

**RIGHT OF FIRST REFUSAL AGREEMENT**  
(Arrowhead Grove Apartments Phase II)

This RIGHT OF FIRST REFUSAL AGREEMENT (the “**Agreement**”) is made and entered into as of [\_\_\_\_\_, 2019], among WATERMAN GARDENS PARTNERS 2, L.P., a California limited partnership (the “**Owner**”) and the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a public body, corporate and politic (“**Grantee**”), and is consented to by WG PARTNERS 2 MGP, LLC, a California limited liability company (the “**General Partner**”), WATERMAN AFFORDABLE 3 LLC, a California limited liability company (the “**HA Limited Partner**”), WG 2 DGP LLC, a Massachusetts limited liability company (the “**Clancy Limited Partner**”), BANK OF AMERICA, N.A., a national banking association (the “**Investor Limited Partner**”), BANC OF AMERICA CDC SPECIAL HOLDING COMPANY, INC., a North Carolina corporation (the “**Special Limited Partner**”). The General Partner, the HA Limited Partner, the Clancy Limited Partner, the Investor Limited Partner and the Special Limited Partner are sometimes collectively referred to herein as the “**Consenting Partners**”.

**Recitals**

A. The Owner, pursuant to its Amended and Restated Agreement of Limited Partnership dated as of [\_\_\_\_\_, 2019] by and among the Consenting Partners (the “**Partnership Agreement**”), is engaged in the ownership and operation of a 184-unit apartment complex located in San Bernardino, California known as Arrowhead Grove Apartments Phase II (the “**Project**”). The real property comprising the Project is legally defined on **Exhibit A**.

B. The Grantee is an Affiliate of the HA Limited Partner and is instrumental to the development of the Project; and

C. The Owner desires to give, grant, bargain, sell and convey to the Grantee certain rights of first refusal to purchase the Project on the terms and conditions set forth herein;

D. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Partnership Agreement.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which the parties hereto acknowledge, the parties hereby agree as follows:

**Section 1.     Right of First Refusal**

The Owner hereby grants to the Grantee a right of first refusal (the “**Refusal Right**”) to purchase the real estate, fixtures, and personal property comprising the Project or associated with the physical operation thereof and owned by the Owner at the time (the “**Property**”), for the price and subject to the other terms and conditions set forth below.

## Section 2. Exercise of Refusal Right

A. In the event that the Owner receives a bona fide offer to purchase the Property at any time during the period beginning on the date of termination of the Compliance Period and continuing until the fifth anniversary thereof, the Owner shall give the Grantee notice of its receipt of such offer to purchase the Property (the “**Offer Notice**”) and shall deliver a copy of the Offer Notice to each of the Consenting Partners. The Grantee shall have a period of sixty (60) days from the date of receipt of the Offer Notice to elect to exercise its Refusal Right by delivering written notice to the Owner of its election to do so (the “**Election Notice**”) and a copy of the Election Notice to each of the Consenting Partners. All costs of the exercise of the Refusal Right, including without limitation any filing or recording fees and applicable transfer taxes, shall be paid by the Grantee.

B. If Grantee fails to deliver the Election Notice within sixty (60) days of receipt of the Offer Notice, or if such Election Notice is delivered but the Grantee does not consummate the purchase of the Property within ninety (90) days from the date of delivery of the Election Notice, then its Refusal Right shall terminate. Thereafter, the Owner shall be permitted to sell the Property free of the Refusal Right.

C. Notwithstanding anything to the contrary herein, the right of the Grantee to exercise the Refusal Right and consummate any purchase pursuant thereto is contingent on each of the following being true and correct at the time of exercise and purchase:

(i) the HA Limited Partner shall be continuing to serve as a limited partner of the Owner and shall not be in material default under the Partnership Agreement,

(ii) neither the Grantee nor any Affiliate of the Grantee shall be in material default under any agreement with the Owner, the Investor Limited Partner, or the Special Limited Partner, and

(iii) the Grantee shall be a government agency or a “qualified nonprofit organization” as defined in Section 42(h)(5)(C) of the Code.

