

TEMPORARY LICENSE AND CONSTRUCTION AGREEMENT (Arrowhead Grove Phase II)

THIS TEMPORARY LICENSE AND CONSTRUCTION AGREEMENT (the "Agreement") is made as of August __, 2019 (the "Effective Date"), by and among the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a public body corporate and politic organized under the laws of California (the "Authority"), WATERMAN GARDENS PARTNERS 2, L.P., a California limited partnership, (the "Partnership"), and NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation ("NCRC").

RECITALS

A. The Authority is the owner of fee title to certain real property located within the City of San Bernardino (the "City"), County of San Bernardino, bounded generally by Baseline Street on the north, Waterman Avenue on the west, Olive Street on the south, and La Junta Avenue (a private street owned by the Authority) on the east (the "Site"). The Site is depicted on the map attached as Exhibit A to this Agreement (the "Map").

B. On or about March 18, 2016, the Authority entered into a long-term ground lease for approximately 6.4 acres located in the southeast corner of the Site and bounded by Orange Street to the north, Crestview Avenue to the west, Olive Street to the South, and La Junta Avenue to the east (the "Olive Meadows Property") with Waterman Gardens Partners 1, L.P., a California limited partnership as Lessee. The Olive Meadows Property is improved with a 62-unit affordable housing community for rent to persons and families at affordable rents (the "Olive Meadows Development").

C. Concurrently herewith, the Authority is entering into a long-term ground lease (the "Arrowhead Grove Ground Lease") for approximately 9.03 acres of the Site bounded by Baseline Street to the north, the Authority Retained Property (as defined below) to the west, the Parking Property (as defined below) to the south, and Crestview Avenue to the east (the "Arrowhead Grove Property") with the Partnership as Lessee. The Partnership intends to redevelop the Arrowhead Grove Property into one hundred eighty-four (184) multifamily housing units including two (2) manager units in eighteen (18) buildings, and related ancillary facilities including but not limited to parking and common spaces, and a detention basin and open space (the "Arrowhead Grove Development").

D. The balance of the Site not including the Arrowhead Grove Property and the Olive Meadows Property (the "Authority Retained Property") is in the process of being redeveloped by the Housing Authority and may include future housing developments and shared community space. A portion of the Authority Retained Property located immediately to the south of the Arrowhead Grove Property (the "Parking Property") is to be developed by the Partnership with certain parking improvements for the benefit of the users of the Arrowhead Grove Development and the Olive Meadows Development (the "Parking Improvements").

E. In addition to the Parking Improvements, the Partnership will also be constructing certain offsite improvements including but not limit to a traffic signal, sidewalks, curbs, street

lights (along with the Parking Improvements, the "Partnership Improvements"). The Partnership Improvements are more particularly described on the attached Exhibit B. The general contractor for the construction of the Partnership Improvements is NCRC.

F. NCRC has entered into a Standard Agreement with the California Department of Housing and Community Development ("HCD") dated August __, 2019 (the "HCD Standard Agreement") pursuant to which HCD has agreed to provide NCRC Two Million Five Hundred Seventy-Seven Thousand Two Hundred Eighty-Six Dollars (\$2,577,286) and NCRC has agreed to construct certain infrastructure improvements on a portion of the Site (the "Infrastructure Improvements"). The Infrastructure Improvements are more particularly described on the attached Exhibit C.

G. The Authority, NCRC, and the Partnership desire to enter into this Agreement to allow for NCRC to construct the Infrastructure Improvements and the Partnership (through NCRC) to construct the Partnership Improvements, on the Site, subject to the terms and conditions set forth below. The Infrastructure Improvements and the Partnership Improvements are collectively the "Permitted Work." A diagram of where the Permitted Work is to occur is attached as Exhibit D. The Site is served by a private street circulation system made up of existing streets and streets to be constructed as part of the Permitted Work (the "Private Street Circulation System").

