



Contract Number

19-5491

SAP Number

Community Development and Housing

Department Contract Representative
Telephone Number

Gary Hallen
909-387-4411

Contractor
Contractor Representative
Telephone Number
Contract Term
Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

Waterman Gardens Partners 2, L.P.
Ashley Wright
(909) 204-3429
08/2076
\$2,900,000
N/A
\$2,900,000
6210002472

Briefly describe the general nature of the contract: Approval of the HOME Loan Agreement will allow CDH to support the construction of 147 affordable units in the Arrowhead Grove Phase II Affordable Housing Project.

FOR COUNTY USE ONLY

Approved as to Legal Form

Robert Messinger, Principal Assistant County Counsel

Date 8/5/19

Reviewed for Contract Compliance

Date

Reviewed/Approved by Department

Dena Fuentes, Deputy Executive Officer

Date 8/5/19

HOME INVESTMENT PARTNERSHIPS ACT LOAN AGREEMENT

Between

COUNTY OF SAN BERNARDINO

and

Waterman Gardens Partners 2, L.P.

(Arrowhead Grove Phase II)

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS AND EXHIBITS	2
Section 1.1 Definitions.	2
Section 1.2 Exhibits.	11
ARTICLE 2. LOAN PROVISIONS	11
Section 2.1 Loan.	11
Section 2.2 Interest.	11
Section 2.3 Use of Loan Funds.	12
Section 2.4 Security.	12
Section 2.5 Subordination.	13
Section 2.6 Conditions Precedent to Disbursement of Loan Funds.	14
Section 2.7 Repayment Schedule.	18
Section 2.8 Non-Recourse.	19
ARTICLE 3. CONSTRUCTION OF THE DEVELOPMENT	20
Section 3.1 Schedule of Performance.	20
Section 3.2 Permits and Approvals.	20
Section 3.3 Construction Contract.	20
Section 3.4 Bid Package.	21
Section 3.5 Construction Bonds.	21
Section 3.6 Commencement of Construction.	22
Section 3.7 Completion of Construction.	22
Section 3.8 Construction Pursuant to Plans and Laws; Prevailing Wages; Accessibility.	22
Section 3.9 Equal Opportunity.	24
Section 3.10 Minority and Women-Owned Contractors.	25
Section 3.11 Progress Reports.	25
Section 3.12 Construction Responsibilities.	25
Section 3.13 Mechanics Liens, Stop Notices, and Notices of Completion.	26
Section 3.14 Inspections.	26
Section 3.15 Approved Development Budget; Revisions to Budget.	27
Section 3.16 Developer Fee.	27
Section 3.17 Marketing Plan.	28
Section 3.18 Tenant Services Plan and Budget.	28
Section 3.19 AHSC Grant.	29
ARTICLE 4. LOAN REQUIREMENTS	29
Section 4.1 HOME Match and Per Unit Subsidy Requirement.	29
Section 4.2 Financial Accountings and Post-Completion Audits.	29
Section 4.3 Annual Operating Budget.	29
Section 4.4 Information.	30
Section 4.5 Records.	30

TABLE OF CONTENTS

	<u>Page</u>
Section 4.6 County Audits.	31
Section 4.7 HOME Requirements.	32
Section 4.8 Hazardous Materials.	36
Section 4.9 Maintenance and Damage.	38
Section 4.10 Fees and Taxes.	39
Section 4.11 Notice of Litigation.	39
Section 4.12 Operation of Development as Affordable Housing.	39
Section 4.13 Nondiscrimination.	40
Section 4.14 Transfer.	40
Section 4.15 Insurance Requirements.	42
Section 4.16 Anti-Lobbying Certification.	46
Section 4.17 Covenants Regarding Approved Financing.	46
Section 4.18 Affordability and Project Monitoring.	47
Section 4.19 Crime-Free Multi-Housing Unit Program Participation.	48
ARTICLE 5. REPRESENTATIONS AND WARRANTIES OF BORROWER.	48
Section 5.1 Representations and Warranties.	48
ARTICLE 6. DEFAULT AND REMEDIES.	50
Section 6.1 Events of Default.	50
Section 6.2 Remedies.	52
Section 6.3 Right of Contest.	53
Section 6.4 Remedies Cumulative.	53
Section 6.5 Limited Partner Cure Rights	53
ARTICLE 7. GENERAL PROVISIONS	53
Section 7.1 Relationship of Parties.	53
Section 7.2 No Claims.	54
Section 7.3 Discretion Retained By County.	54
Section 7.4 Indemnification.	54
Section 7.5 Non-Liability of County Officials, Employees and Agents.	54
Section 7.6 No Third Party Beneficiaries.	55
Section 7.7 Conflict of Interest.	55
Section 7.8 Notices, Demands and Communications.	55
Section 7.9 Amendments.	57
Section 7.10 County Approval.	57
Section 7.11 Applicable Law and Venue.	57
Section 7.12 Parties Bound.	57
Section 7.13 Attorneys' Fees.	58
Section 7.14 Severability.	58
Section 7.15 Force Majeure.	58
Section 7.16 Waivers.	58
Section 7.17 Title of Parts and Sections.	58