D. The closing on the sale of the Property shall take place in San Bernardino, California at the time and place set forth in the Election Notice (the “**Closing**”).

## Section 3. Purchase Price

A. The Property’s purchase price under the Refusal Right (the “**Purchase Price**”) shall be the sum of:

(i) the outstanding principal, accrued interest, any prepayment penalty and any other amounts due under any and all mortgage loan documents relating to the Property, whether or not such amounts are due upon sale, and the total amount of all other indebtedness of Owner as of the date of Closing (collectively, the “**Loans**”); and

(ii) an amount sufficient to assure receipt by the Investor Limited Partner from the proceeds of the sale of the Property (when distributed pursuant to liquidation provisions in the Partnership Agreement) of an amount not less than the sum of all federal, state and local taxes, including without limitation, all income taxes due upon sale, incurred or to be incurred by the Investor Limited Partner (or its constituent partners or members) as a result of such sale, plus the amount of any theretofore unpaid Credit Adjustment payments and other unpaid obligations to which the Investor Limited Partner is entitled under the Partnership Agreement, plus the amount of any unpaid obligations owed to the Investor Limited Partner; and

(iii) an amount sufficient to assure receipt by the General Partner from the proceeds of the sale of the Property (when distributed pursuant to liquidation provisions in the Partnership Agreement) of (a) an amount not less than the sum of all federal, state and local taxes, including without limitation, all income taxes due upon sale, incurred or to be incurred by the General Partner (or its constituent partners or members) as a result of such sale, plus (b) the amount of any amounts then owing from the Owner to the General Partner or any affiliate of the General Partner, whether as loan repayment, unpaid fee, or otherwise, plus (c) a disposition fee equal to \$[3,648,000], which the parties acknowledge to be [fifty-seven percent (57%)] of the General Partner's initial capital contribution to the Owner; and

(iv) an amount sufficient to assure receipt by the Clancy Limited Partner from the proceeds of the sale of the Property (when distributed pursuant to liquidation provisions in the Partnership Agreement) of (a) an amount not less than the sum of all federal, state and local taxes, including without limitation, all income taxes due upon sale, incurred or to be incurred by the Clancy Limited Partner (or its constituent partners or members) as a result of such sale, plus (b) the amount of any amounts then owing from the Owner to the Clancy Limited Partner or any affiliate of the Clancy Limited Partner, whether as loan repayment, unpaid fee, or otherwise, plus (c) a disposition fee equal to \$[640,000], which the parties acknowledge to be ten percent (10%) of the General Partner's initial capital contribution to the Owner.

In computing such amounts, it shall be assumed that each of the Partners of the Owner (or their constituent partners or members) has an effective combined federal, state and local income tax rate equal to the maximum of such rates in effect on the date of Closing; and

B. Notwithstanding the foregoing, however, the Purchase Price shall never be less than the amount of the "minimum purchase price" as defined in Section 42(i)(7)(B) of the Code.

#### Section 4. Payment of Purchase Price

The Purchase Price shall be paid at Closing in one of the following methods:

(i) the payment of all cash or immediately available funds at Closing,  
or

(ii) the assumption of any assumable Loans if Grantee has obtained the consent of the lenders to the assumption of such Loans, which consent shall be secured at the sole cost and expense of Grantee; provided, however, that any Purchase Price balance remaining after the assumption of the Loans shall be paid by Grantee in immediately available funds.

#### Section 5. Conditions Precedent; Termination

A. Notwithstanding anything in this Agreement to the contrary, the Refusal Right granted hereunder shall be contingent on the following being true and correct at the time of exercise of the Refusal Right and any purchase pursuant thereto: neither the Grantee nor any Affiliate of the Grantee is in material default under the Partnership Agreement or any agreement with the Owner, the Investor Limited Partner or the Special Limited Partner. If such condition precedent is not satisfied, the Refusal Right shall not be exercisable and the Agreement shall be of no further force and effect.