In reliance on the foregoing recitals, and in consideration of the terms, conditions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority, NCRC, and the Partnership (collectively, the "Parties") hereby agree as follows:

AGREEMENT

1. Grant of License for Partnership Improvements. Subject to the terms and conditions of this Agreement, the Authority hereby grants to the Partnership and its contractors, engineers, and consultants, and all of their respective employees and agents (the "Partnership Licensees") a non-exclusive license to enter the Authority Retained Property for the sole purpose of constructing the Partnership Improvements. The Partnership Licensees may not access or enter upon any portion of the Site except as reasonably necessary to perform the Partnership Improvements.

2. Grant of License for Infrastructure Improvements. Subject to the terms and conditions of this Agreement, the Authority hereby grants to NCRC and its subcontractors, engineers, and consultants, and all of their respective employees and agents (the "NCRC Licensees"), a non-exclusive license to enter the Authority Retained Property for the sole purpose of constructing the Infrastructure Improvements. The NCRC Licensees and the Partnership Licensees are collectively, the "Project Licensees." The NCRC Licensees may not access or enter upon any portion of the Site except as reasonably necessary to perform the Infrastructure Improvements.

3. License Term. This Agreement will be in effect (the "Term") commencing on the Effective Date and ending on the earlier of: (a) _____, (b) NCRC's completion

of the Infrastructure Improvements and the Partnership's completion of the Partnership Improvements which ever is later, or (c) the date this Agreement is terminated pursuant to Section 19. From and after the expiration of the Term, neither the Authority, the Partnership, nor NCRC shall have any further rights or obligations hereunder, except for any obligations which expressly survive the expiration of the Term pursuant to the provisions hereof.

4. Condition of Site. The Partnership and NCRC acknowledge that, by this Agreement, the Authority makes no representation, covenant, warranty, or promise of any kind whatsoever with respect to the Authority Retained Property, and the Partnership and NCRC are not relying on any representation, covenant, warranty, or promise by the Authority in entering into this Agreement. The Partnership and NCRC warrant and represent that, prior to the commencement of the Permitted Work, they will have made an inspection of the existing conditions of the Authority Retained Property including but not limited to the locations of existing utilities. The Partnership and NCRC shall promptly report in writing to the Authority any discovered condition, defects, errors, ambiguity or discrepancy which the Partnership and NCRC may discover as a result of its inspection which may affect the performance of the Permitted Work.

5. General Conditions Precedent to Commencement of Work. The Project Licensees shall have no right to enter the Authority Retained Property to perform the construction of the Permitted Work unless and until the satisfaction of the following conditions precedent, unless otherwise waived by the Authority.

a. Applicable Permits. The Partnership and NCRC shall have submitted to the Authority evidence that each has obtained all necessary permits for, or any other applicable approvals necessary for, the performance of the Permitted Work.

b. Insurance. The Partnership shall have submitted to the Authority evidence that it has complied with all of the insurance requirements of the Arrowhead Grove Ground Lease that are to be complied with prior to the commencement of the Permitted Work. NCRC shall have submitted to the Authority evidence that it has complied with all of the insurance requirements set forth in Exhibit E that are to be complied with prior to the commencement of the Permitted Work.

c. Performance and Payment Bonds. The Partnership shall provide the payment and performance bonds required to be provided pursuant to the Development Loan Agreement between the Partnership and the Authority of approximately even date herewith. NCRC shall provide the payment and performance bonds required to be provided pursuant to the HCD Standard Agreement, and shall name the Authority a co-obligee on such bonds.

6. Schedule for the Permitted Work. At least thirty (30) days prior to commencing the Permitted Work, NCRC and the Partnership will submit to the Authority for the Authority's approval, a schedule outlining the periods during which they will need access to the Authority Retained Property. NCRC shall construct the Infrastructure Improvements within the time frame set forth in the HCD Standard Agreement.

7. Completion of the Work. Once the Partnership and NCRC commence the Permitted Work, they shall diligently prosecute the Permitted Work to completion without interruption or delay, subject to force majeure and other delays beyond the reasonable control of the Partnership and NCRC. Title to, and ownership of, the Parking Improvements and Infrastructure Improvements constructed by the Partnership and NCRC will vest in the Authority upon completion and acceptance of such improvements by the Authority.