TABLE OF CONTENTS

	<u>Page</u>
Section 7.18 Entire Understanding of the Parties	59
Section 7.19 Multiple Originals; Counterpart.....	59
Section 7.21 Action by the County.....	59
Exhibit A: Legal Description of the Property	
Exhibit B: Approved Development Budget	
Exhibit C: Schedule of Performance	
Exhibit D: Form of Promissory Note	
Exhibit E: Form of Leasehold Deed of Trust	
Exhibit F: Form of Regulatory Agreement	
Exhibit G: Certification of Continuing Program Compliance	
Exhibit H: Section 3 Compliance	
Exhibit I: Statement of Residual Receipts	

HOME INVESTMENT PARTNERSHIPS ACT LOAN AGREEMENT
(Arrowhead Grove Phase II)

This HOME Investment Partnerships Act Loan Agreement (the "Agreement") is dated August 6, 2019 (the "Effective Date"), and is between the County of San Bernardino, a political subdivision of the State of California (the "County"), and Waterman Gardens Partners 2, L.P., a California limited partnership ("Borrower").

RECITALS

A. Defined terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. Pursuant to the terms of the Sub-Recipient Agreement, the County has received Home Investment Partnerships Act funds from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Housing Act of 1990 ("HOME Funds"). The HOME Funds must be used by the County in accordance with 24 C.F.R. Part 92 (the "HOME Regulations").

C. The Housing Authority of the County of San Bernardino (the "Housing Authority") owns fee title interest in the real property located west of Crestview Avenue between Baseline Road and Olive Street, in the City of San Bernardino, named in Revised Tentative Tract Map 18829 as Parcels C & D, and said to be located within current APN's 0147-211-24 & 0147-211-25, County of San Bernardino, State of California, as more particularly described in Exhibit A (the "Property"). The Borrower will lease the Property from the Housing Authority pursuant to a long-term ground lease (the "Housing Lease").

D. The Property is part of the larger phased redevelopment of public housing units under the Rental Assistance Demonstration ("RAD") Program under which the Housing Authority obtained specified rights to develop, construct and maintain up to four hundred eleven (411) residential units, with not less than two hundred fifty-two (252) RAD replacement units. To date, Borrower has developed Phase 1a consisting of seventy-six (76) units offsite with seventy-five (75) units being RAD replacement units, and Phase 1b consisting of sixty-two (62) units with sixty-one (61) being RAD replacement units.

E. As part of the second phase of the redevelopment project, the Borrower intends to construct approximately one hundred forty-seven (147) multi-family affordable rental units (the "Improvements"). The Improvements and the Property are referred to as the "Development." The second phase of the redevelopment project also includes thirty-five (35) market rate units and two (2) manager's units which will not be assisted with the HOME funds.

F. The County and Borrower's predecessor in interest, National Community Renaissance of California, a California nonprofit public benefit corporation ("NCRC") entered into that certain Predevelopment Loan Agreement date July 24, 2018, under which the County provide financial assistance in the amount of up to One Million Four Hundred Eighty-Seven Thousand Four Hundred Fifty Dollars (\$1,487,450) (the "Predevelopment Loan") in HOME

CHDO Funds to finance certain specified predevelopment activities associated with the Development.