B. This Agreement shall automatically terminate upon the occurrence of any of the following events and, if terminated, shall not be reinstated unless such reinstatement is agreed to in a writing signed by the Grantee and each of the Consenting Partners:

(i) the Transfer of the Property to a lender in total or partial satisfaction of any loan; or

(ii) any Transfer or attempted Transfer of all or any part of the Refusal Right, whether by operation of law or otherwise, except as otherwise permitted under Section 8 of this Agreement; or

(iii) the removal of the HA Limited Partner under the Partnership Agreement; or

(iv) the Project ceases to be a “qualified low-income housing project” within the meaning of Section 42 of the Code.

#### Section 6. Contract and Closing

Upon determination of the purchase price, the Owner and the Grantee shall enter into a written contract for the purchase and sale of the Property in accordance with the terms of this Agreement and containing such other terms and conditions as are standard and customary for similar commercial transactions in the geographic area which the Property is located, providing for a closing not later than the date specified in the Election Notice or thirty (30) days after the Purchase Price has been determined, whichever is later. In the absence of any such contract, this Agreement shall be specifically enforceable upon the exercise of the Refusal Right.

#### Section 7. Conveyance and Condition of the Property

The Owner's right, title and interest in the Property shall be conveyed by quitclaim deed, subject to such liens, encumbrances and parties in possession as shall exist as of the date of Closing. The Grantee shall accept the Property "AS IS, WHERE IS" and "WITH ALL FAULTS AND DEFECTS," latent or otherwise, without any warranty or representation as to the condition thereof whatsoever, including without limitation, without any warranty as to fitness for a particular purpose, habitability, or otherwise and no indemnity for hazardous waste or other conditions with respect to the Property will be provided. It is a condition to Closing that all amounts due to the Owner and the Investor Limited Partner from the Grantee or its Affiliates be paid in full. The Grantee shall pay all closing costs, including, without limitation, the Owner's attorney's fees. Upon closing, the Owner shall deliver to the Grantee, along with the deed to the property, an ALTA owner's title insurance policy dated as of the close of escrow in the amount of the purchase price, subject to the liens, encumbrances and other exceptions then affecting the title.

Section 8.     Transfer.

The Refusal Right shall not be Transferred to any Person without the Consent of the Investor Limited Partner. In the case of any such permitted transfer, (i) all conditions and restrictions applicable to the exercise of the Refusal Right or the purchase of the Property pursuant thereto shall also apply to such transferee, and (ii) such transferee shall be disqualified from the exercise of any rights hereunder at all times during which Grantee would have been ineligible to exercise such rights hereunder had it not effected such transfer.

Section 9.     Rights Subordinate; Priority of Requirements of Section 42 of the Code

This Agreement is subordinate in all respects to any regulatory agreements and to the terms and conditions of the Mortgage Loans encumbering the Property. In addition, it is the intention of the parties that nothing in this Agreement be construed to affect the Owner's status as owner of the Project for federal income tax purposes prior to exercise of the Refusal Right granted hereunder. Accordingly, notwithstanding anything to the contrary contained herein, both the grant and the exercise of the Refusal Right shall be subject in all respects to all applicable provisions of Section 42 of the Code, including, in particular, Section 42(i)(7). In the event of a conflict between the provisions contained in this Agreement and Section 42 of the Code, the provisions of Section 42 shall control.

Section 10.    Alternative Purchase of Partnership Interests

Notwithstanding the foregoing, if the Service hereafter issues public authority to permit the owner of a low-income housing tax credit project to grant a "right of first refusal to purchase partnership interests" pursuant to Section 42(i)(7) of the Code as opposed to a "right of first refusal to purchase the Property" without adversely affecting the status of such owner as owner of its project for federal income tax purposes, the Grantee may, at its election, in lieu of a direct acquisition of the Property pursuant to the Refusal Right, acquire the partnership interests (but not less than all of such interests) of all the partners of the Owner for a purchase price to each of them equal to the amount which would be distributable to each such partner upon liquidation of the Owner following any sale of the Property under the Refusal Right at the Purchase Price as calculated under Section 3.