8. Changes to Plans and Specifications for the Improvements. The Partnership and NCRC shall construct the Partnership Improvements and the Infrastructure Improvements in conformance with the plans and specifications approved by the City (the "Construction Documents"). The Partnership and NCRC shall notify the Authority in a timely manner of any changes in the Permitted Work required to be performed under the Construction Documents. Any material changes to the Permitted Work shall require the prior written approval of Authority which approval shall not be unreasonably withheld, conditioned or delayed.

9. Repair or Reconstruction of Defective Work.

a. The Partnership and NCRC shall, at their expense, promptly correct any of the Permitted Work rejected by the Authority, for failing to conform to the requirements of the Construction Documents, or damaged by the Project Licensees.

b. If, within a period of one (1) year after final acceptance of the work performed under this Agreement, any improvement or part of any improvement furnished and/or installed or constructed, or caused to be installed or constructed by the Partnership and/or NCRC, or any of the work done under this Agreement, fails to fulfill any of the requirements of this Agreement, the Partnership and/or NCRC will without delay and without any cost to the Authority repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Establishment of the one-year period for correction as described in this Section relates only to the specific obligation of the Partnership and NCRC to correct the work, and has no relationship to the time within which the obligation to comply with this Agreement may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Partnership's or NCRC's liability with respect to obligations other than specifically to correct the work.

10. Use of the Site.

a. Equipment. The Partnership and NCRC shall confine operations at the Authority Retained Property to areas permitted by applicable permits and as indicated by the Authority, and shall not unreasonably encumber the Authority Retained Property with materials or equipment. Only materials and equipment that are to be used directly in the Permitted Work shall be brought to and stored on the Authority Retained Property. Protection of construction materials and equipment stored at the Authority Retained Property from weather, theft, damage, and all other adversity is solely the responsibility of the Partnership and NCRC. At the earlier of: (i) the completion of the Permitted Work, or (ii) the expiration or earlier termination of this Agreement, the Partnership and NCRC shall remove any or all improvements, equipment, or any other personal property brought to the Authority Retained Property by or on behalf of the Partnership and NCRC at the Partnership's and NCRC's sole expense. The Authority is not

required, at any time, to make any improvements, alterations, changes, or additions of any nature whatsoever to the Authority Retained Property to accommodate the installation, use, or operation of any equipment or structures by the Partnership and NCRC.

b. Access. The Partnership and NCRC shall ensure that the Permitted Work, at all times, is performed in a manner that affords reasonable and safe access, both vehicular and pedestrian, to the Private Street Circulation System and all adjacent areas, including necessary emergency ingress and egress. The Permitted Work shall be performed, to the fullest extent reasonably possible, in such manner that public areas adjacent to the site of the Permitted Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions. Vehicle access shall only be along public and private roads and any parked vehicles shall not obstruct access.

c. Tenants. The Partnership and NCRC acknowledges that tenants shall be occupying the Site while the Permitted Work is being performed. The Partnership and NCRC shall take all necessary precautions to ensure that the Permitted Work is performed in such a manner so as not to endanger, threaten, or impair the safety of tenants and guest and invitees to the Site or to materially interfere with tenants' use and access to the Site, and shall construct and maintain reasonable safeguards as required by the condition and progress of the Permitted Work.

d. Protection of Work Area. Throughout the performance of the Permitted Work, the Partnership and NCRC shall safeguard the work areas and secure it at the completion of each days' work. The Partnership and NCRC shall erect and maintain, as required by existing conditions and performance of the Permitted Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations.

e. Accidents. The Partnership and NCRC shall promptly report in writing to the Authority all accidents arising out of or in connection with the Permitted Work that caused death, serious personal injury, or serious property damage.