G. Borrower desires to borrow from the County and the County desires to lend Borrower Two Million Nine Hundred Thousand Dollars (\$2,900,000) of HOME Funds (the "Loan") to fund eligible activities for the Development as allowed under 24 C.F.R. 92.64. The Loan will be evidenced by the Note and secured by the Deed of Trust, as defined below.

H. The Loan is being made to finance construction costs associated with the Development in order to help achieve financial feasibility for the Development. The Development will increase the supply of affordable rental housing in San Bernardino County. Due to the assistance provided Borrower pursuant to this Agreement, the County has classified fourteen (14) units as HOME-assisted units (each such unit a "HOME-Assisted Unit"), which Units are "fixed" Units as defined in 24 C.F.R. 92.252(j). The HOME-Assisted Units are required to be two (2) of the one-bedroom Units, nine (9) of the two-bedroom Units, and three (3) of the three-bedroom Units, and are to be intermingled throughout the Development and of comparable quality to all other Units and must meet the Uniform Federal Accessibility Standards and Section 3.8(g) below. One Hundred Forty Seven (147) Units are to be made available to, and occupied by, LIHTC-compliant households pursuant to the terms of the Regulatory Agreement.

I. The City of San Bernardino has prepared a Mitigated Negative Declaration under the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") requirements, pursuant to 14 CCR Section 15070. The County, as responsible agency, considered the environmental effects of the Development as show in the Mitigated Negative Declaration and determined that no further CEQA analysis is required pursuant to 14 California Code of Regulations Section 15162.

J. In accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347) ("NEPA"), the County has completed and approved all applicable environmental review for the activities proposed to be undertaken under this Agreement and issued a Finding of No Significant Impact.

The Parties therefore agree as follows:

AGREEMENT

ARTICLE 1. DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

The following terms have the following meanings:

(a) "Affiliate" means an entity that is Controlling or Controlled by Borrower or the County, as applicable. For the purposes of this definition "Control" means (1) direct or indirect management or control of the managing member or members in the case of a limited liability company; (2) direct or indirect management or control of a general partner or general

partners in the case of a partnership; and (3) direct or indirect control of a majority of the directors in the case of a corporation. Notwithstanding anything to the contrary herein, the sole member of the sole general partner of the Borrower shall at all times continue to qualify as a CHDO as defined in 24 C.F.R. 92.2, such that the Borrower qualifies for CHDO set aside HOME Funds.

(b) "Agreement" means this HOME Investment Partnerships Act Loan Agreement.

(c) "AHSC Grant" means an AHSC Program grant from HCD in the amount of Two Million Five Hundred Seventy-Seven Thousand Two Hundred Eighty-Six Dollars (\$2,577,286) granted to NCRC.

(d) "Annual Operating Expenses" means for each calendar year, the following costs reasonably and actually incurred for operation and maintenance of the Development, and subject to the limits contained in the Approved Development Budget:

(1) Property taxes and assessments imposed on the Development;

(2) Debt service and associated fees currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on loans associated with development of the Development and approved by the County;

(3) Property management fees and reimbursements (including deferred payments of previously approved property management fees), on-site property management office expenses, and salaries of property management and maintenance personnel payable to a property manager approved by the County pursuant to the Regulatory Agreement, not to exceed amounts that are standard in the industry and pursuant to a management contract approved by the County pursuant to the Regulatory Agreement;

(4) The Partnership Asset Management Fee;

(5) Fees for accounting, audit, and legal services incurred by Borrower's general partner in the management of the Development, not to exceed amounts that are standard in the industry and to the extent not included in the Partnership Asset Management Fee;

(6) Premiums for property damage and liability insurance;

(7) Utility services not paid for directly by Tenants, including water, sewer, and trash collection;

(8) Maintenance and repair;

(9) Any annual license or certificate of occupancy fees required for operation of the Development;

(10) Security services;

(11) Advertising and marketing;

(12) Cash deposited into an operating reserve in an amount sufficient to replenish the operating reserve to the amount required by the Partnership Agreement approved by the County (approximately Five Hundred Seventy-Nine Thousand Five Hundred Twenty-Five Dollars (\$579,525)) or the amount required in connection with the permanent financing (or any greater amount approved in writing by the County) but with the operating reserve capped at three (3) months gross rent from the Development (as such rent may vary from time to time);