#### Section 11. Option to Purchase

The parties hereto agree that if the Service hereafter issues public authority to permit the owner of a low-income housing tax credit project to grant an "option to purchase" pursuant to Section 42(i)(7) of the Code as opposed to a "right of first refusal" without adversely affecting the status of such owner as owner of its project for federal income tax purposes, then the parties shall amend this Agreement and the Owner shall grant the Grantee an option to purchase the Property at the Purchase Price.

#### Section 12. Notice

Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given and received (i) two (2) business days after being deposited in the United States mail and sent by certified or registered mail, postage prepaid, (ii) one (1) business day after being delivered to a nationally recognized overnight delivery service, (iii) on the day sent by telecopier or other facsimile transmission, answer back requested, or (iv) on the day delivered personally, in each case, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to the other party:

(i) If to the Owner, at the principal office of the Owner set forth in Article II of the Partnership Agreement;

(ii) If to a Consenting Partner, at their respective addresses set forth in Exhibit A of the Partnership Agreement;

(iii) If to the Grantee, at 715 East Brier Drive, San Bernardino, California 92408-2841, Attn: Executive Director,

in each case, with copies to Buchalter, a Professional Corporation, 1000 Wilshire Blvd., Suite 1500, Los Angeles, California, 90017-2457, Attn: Michael A. Williamson, Esq. and Klein Hornig LLP at 1325 G Street NW, Suite 770, Washington, DC 20005, Attn: Chris Hornig, Esq.

#### Section 13. Severability of Provisions

Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

#### Section 14. Binding Provisions

The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assignees of the respective parties hereto, except in each case as expressly provided to the contrary in this Agreement.

#### Section 15. Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart.

Section 16. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the State of California, without regard to principles of conflicts of law.

Section 17. Headings

All headings in this Agreement are for convenience of reference only. Masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

Section 18. Amendments

This Agreement shall not be amended except by written agreement between Grantee and the Owner with the consent of each of the Consenting Partners.

Section 19. Time

Time is of the essence with respect to this Agreement, and all provisions relating thereto shall be so construed.

Section 20. Legal Fees

Except as otherwise provided herein, in the event that legal proceedings are commenced by the Owner against the Grantee or by the Grantee against the Owner in connection with this Agreement or the transactions contemplated hereby, the prevailing party shall be entitled to recover all reasonable attorney's fees and expenses.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first stated above.

**OWNER:**

**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: \_\_\_\_\_  
Name: Michael Finn  
Title: Chief Financial Officer

**GRANTEE:**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



The undersigned hereby consent to the foregoing Agreement as of the date first set forth hereinabove.

**INVESTOR LIMITED PARTNER:**

**BANK OF AMERICA, N.A.,**  
a national banking association

By: \_\_\_\_\_  
Name: Casey Carpenter  
Title: Vice President

**SPECIAL LIMITED PARTNER:**

**BANC OF AMERICA CDC SPECIAL  
HOLDING COMPANY, INC.,**  
a North Carolina corporation

By: \_\_\_\_\_  
Name: Casey Carpenter  
Title: Vice President

The undersigned hereby consent to the foregoing Agreement as of the date first set forth hereinabove.

**GENERAL PARTNER:**

**WG PARTNERS 2 MGP, LLC,**  
a California limited liability company

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

By: \_\_\_\_\_  
Name: Michael Finn  
Title: Chief Financial Officer

**HA LIMITED PARTNER:**

**WATERMAN AFFORDABLE 3 LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_ [signature block to be confirmed]

**CLANCY LIMITED PARTNER:**

**WG 2 DGP LLC,**  
a Massachusetts limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_ [signature block to be confirmed]

EXHIBIT A  
LEGAL DESCRIPTION

[to be inserted]