11. Damage of Property. The Partnership and NCRC shall use commercially reasonable efforts to maintain the portion of the Authority Retained Property on which they are performing the Permitted Work in a safe and secure condition. If there is any damage to the Authority Retained Property or the improvements thereon attributable to the Permitted Work, the Partnership and/or NCRC as applicable, shall immediately repair such damage, at its sole cost. Upon termination of this Agreement, the Partnership and NCRC shall return any portion of the Authority Retained Property accessed by the Project Licensees for the Permitted Work in the same or better condition as existed immediately prior to commencement of the Permitted Work. In the event the Partnership or NCRC fail to restore the Authority Retained Property as set forth in this Section, then, in addition to any other rights and remedies available to the Authority, the Authority may in the Authority's sole discretion cause such necessary repair or restoration of the Authority Retained Property, and the Partnership and/or NCRC as applicable shall promptly reimburse the Authority for all costs and expenses incurred by, or on behalf of the Authority, in connection with such repair following the Authority's written demand.

12. Right to Stop Work. In the event the Authority reasonably determines that the Project Licensees' activities in any way endanger the Authority Retained Property or the health and safety of any person or property, then, in addition to any other rights or remedies available to Authority, Authority may, at Authority's reasonable discretion, immediately stop the use of the Authority Retained Property by the Project Licensees until proper and appropriate protective measures may be taken to eliminate such endangerment. The Authority's right to stop use or work under this Section shall not in any way affect or alter the Partnership's and NCRC's obligations hereunder that pertain to health, safety, or the protection of the environment, and are in addition to the other rights and remedies set forth herein.

13. Compliance with Law; Conduct of the Licensees.

a. The Partnership and NCRC shall at all times perform the Permitted Work in accordance with: (i) all applicable federal, state, county and local laws, (ii) all applicable ordinances, zoning restrictions, rules, regulations, orders, and any requirements of any duly constituted public authorities now or hereafter in any manner affecting the Authority Retained Property, and (iii) the Construction Documents. If the Partnership and/or NCRC perform the Permitted Work contrary to this requirement, the Partnership and/or NCRC shall assume responsibility for such work and shall bear the costs attributable to correction.

b. All activities conducted on the Authority Retained Property by or on behalf of the Partnership and NCRC shall be done in a safe, workmanlike manner, and only after the Partnership and NCRC have obtained all necessary permits and approvals. The Partnership and NCRC shall not create, and shall not knowingly permit, any dangerous or unsafe condition at or about the Authority Retained Property. The Partnership and NCRC assume all responsibility for the safety of all persons performing the Permitted Work.

c. The Partnership and NCRC shall be responsible for and coordinate any and all inspections required by any governmental body that has jurisdiction over the Permitted Work.

d. The Partnership and NCRC are solely responsible for all aspects of the performance of the Permitted Work, including (but not limited to) the quality and suitability of the Construction Documents, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, and consultants. Any review or inspection undertaken by the Authority with reference to the Permitted Work is solely for the purpose of determining whether the Partnership and NCRC are properly discharging their obligations to the Authority, and should not be relied upon by the Partnership or NCRC or by any third parties as a warranty or representation by the Authority as to the quality of the design or construction of the Permitted Work and does not relieve the Partnership or NCRC, or any of their consultants, from any applicable requirement to obtain applicable public agency approvals and/or inspections.

14. Prevailing Wages.

a. Davis Bacon. The Partnership and NCRC shall cause performance of the Permitted Work to be in compliance with the prevailing wage requirements of the federal Davis-

Bacon Act (40 U.S.C. 3141-3148). The Partnership and NCRC shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Authority) the Authority against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Partnership and NCRC, thier contractor and subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations in connection with the Permitted Work.

b. State Prevailing Wages.

i. To the extent required by applicable law the Partnership and NCRC shall:

1. pay, and shall cause any consultants or contractors to pay, prevailing wages in the performance of the Permitted Work as those wages are determined pursuant to California Labor Code Section 1720 et seq.;

2. cause any consultants or contractors to employ apprentices as required by California Labor Code Section 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"), and to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR;

3. keep and retain, and shall cause any consultants and contractors to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed are required by California Labor Code Section 1777.5 et seq.;

4. post at the Site, or shall cause the contractor to post at the Site, the applicable prevailing rates of per diem wages. Copies of the currently applicable current per diem prevailing wages are available from DIR;