(13) Payment of any previously unpaid portion of the Developer Fee (with interest at the applicable federal rate) due, not to exceed a cumulative Developer Fee in the maximum amount set forth in Section 3.16 below;

(14) Fees or charges due on a non-optional basis on loans associated with the construction of the Development and approved by the County, including but not limited to inspection fees or compliance monitoring fees;

(15) Deposits to a replacement reserve account of Five Hundred Dollars (\$500) per unit per annum, and cash deposited into any other reserve required by lenders of Approved Financing and the Investor Limited Partner including a transition reserve and tenant rent burden protection reserve;

(16) Extraordinary operating costs specifically approved in writing by the County;

(17) Bond monitoring fee, issuer fees, trustee's fees and other fees and cost payable to a trustee and/or issuer in connection with tax-exempt bonds issued as part of financing for the Development;

(18) On-site service provider fees for Tenant Services, provided the County has approved, in writing, the Services Plan and Services Budget, in accordance with Section 3.18 below, before such services begin;

(19) Payments made toward the outstanding balance of the deferred Developer Fee, but only for the first ten (10) years of operation of the Development (measured from the date of issuance of a certificate of occupancy or equivalent document for the Development);

(20) Payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved in writing by the County and not listed above.

Annual Operating Expenses do not include the following: depreciation, amortization, depletion or other non-cash expenses, any amount expended or withdrawn from any reserve account, and any capital cost associated with the Development, as determined by the accountant for Borrower.

(e) "Annual Payment" has the meaning set forth in Section 2.7(b).

(f) "Approved Development Budget" means the proforma development budget, including sources and uses of funds, as approved by the County, and attached hereto and incorporated herein as Exhibit B as such may be modified pursuant to Section 3.15.

(g) "Approved Financing" means all of the following loans, grants and equity obtained by Borrower and approved by the County for the purpose of financing the Development:

(1) A construction loan in the approximate amount of Fifty-Five Million Dollars (\$55,000,000) (the "Construction Loan");

(2) A permanent loan in the approximate amount of Nineteen Million Nine Hundred Nine Thousand Dollars (\$19,909,000) (the "Permanent Loan");

(3) Investor Limited Partner capital contribution in the approximate amount of Twenty-Five Million Eighteen Thousand Thirty-Six Dollars (\$25,018,036) (the "Tax Credit Investor Equity");

(4) An AHSC Program loan from the California Department of Housing and Community Development ("HCD") of approximately Seventeen Million Four Hundred Twenty-Two Thousand Seven Hundred Fourteen Dollars (\$17,422,714) (the "AHSC Loan")

(5) A loan from the City of approximately One Million Five Hundred Thousand Dollars (\$1,500,000), consisting of Neighborhood Stabilization Program funds (the "City NSP Loan");

(6) A loan from the City of approximately Eight Hundred Thirty Thousand Dollars (\$830,000), consisting of HOME program funds (the "City HOME Loan");

(7) A loan from NCRC, reloaning funds from Dignity Health in the approximate amount of One Million Two Hundred Thousand Dollars (\$1,200,000) (the "Sponsor Dignity Health Loan");

(8) A loan from the Housing Authority of approximately Four Million Three Hundred Eighty-Two Thousand Dollars (\$4,382,000) consisting of Three Million Four Hundred Twelve Thousand Dollars (\$3,412,000) of federal funds and a ground lease loan of in the amount of Nine Hundred Seventy Thousand Dollars (\$970,000) (the "Authority Loan"); and

(9) GP Equity and Deferred Developer Fee in the approximate amount of Six Million Four Hundred Thousand Dollars (\$6,400,000), or otherwise as required by, and as sized in accordance with, TCAC regulations, and subject to the requirements set forth in Section 3.16(c), if any.

(h) "Assignment of Documents" means the agreement, evidencing the Borrower's assignment of all rights in and to certain plans, specifications and other work product as security for the Loan Documents.

(i) "Bid Package" means the package of documents Borrower's general contractor is required to distribute to potential bidders as part of the process of selecting subcontractors for the Development. The Bid Package is to include the following: (1) an invitation to bid; (2) copy of the proposed construction contract; and (3) all Construction Plans.

(j) "Borrower" has the meaning set forth in the first paragraph of this Agreement.

