (not to exceed sixty (60) days after the meeting between the County and the Owner), the County determines that the Owner is not operating and managing the Project in accordance with the material requirements and standards of this Agreement, the County may require replacement of the Management Agent or on-site resident manager.

(b) If, after the above procedure, the County requires in writing the replacement of the Management Agent or on-site resident manager, the Owner shall promptly dismiss the then Management Agent or on-site resident manager within thirty (30) days notice, and shall appoint as the Management Agent or on-site resident manager a person or entity meeting the standards for a Management Agent or on-site resident manager set forth in Section 5.2 above and approved by the County pursuant to Section 5.2 above.

(c) Any contract for the operation or management of the Project entered into by the Owner shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent or on-site resident manager in accordance with the provisions of this Section shall constitute default under this Agreement, and the County may enforce this provision through legal proceedings as specified in Section 6.7, below.

5.5 Approval of Management Policies. The Owner shall submit its written management policies with respect to the Project to the County for its review, and shall amend such policies to ensure that such policies comply with the provisions of this Agreement.

5.6 Maintenance Requirements.

(a) The Owner agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Project in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

(1) Landscaping. The Owner agrees to have landscape maintenance performed at least every other week, including replacement of dead or diseased plants with comparable plants. The Owner agrees to adequately water the landscaping on the Project. No improperly maintained landscaping on the Project shall be visible from public streets and/or rights of way.

(2) Yard Area. No yard areas on the Project shall be left unmaintained, including:

(i) Broken or discarded furniture, appliances and other, household equipment stored in yard areas for a period exceeding one (1) week;

(ii) Packing boxes, lumber trash, dirt and other debris in areas visible from public Project or neighboring properties; and

(iii) Vehicles parked or stored in other than approved parking areas.

(3) Building. No buildings located on the Project may be left in an unmaintained condition so that any of the following exist:

(i) Violations of state law, uniform codes, or local ordinances;

(ii) Conditions that constitute an unsightly appearance that detracts from the aesthetics or value of the Project or constitutes a private or public nuisance;

(iii) Broken windows;

(iv) Graffiti (must be removed within seventy-two (72) hours);
and

(v) Conditions constituting hazards and/or inviting trespassers, or malicious mischief.

(4) Sidewalks. The Owner shall maintain, repair, and replace as necessary all private sidewalks adjacent to the Project.

(b) The County places prime importance on quality maintenance to protect its investment and to ensure that all County assisted affordable housing projects are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Project will be acceptable to the County assuming the Owner agrees to provide all necessary improvements to assure the Project is maintained in good condition. The Owner shall make all repairs and replacements necessary to keep the Project in good condition and repair.

(c) In the event that the Owner breaches any of the covenants contained in this Section and such default continues for a period of seven (7) days after written notice from the County with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the County with respect to landscaping and building improvements, then the County, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Project and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the County shall be permitted (but is not required) to enter upon the Project and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Project, and to attach a lien on the Project, or to assess the Project, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the

County and/or costs of such cure, including a ten percent (10%) administrative charge, which amount shall be promptly paid by the Owner to the County upon demand.

5.7 Safety Conditions.

(a) The Owner acknowledges that the County places a prime importance on the security of Agency assisted projects and the safety of the residents and surrounding community. The Owner agrees to implement and maintain throughout the Term the following security measures in the Project:

(1) to the extent feasible employ defensible space design principles and crime prevention measures in the operation of the Project including but not limited to maintaining adequate lighting in parking areas and pathways;

(2) provide added security including dead-bolt locks for every entry door, and where entry doors are damaged, replace them with solid-core doors.

(b) The County shall have the right to enter on the Project and/or contact the San Bernardino County Sheriff's Department if it becomes aware of or is notified of any conditions that pose a danger to the peace, health, welfare or safety of the Residents and/or the surrounding community, and to perform or cause to be performed such acts as are necessary to correct the condition.

ARTICLE 6.
MISCELLANEOUS

6.1 Lease Provisions. In leasing the Units, the Owner shall use a form of Resident lease approved by the County. The lease shall not contain any provision which is prohibited by 24 C.F.R. Section 92.253(b) and any amendments thereto. The form of Resident lease shall also comply with all requirements of this Agreement and the Financing Agreements, and shall, among other matters:

(a) Provide for termination of the lease and consent by the Resident to immediate eviction for failure to provide any information required under this Agreement or reasonably requested by Owner to establish or recertify the Resident's qualification, or the qualification of the Resident's household, for occupancy in the Project in accordance with the standards set forth in this Agreement; and

(b) Be for an initial term of not less than one (1) year, unless by mutual agreement between the Resident and Owner (and only if allowed by all financing sources), and provide for no increase in Rent during such year. After the initial year of tenancy, the lease may be month-to-month by mutual agreement of Owner and the Resident; however Rent may not be raised more often than once a year. Owner will provide each Resident with at least sixty (60) days written notice of any increase in Rent applicable to such Resident, and with such further notice as may be required by Section 2.3 above.

6.2 Lease Termination. Any termination of a lease or refusal to renew must be preceded by not less than sixty (60) days written notice to the Resident by the Owner specifying the grounds for the action. Any termination of a lease for a default of the Resident shall be in accordance with applicable law.

6.3 Nondiscrimination.

(a) All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. Owner shall not give preference to any particular class or group of persons in renting the Units, except to the extent that the Units are required to be leased to income eligible households pursuant to this Agreement, and except to the extent Owner operates any portion of the Project as lawful senior housing. There shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit; nor shall the Owner or any person claiming under or through the Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit.