5. cause contractors and subcontractors constructing the Improvements to be registered as set forth in California Labor Code Section 1725.5;

6. cause its contractors and subcontractors, in all calls for bids, bidding materials and the construction contract documents for the performance of the Permitted Work to specify that: (a) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Permitted Work unless registered with the DIR pursuant to California Labor Code Section 1725.5; and (b) the performance of the Permitted Work is subject to compliance monitoring and enforcement by the DIR;

7. provide the Authority all information required by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of any contract (<https://www.dir.ca.gov/pwc100ext/>);

8. cause its contractors to post job site notices, as prescribed by regulation by the DIR; and

9. cause its contractors to furnish payroll records required by California Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

ii. The Partnership and NCRC shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Authority) the Authority against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Partnership and NCRC, their contractor and subcontractors) to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., to meet the conditions of California Labor Code Section 1771.4, and implementing regulations of the DIR, or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and 1771.4, and the implementing regulations of the DIR, in connection with the performance of the Permitted Work.

15. Liens. NCRC shall not permit any lien, charge or encumbrance to be filed against title to the Authority Retained Property in connection with their rights or obligations under this Agreement. If any claim of lien is filed against the Authority Retained Property, the Partnership and NCRC shall, within twenty (20) days after such filing, either pay and fully discharge the lien, or provide the Authority with assurance satisfactory to the Authority that the claim of lien, charge, or encumbrance will be paid or discharged. If the Partnership and NCRC fail to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then the Authority may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at the Partnership's and/or NCRC's expense and the Partnership and NCRC as applicable shall reimburse the Authority for the cost thereof within ten (10) days after written demand by the Authority.

16. Nondiscrimination. During the performance of the Permitted Work there shall be no discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work.

17. Release. The Partnership and NCRC accept the Authority Retained Property as provided in this Agreement for the performance of the Permitted Work in its current "as-is" condition including all faults, or defects, or hazardous conditions known or unknown (if any). The Authority shall not be liable to the Partnership and/or NCRC for, and the Partnership and NCRC hereby waive and release the Authority, its commissioners, officers, directors, employees, agents, successors, and assigns (collectively, the "Released Parties") from, any and all liability, whether in contract, tort or on any other basis, for any injury, damage, or loss resulting from or attributable to an occurrence on the Authority Retained Property, the condition of the Authority Retained Property, or the use of the Authority Retained Property, in each case for the performance of the Permitted Work pursuant to this Agreement. The Partnership and NCRC hereby waive and agrees not to commence any action, legal proceeding, cause of action, or suits in law and equity, of whatever kind and nature, directly or indirectly against the Released Parties in connection with the Partnership's and/or NCRC's use of the Authority Retained Property pursuant to this Agreement and the Partnership and NCRC on their own behalf, and on behalf of

any other party claiming by or through the Partnership and NCRC, expressly waives the provisions of Section 1542 of the California Civil Code which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

NCRC's Initials: _____

Partnership's Initials: _____

The Partnership and NCRC acknowledges that the release set forth above is an integral part of this Agreement, and that Authority would not have agreed to enter into this Agreement without the release set forth above. This release shall survive termination and expiration of the Agreement.

18. Indemnification. The Partnership and NCRC shall indemnify, defend and hold harmless the Authority, its commissioners, directors, officers, employees, agents, successors and assigns (collectively, the "Indemnitees") from and against all claims, loss, damage, actions, causes of action, expense (including but not limited to reasonable attorney's fees and expenses related to mechanics liens claims) and/or liability arising from or related to this Agreement, the performance of the Permitted Work, or the Partnership's or NCRC's or any Project Licensee's use or occupancy of the Authority Retained Property for the performance of the Permitted Work, including without limitation, any action, or failure to act by the Partnership or NCRC or any other party claiming any rights under the Partnership or NCRC. This indemnity shall not apply to any claim arising from the Indemnitees' gross negligence or willful misconduct. This indemnity shall survive the expiration or termination of this Agreement.