(k) "CEQA" has the meaning set forth in Paragraph F of the Recitals.

(l) "Certificate of Occupancy" means the certificate of occupancy or equivalent document issued by the City to certify completion of the construction of the Development.

(m) "City" means the City of San Bernardino, a municipal corporation.

(n) "Commencement of Construction" has the meaning set forth in Section 3.6.

(o) "Completion Component" has the meaning set forth in Section 2.6.

(p) "Completion Date" means the date that all of the following have occurred: (1) a temporary or final certificate of occupancy, or equivalent document is issued by the City to certify completion of the construction of the Development; (2) the final disbursement of HOME funds for the Development has been made; (3) the County has verified the Development complies with the property standards set forth in 24 CFR 92.251 and all other requirements in Subpart F of the HOME Regulations; and (4) all project completion information has been entered by the County into the Integrated Disbursement and Information System (IDIS). County shall process completion information promptly after receiving complete information from the Borrower.

(q) "Completion of Construction" has the meaning set forth in Section 3.7.

(r) "Construction Closing" means the date that Borrower acquires leasehold title to the Property and all deeds of trust associated with Approved Financing necessary for the construction of the Development as shown on the Approved Development Budget are recorded against the Borrower's leasehold interest in the Property.

(s) "Construction Component" has the meaning set forth in Section 2.6.

(t) "Construction Contract" has the meaning set forth in Section 3.3.

(u) "Construction Loan" has the meaning set forth in Section 1.1(g)(1)

(v) "Construction Plans" means all construction documentation upon which Borrower and the General Contractor rely in constructing the Development on the Property (including the units in the Development, landscaping, parking, and common areas) as approved by the City, as applicable, and includes, but is not limited to, final architectural drawings,

landscaping plans and specifications, final elevations, building plans and specifications, and scope of construction working drawings.

(w) "County" has the meaning set forth in the first paragraph of this Agreement.

(x) "County Prorata Percentage" means the County's prorata percentage of the Lenders' Share of Residual Receipts, resulting from dividing the Loan funds disbursed to Borrower in accordance with this Agreement, by the sum of Public Loans funds actually disbursed, or any other residual receipts loans included as Approved Financing and disbursed to Borrower.

(y) "Deed of Trust" means the Leasehold Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing among Borrower, as Trustor, a trustee approved by the County, and the County, as beneficiary, that will encumber the Borrower's leasehold in the Property to secure repayment of the Loan and performance of the covenants of the Loan Documents. A copy of the form of Leasehold Deed of Trust is attached as Exhibit E.

(z) "Default Rate" has the meaning set forth in Section 6.2(a)(v).

(aa) "Developer Fee" has the meaning set forth in Section 3.16 and includes the Deferred Developer Fee defined in subsection 3.16(a).

(bb) "Development" has the meaning set forth in Paragraph E of the Recitals.

(cc) "Escrow" means the escrow account established by the Borrower for the closing of Development financing with Fidelity National Title Insurance Company in its Riverside California office, located at 4210 Riverwalk Parkway, Suite 100, Riverside, California, 92505, or another escrow company satisfactory to the County.

(dd) "Event of Default" has the meaning set forth in Section 6.1.

(ee) "Final Cost Certification" has the meaning set forth in Section 4.2(b).

(ff) "Final Development Cost" means the total of the cost of acquisition, development and construction (including soft costs) of the Development as shown on the Final Cost Certification, including the payment of the Deferred Developer Fee pursuant to Section 3.16 below.

(gg) "General Contractor" has the meaning set forth in Section 3.3.

(hh) "Gross Revenue" means for each calendar year, all revenue, income, receipts, and other consideration actually received from operation and leasing of the Development. Gross Revenue includes, but is not limited to:

- (1) All rents, fees and charges paid by Tenants;
- (2) Section 8 payments or other rental subsidy payments received for the dwelling units;

- (3) Deposits forfeited by Tenants;
- (4) All cancellation fees;
- (5) Price index adjustments and any other rental adjustments to leases or rental agreements;
- (6) Net proceeds from vending and laundry room machines;
- (7) The proceeds of business interruption or similar insurance not paid to Senior Lenders;
- (8) The proceeds of casualty insurance not used to rebuild the Development; and
- (9) Condemnation awards for a taking of part or all of the Development for a temporary period, not paid to Senior Lenders.