(b) Disabled Persons Occupancy. The Project shall be operated at all times in compliance with the provisions of: (i) the Unruh Act; (ii) the California Fair Employment and Housing Act; (iii) Section 504 of the Rehabilitation Act of 1973; (iv) the United States Fair Housing Act, as amended; and (v) any other applicable law or regulation (including the Americans With Disabilities Act, to the extent applicable to the Project). The Owner agrees to indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the County) the County, and its boardmembers, officers, employees, agents and assigns from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Owner's failure to comply with applicable legal requirements related to housing for persons with disabilities. The provisions of this subsection shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

6.4 Term. The provisions of this Agreement shall apply to the Project for the entire Term even if the entire NSP Loan is paid in full prior to the end of the Term; provided, however, that the provisions of Sections 2.1(e), 4.5 and 6.3 of the Agreement shall run with the Project and shall remain in effect in perpetuity. This Agreement shall bind any successor, heir or assign of the Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the County. The County makes the NSP Loan, on the condition, and in consideration of, this provision, and would not do so otherwise.

6.5 Compliance with Loan Agreement and Program Requirements. The Owner's actions with respect to the Project shall at all times be in full conformity with:

- (a) All requirements of the NSP Loan Agreement;
- (b) All requirements under the NSP Governing Regulations.

6.6 Covenants to Run With the Land. The County and the Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Project, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the County expressly releases such conveyed portion of the Project from the requirements of this Agreement.

6.7 Enforcement by the County. If the Owner fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the County has notified the Owner in writing of the default or, if the default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure, the County shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Calling the NSP Loan. The County may declare a default under the NSP Note, accelerate the indebtedness evidenced by the NSP Note, and proceed with foreclosure under the NSP Deed of Trust.

(b) Action to Compel Performance or for Damages. The County may bring an action at law or in equity to compel the Owner's performance of its obligations under this Agreement, and/or for damages.

(c) Remedies Provided Under Loan Documents. The County may exercise any other remedy provided under the NSP Loan Documents.

6.8 Attorneys' Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys' fees. This Section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

6.9 Recording and Filing. The County and the Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Project in the Official Records of the County of San Bernardino.

6.10 Governing Law. This Agreement shall be governed by the laws of the State of California.

6.11 Waiver of Requirements. Any of the requirements of this Agreement may be expressly waived by County in writing, but no waiver by County of any requirement of this Agreement shall, or shall be deemed to, extend to, or affect any other provision of this Agreement.

6.12 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of San Bernardino, California.

6.13 Notice. Formal notices, demands, and communications between the County and the Owner shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the County and the Owner as follows:

If to the Owner: Hillcrest Court Apartments, LLC
Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, CA 92408-2841

If to the County: County of the County of San Bernardino
Community Development and Housing Agency
385 North Arrowhead Ave Third Floor
San Bernardino, CA 92415-0043
Attn: Deputy Executive Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt for delivery or refusal of delivery.

6.14 Notice of Expiration of Term. Prior to the expiration of the Term, the Owner shall provide notices to all Residents (and other required parties) meeting the requirements of California Government Code Section 65863.10. The Owner shall file a copy of the above-described notice with the County's Chief Executive Officer.

6.15 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.16 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

6.17 Revival of Agreement after Foreclosure. This Agreement shall be revived according to its original terms if, during the original Term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project or Property.

6.18 Assignment by the County. The County may assign its rights and obligations under the NSP Loan Documents to any other public entity without the consent of the Owner.

6.19 No Claims. Nothing contained in this Agreement shall create or justify any claim against the County by any person that the Owner may have employed or with whom the Owner may have contracted relative to the purchase of materials, supplies or equipment, or the

furnishing or the performance of any work or services with respect to the Property or the construction or operation of the Project.

6.20 Titles of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

6.21 Entire Agreement. This Agreement constitutes the entire Agreement between the Parties and no modification hereof shall be binding unless reduced to writing and signed by the Parties hereto.

6.22 Hold Harmless. Owner will indemnify and hold harmless (without limit as to amount) the County, its board members, officers, employees and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to the Project, the Units, or the Owner's performance or non-performance under this Agreement, and shall protect and defend Indemnitees, and any of them with respect thereto, except to the extent caused by the gross negligence or willful misconduct of the County. The provisions of this Section shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this section shall remain in full force and effect.

6.23 Revival of Agreement after Foreclosure. This Agreement shall be revived according to its original terms if, during the original Term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project or the Property.

[Signature Page Follows]

IN WITNESS WHEREOF, the County and the Owner have executed this Agreement by duly authorized representatives, all on the date first written above.

OWNER:

HILLCREST COURT APARTMENTS, LLC LP, a California limited liability company

By: Housing Authority of the County of San Bernardino, its managing member

By: _____
Maria Razo, Executive Director

Date: _____

[Signatures must be notarized.]

[Additional Signatures Follow.]

COUNTY:

COUNTY OF SAN BERNARDINO, a political subdivision of
the State of California

By: _____
Gary McBride, Chief Executive Officer
County of San Bernardino

Date: _____

APPROVED AS TO LEGAL FORM:

Michelle D. Blakemore
County Counsel

By: _____
Suzanne Bryant, Deputy County Counsel

Date: _____

[Signatures must be notarized.]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Name: Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Name: Notary Public

EXHIBIT A

LEGAL DESCRIPTION