19. Default. In the event of any breach of this Agreement by the Partnership or NCRC, the Authority will give written notice describing the breach and thirty (30) days in which to cure; provided, however that if such cure cannot reasonably be completed within such thirty (30) day period, then the Partnership and/or NCRC as applicable shall have such additional period as shall be reasonably necessary to cure such default, provided that the Partnership and/or NCRC as applicable commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion no later than sixty (60) days after the date of Authority's written notice of breach to the Partnership and/or NCRC as applicable. Should the Partnership and/or NCRC as applicable fail to cure such breach within such cure period, the Authority may enforce all the remedies available to it at law or in equity, including, but not limited to, specific performance, and an action for damages. The Authority may also cancel and terminate this Agreement in the event of a default by the Partnership and/or NCRC as applicable which is not cured within the period provided herein. The rights and remedies of the Authority are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by the Authority shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the Partnership and/or NCRC as

applicable. Upon such termination, the Authority will have the right to remove from the Authority Retained Property any personal property placed on the Authority Retained Property by the Project Licensees, including but not limited to, any equipment, structures and improvements.

20. Quitclaim. At any time following termination of this Agreement, within ten (10) days of request by the Authority to the Partnership and/or NCRC, the Partnership and/or NCRC shall provide a quitclaim deed as may be required by a title company in order to eliminate or release any claims that the Partnership and/or NCRC, its officers, contractors, or employees or other third parties may have related to this Agreement, the activities contemplated hereunder. The provisions of this paragraph shall survive termination or expiration of this Agreement.

21. Attorneys' Fees. In the event of any action or proceeding at law or in equity between the Authority and the Partnership and/or NCRC to enforce any provision of this Agreement or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred therein by such prevailing party, and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment.

22. Notices. All notices required to be given by either party shall be made in writing and may be effected (i) by personal delivery, (ii) via reputable overnight courier service, or (iii) by mail, registered or certified, postage prepaid with return receipt requested. Couriered and mailed notices must be addressed to the Parties at the addresses, appearing below in this Section, but any party may change its designated address by giving written notice to the other Parties in accordance with this Section. Notices delivered personally will be deemed communicated as of actual receipt; notices sent via overnight courier will be deemed communicated as of the date delivered by the courier; mailed notices will be deemed communicated as of the date of receipt or the third day after mailing, whichever occurs first. The Parties' addresses are as follows:

Authority: Housing Authority of the County of San Bernardino
715 East Brier Drive
San Bernardino, CA 92408-2841
Attn: Executive Director

Partnership: Waterman Gardens Partners 2, L.P.
9421 Haven Avenue
Rancho Cucamonga, CA 91730
Attn: President/CFO

NCRC: National Community Renaissance of California
9421 Haven Avenue
Rancho Cucamonga, CA 91730
Attn: General Counsel

23. Governing Law. This Agreement is governed by and construed in accordance with California law, without resort to choice of law principles.

24. Binding on Successors. This Agreement and the Parties' respective obligations hereunder are binding upon, and inure to the benefit of, the Parties' respective representatives, successors, and assigns.

25. No Right to Develop; Non-Possessory Interest. The Partnership and NCRC acknowledge that this Agreement merely permits the Partnership and NCRC the limited right to enter the Authority Retained Property, as set forth herein, to perform the Permitted Work and does not grant any other right to use or otherwise develop the Authority Retained Property. Notwithstanding the limited right to enter granted herein, the Authority retains full ownership and possession of the Authority Retained Property, and neither the Partnership nor NCRC will acquire any ownership interest, or estate in the Authority Retained Property, whether temporary, permanent, revocable, or irrevocable, possessory, or otherwise, by reason of this Agreement, or by the exercise of the rights granted herein. The Partnership and NCRC will make no claim to any such estate or interest and hereby waive and relinquish any and all right or claim they has or may have in or to any such estate or interest.