Gross Revenue does not include Tenants' security deposits, loan proceeds, capital contributions or similar advances.

- (ii) "Hazardous Materials" has the meaning set forth in Section 4.7.
- (jj) "Hazardous Materials Claims" has the meaning set forth in Section 4.7.
- (kk) "Hazardous Materials Law" has the meaning set forth in Section 4.7.
- (ll) "HOME" means the HOME Investment Partnerships Act Program pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12705 et seq.), as amended.
- (mm) "HOME-Assisted Units" has the meaning set forth in Recital H.
- (nn) "HOME Funds" has the meaning set forth in Paragraph B of the Recitals.
- (oo) "HOME Term" means the period beginning on the date of this Agreement and ending on the twentieth (20th) anniversary of the Completion Date.
- (pp) "HOME Regulations" has the meaning set forth in Recital B.
- (qq) "Housing Lease" has the meaning set forth in Recital C.
- (rr) "HUD" has the meaning set forth in Paragraph B of the Recitals.
- (ss) "Improvements" has the meaning set forth in Paragraph E of the Recitals.
- (tt) "Investor Limited Partner" means the limited partner entity admitted to the Borrower and benefiting from federal low-income housing tax credits established pursuant to Section 42 of the Internal Revenue Code of 1986, as amended.

(uu) "Lenders' Share of Residual Receipts" means fifty percent (50%) of the Residual Receipts, inclusive of any Residual Receipts payment due under the Public Loans.

(vv) "Loan" has the meaning set forth in Paragraph G of the Recitals.

(ww) "Loan Documents" means this Agreement, the Note, the Regulatory Agreement, and the Deed of Trust.

(xx) "Local Loans" means the sum of the County Loan, the City NSP Loan, the City HOME Loan and the Housing Authority Loan.

(yy) "Major Trades" means the following construction trades for which the general contractor must bid out work: mechanical, roofing, concrete, electrical, plumbing, and framing trades.

(zz) "Marketing Plan" has the meaning set forth in Section 3.17(a).

(aaa) "NCRC" has the meaning set forth in Recital F.

(bbb) "NEPA" has the meaning set forth in Paragraph J of the Recitals.

(ccc) "Net Proceeds of Permanent Financing" means the amount by which Permanent Financing exceeds the Final Development Costs.

(ddd) "Note" means the Promissory Note that evidences Borrower's obligation to repay the Loan. A copy of the form of Note is attached as Exhibit D.

(eee) "Notice of Completion" means the Notice of Completion executed by Borrower in the form specified in California Civil Code Section 3093.

(fff) "Partnership Agreement" means the Agreement of Limited Partnership executed by the partners of Borrower, to be amended and restated upon admittance of the Investor Limited Partner to the partnership, and as may be further amended pursuant to the requirements of Section 4.13(c)(ii) hereof.

(ggg) "Partnership Asset Management Fee" means the total of the annual partnership management fees and asset management fees payable to the limited partner or general partner of Borrower pursuant to Borrower's Partnership Agreement, in an amount not to exceed Fifty Thousand Dollars (\$50,000) per year, subject to an annual increase that is equal to three percent (3%), and in an amount to be approved by the County at the end of the tax credit compliance period for the remainder of the Term.

(hhh) "Permanent Closing" means the date that all deeds of trust (or assignments of deeds of trust) associated with the Permanent Financing (as shown on the Approved Development Budget), have been recorded against the Borrower's leasehold interest in the Property, or if previously recorded, are converted to permanent loan deeds of trust, which shall also be referenced as the "Conversion Date".

(iii) "Permanent Financing" means the following loans: (1) the City NSP Loan; (2) the City HOME Loan; (3) the Authority Loan; (4) the Permanent Loan; (5) the AHSC Loan; (6) the Sponsor Dignity Health Loan; and (7) the Loan.

(jjj) "Permitted Limited Partner" has the meaning set forth in Section 6.5.

(kkk) "Permitted Transfer" has the meaning set forth in Section 4.13.

(lll) "Predevelopment Component" has the meaning set forth in Section 2.6.

(mmm)"Property" has the meaning set forth in Paragraph C of the Recitals.