26. Relationship of Parties; No Third Party Beneficiaries.

a. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the Authority on one hand, and the Partnership and NCRC on the other, and the Partnership and NCRC shall at all times be wholly responsible for the manner in which they or their agents, or both, perform the services required of it by the terms of this Agreement. The Authority shall not have any liability or duty to any person, firm, corporation, or governmental body for any act of omission or commission, liability, or obligation of the Partnership and/or NCRC, whether arising from actions under this Agreement or otherwise.

b. This Agreement is made and entered into only for the protection and benefit of the Parties and their respective successors and permitted assigns. No other person shall have or acquire any right or action of any kind based upon the provisions of this Agreement except as explicitly provided to the contrary in this Agreement.

27. Entire Agreement. This Agreement constitutes the sole understanding of the Parties with respect to the subject matter of this Agreement, and may not be amended or modified except in writing signed by the Parties. The Partnership and NCRC have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including, but not limited to Civil Code Section 1654, as may be amended from time to time) shall not apply to the interpretation of this Agreement.

28. Waiver. No waiver of any right under this Agreement shall be deemed effective unless contained in a writing signed by the Party charged with the waiver. No waiver of any breach or any failure to perform shall be deemed to be a waiver of any future breach or failure to perform or of any other right arising under this Agreement.

29. Assignment. This license is personal to the Partnership and NCRC and neither the Partnership nor NCRC may assign this Agreement in whole or in part.

30. Severability. If any provision of this Agreement or the application of any provision to any person or circumstances is deemed to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

31. Multiple Originals; Counterparts. This Agreement may be executed in counterparts and multiple originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

32. Time. In all matters under this Agreement, the Parties agree that time is of the essence.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

AUTHORITY:

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a public body, corporate and politic

By: _____
Maria Razo, Executive Director

PARTNERSHIP:

WATERMAN GARDENS PARTNERS 2, L.P., a California limited partnership

By: WG PARTNERS 2 MGP, LLC, a California limited liability company, its general partner

By: National Community Renaissance of California, a California nonprofit public benefit corporation, its sole member and manager

By: _____
Michael Finn
Chief Financial Officer

NCRC:

NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA, a California nonprofit public benefit corporation

By: _____
Michael Finn
Chief Financial Officer

EXHIBIT A

MAP

EXHIBIT B

PARTNERSHIP IMPROVEMENTS

EXHIBIT C

INFRASTRUCTURE IMPROVEMENTS

EXHIBIT D

DIAGRAM OF PERMITTED WORK

EXHIBIT E

NCRC INSURANCE REQUIREMENTS

NCRC shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Exhibit.

Section 1. Commercial General Liability insurance for the Permitted Work written on an occurrence form with policy limits of not less than Two Million Dollars (\$2,000,000) each occurrence, Four Million Dollars (\$4,000,000) general aggregate, and Four Million Dollars (\$4,000,000) aggregate for products-completed operations hazard, providing coverage for claims including:

- .a damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .b personal and advertising injury;
- .c damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .d bodily injury or property damage arising out of completed operations; and
- .e NCRC's indemnity obligations under this Agreement.

In addition to the commercial general liability insurance set forth above, NCRC shall obtain an "installation floater" or equivalent builder's risk property insurance covering NCRC's interest in the Site and all of NCRC's total equipment and personal property during the course of construction.

Section 2. Automobile Liability covering vehicles owned by NCRC and non-owned vehicles used by NCRC, with policy limits of not less than Two Million Dollars (\$2,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

Section 3. NCRC may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required above, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

Section 4. Workers' Compensation at statutory limits.

Section 5. Employers' Liability with policy limits not less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, and One Million (\$1,000,000) policy limit.

Section 6. If NCRC is required to furnish professional services as part of the Work, NCRC shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate.

Section 7. If the Work involves the transport, dissemination, use, or release of pollutants, NCRC shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate endorsed to include Non-Owned Disposal Site coverage. Coverage must be maintained for at least three (3) years after completion of the Permitted Work.

Section 8. NCRC shall provide certificates of insurance acceptable to the Authority evidencing compliance with the requirements in this Exhibit at the following times: (i) prior to commencement of the Permitted Work; (ii) upon renewal or replacement of each required policy of insurance; and (iii) upon the Authority's written request. The certificates will show the Authority as an additional insured on NCRC's Commercial General Liability and excess or umbrella liability policy.

Section 9. NCRC shall disclose to the Authority any deductible or self- insured retentions applicable to any insurance required to be provided by NCRC.

Section 10. To the fullest extent permitted by law, NCRC shall cause the commercial liability coverage required by this Exhibit to include the Authority as an additional insured for claims caused in whole or in part by NCRC's negligent acts or omissions during NCRC's operations. The additional insured coverage shall be primary and non-contributory to any of the Authority's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04.

Section 11. Within three (3) business days of the date NCRC becomes aware of an impending or actual cancellation or expiration of any insurance required by this Exhibit, NCRC shall provide notice to the Authority of such impending or actual cancellation or expiration. Upon receipt of notice from NCRC, the Authority shall, unless the lapse in coverage arises from an act or omission of the Authority, have the right to stop the Permitted Work until the lapse in coverage has been cured by the procurement of replacement coverage by NCRC. The furnishing of notice by NCRC shall not relieve NCRC of any contractual obligation to provide any required coverage.

Section 12 . The Authority and such other persons and entities as may be designated by Authority in writing, shall be named as additional insureds under the policies required by Sections 1 and 2, by way of endorsement acceptable to Authority. The Additional Insured endorsement shall provide coverage arising out of both ongoing and completed operations. The endorsement must specify NCRC as the named insured and shall include the policy number and expiration date. The additional insured endorsement shall provide that the insurance is primary insurance with respect to the interests of such additional insureds, and that any other insurance or self insurance maintained by or available to the additional insured shall be excess and non-

contributory with the insurance provided hereunder. The coverage provided to the additional insureds must be at least as broad as that provided to NCRC and may not contain any additional exclusionary language or limitations applicable to the additional insureds. The endorsement shall provide that no act or omission of an additional insured shall affect or limit the coverage otherwise provided.

Section 13. In no event shall any failure of the Authority to receive certified copies or certificates of policies required under this Exhibit or to demand receipt of such certified copies or certificates prior to NCRC's commencing the Work be construed as a waiver by the Authority of NCRC's obligations to obtain insurance pursuant to this Exhibit. The obligation to procure and maintain any insurance required by this Exhibit is a separate responsibility of NCRC and independent of the duty to furnish a certified copy or certificate of such insurance policies.

Section 14. When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, NCRC shall supply the Authority with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, NCRC shall also furnish the Authority with a certified copy of the renewal or replacement policy unless the Authority provides NCRC with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Authority and written by carriers acceptable to the Authority.

Section 15. If NCRC fails to purchase and maintain, or require to be purchased or maintained, any insurance required under this Exhibit, the Authority may, but shall not be obligated to, (i) upon five (5) days' written notice to NCRC, purchase such insurance on behalf of NCRC and shall be entitled to be reimbursed by NCRC upon demand, or (ii) terminate this Agreement, and Authority shall retain all remedies for breach of this Agreement. If NCRC fails to obtain insurance required by this Contract, NCRC shall fully indemnify, defend and hold harmless the Authority and its commissioners, officers, directors, employees and agents from any and all claims for which the required insurance would have provided coverage.

Section 16. Any aggregate limit under NCRC's liability insurance shall, by endorsement, apply to the Permitted Work separately.

Section 17. None of the requirements contained herein as to types, limits and acceptability of insurance coverages to be maintained by NCRC are intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by NCRC under the Agreement or at law, including without limitation, NCRC's indemnification obligations and liability in excess of the limits and coverages required herein. Neither receipt of certificates, endorsements, or policies showing less or different coverage than required, nor any other forbearance or omission by or for the Authority, shall be deemed a waiver of, or estoppel to assert, any right or obligation regarding the insurance requirements herein. NCRC shall be solely responsible to pay any amount that lies within the deductible or self-insured retention of NCRC's insurance policies,

regardless of the amount of the deductible or self-insured retention and regardless of the cause of the loss, injury or damage.