(nnn) "Public Loans" means the County Loan, the City NSP Loan, the City HOME Loan, the AHSC Loan and the Housing Authority Loan.

(ooo) "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants between the County and Borrower related to the Loan, to be recorded against the Borrower's leasehold interest in the Property. A copy of the form of Regulatory Agreement is attached as Exhibit F.

(ppp) "Residual Receipts" in a particular calendar year shall mean the amount by which Gross Revenue exceeds Annual Operating Expenses as further set forth in Section 2.7(a)(6).

(qqq) "Schedule of Performance" means the schedule for performance of various tasks and obligations under this Agreement that is attached as Exhibit C, as such may be modified pursuant to Section 3.1.

(rrr) "Senior Lender" has the meaning set forth in Section 2.5.

(sss) "Services Budget" has the meaning set forth in Section 3.18.

(ttt) "Services Plan" has the meaning set forth in Section 3.18.

(uuu) "Statement of Residual Receipts" means an itemized statement of Residual Receipts, in the form attached here to as Exhibit I, incorporated herein by this reference. The first Statement of Residual Receipts will cover the period that begins on the Completion Date and ends on December 31st of that same year. Subsequent statements of Residual Receipts will cover the twelve-month period that ends on December 31 of each year.

(vvv) "Subdivision Map" means a lot line adjustment, tentative map amendment, or subdivision map (as may be required by the City) which will create the proposed development parcels.

(www) "Tax Credit Investor Equity" has the meaning set forth in Section 1.1(h)(3).

(xxx) "TCAC" means the California Tax Credit Allocation Committee.

(yyy) "Tenant" means the tenant household that occupies a unit in the Development.

(zzz) "Term" means the period of time that commences on the date of this Agreement, and expires, unless sooner terminated in accordance with this Agreement, on the fifty-fifth (55th) anniversary of the Completion Date.

(aaaa) "Transfer" has the meaning set forth in Section 4.13.

(bbbb) "Unit" means one (1) of the approximately one hundred forty-seven (147) affordable housing units to be constructed at the Development, other than a manager's unit or a non-restricted unit.

Section 1.2 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A:	Legal Description of the Property
Exhibit B:	Approved Development Budget
Exhibit C:	Schedule of Performance
Exhibit D:	Form of Promissory Note
Exhibit E:	Form of Leasehold Deed of Trust
Exhibit F:	Form of Regulatory Agreement
Exhibit G:	Certification of Continuing Program Compliance
Exhibit H:	Section 3 Compliance
Exhibit I:	Statement of Residual Receipts

ARTICLE 2. LOAN PROVISIONS

Section 2.1 Loan.

Subject to the satisfaction of the conditions set forth in this Article, the County shall lend to Borrower the Loan for the purposes set forth in Section 2.3 of this Agreement. Borrower's obligation to repay the Loan is evidenced by the Note.

Section 2.2 Interest.

(a) Subject to the provisions of Subsection (b) below, simple interest will accrue on the outstanding principal balance of the Loan at a per annum rate of simple interest equal to three percent (3%) commencing on the date of each disbursement.

(b) Upon the occurrence of an Event of a Default, interest on the Loan will begin to accrue, beginning on the date of such occurrence and continuing until the date the Loan is repaid in full or the Event of Default is cured, at the "Default Rate" defined in section 6.2(a)(v) below.

Section 2.3 Use of Loan Funds.

(a) Allowable Uses. The Borrower may use the Loan to fund the predevelopment, construction and permanent financing of the Development consistent with the Approved Development Budget and consistent with eligible activities requirements under 24 C.F.R. 92.64. Borrower shall use the Loan only to fund costs associated with the affordable residential portions of the Development.

(b) Prior Incurred Costs. No portion of the Loan shall be used to fund costs incurred more than twenty-four (24) months prior to the Effective Date or for any costs not allowed under 24 C.F.R. 92.206.

(c) No Other Uses. Borrower may not use the Loan proceeds for any other purposes without the prior written consent of the County.

(d) Use in Compliance with Regulations and Notice. During the entire Term, the Borrower shall comply with the HOME Regulations, the Regulatory Agreement and this Agreement in the use of the Loan funds.

Section 2.4 Security.

(a) Assignment of Documents. The Borrower's obligations under this Agreement shall be secured by the Assignment of Documents, in a form to be provided by the County, to be executed by the Borrower pursuant to this Section. The Assignment of Documents shall become effective upon an uncured Event of Default as defined in Section 6.1 below. The County shall not have any obligation under any contracts or agreements assigned pursuant to the Assignment of Documents until it expressly agrees in writing to be bound by such contracts or agreements. Upon an Event of Default that has not been cured pursuant to this Agreement, the County may use any of the documents, assigned to the County under an Assignment of Documents, for any purpose for which the Borrower could have used them for construction of the Development.

(b) During Construction. The Deed of Trust will secure the Loan. At the Construction Closing, the Deed of Trust shall be recorded against the Borrower's leasehold interest in the Property. Borrower shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and causing or permitting it to be recorded as a lien against the leasehold interest in the Property in lien priority approved by the County in such relationship to the other Approved Financing liens as the County approves. Borrower shall also cause or permit the Regulatory Agreement to be recorded against the leasehold interest in the Property, in a lien position approved by the County.

(c) Post Conversion. Subject to Section 2.5 below, as of the Permanent Closing, the Deed of Trust, shall be recorded as a lien against the Borrower's leasehold interest in the Property subordinate only to the deeds of trust securing the Approved Financing in the following order: the Permanent Loan, the AHSC Loan, and the Authority Loan. Borrower shall also cause or permit the Regulatory Agreement to be recorded against the Borrower's leasehold interest in the Property, in a lien position prior to all Approved Financing and related covenants

except for the HUD RAD Use Restriction, the Authority Regulatory Agreement, and the deeds of trust securing the Permanent Loan, the AHSC Loan and Authority Loan.

Section 2.5 Subordination.

(a) Any agreement by the County to subordinate the Deed of Trust to an encumbrance securing and/or evidencing Approved Financing (each such Approved Financing, a "Senior Loan"), will be subject to the satisfaction of each of the following conditions:

(1) All of the proceeds of the proposed Senior Loan, less any transaction costs, are used to provide acquisition, construction and/or permanent financing for the Development;

(2) The proposed lender of a Senior Loan (each a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender, except as may otherwise be permitted by the County, at its sole and absolute discretion;

(3) Borrower demonstrates to the County's satisfaction that subordination of the Deed of Trust is necessary to secure adequate acquisition, construction and/or permanent financing to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the County, in addition to any other information reasonably required by the County, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate acquisition, construction and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination;

(4) The subordination agreement(s) is structured to minimize the risk that the Deed of Trust will be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Loan. To satisfy this requirement, the subordination agreement must provide the County with adequate rights to cure any defaults by Borrower, including:

(i) providing the County or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (ii) providing the County with a cure period of at least sixty (60) days to cure any default;

(5) The subordination(s) of the Loan is effective only during the original term of the Senior Loan and any extension of its term that is approved in writing by the County;

(b) No subordination may limit the effect of the Deed of Trust before a foreclosure, nor require the consent of the Senior Lender prior to the County exercising any remedies available to the County under the Loan Documents; and

(c) Upon a determination by the County Chief Executive Officer or the Community Development and Housing Agency (CDHA) Deputy Executive Officer that the conditions in this Section have been satisfied, the County Chief Executive Officer or the

Community Development and Housing Agency (CDHA) Deputy Executive Officer, or his/her designee, will be authorized to execute the approved subordination agreement without the necessity of any further action or approval by the Board of Supervisors. Execution of any subordination agreement will evidence and constitute the determination of the County that all requirements of this Section 2.5 have been satisfied or waived.

(d) The County agrees to subordinate the Deed of Trust and the Authority Regulatory Agreement to that certain Rental Assistance Demonstration (RAD) Use Agreement to be entered into between HUD and Borrower, pursuant to a form of subordination agreement provided by HUD and approved by the County.

Section 2.6 Conditions Precedent to Disbursement of Loan Funds.

(a) The disbursements made pursuant to this Section 2.6 may not exceed the amount of the Loan and shall only be requested at such time they are needed by the Borrower to pay eligible costs. The County shall disburse the Loan into Escrow in three components: (i) a "Predevelopment Component" in the amount of up to One Million Four Hundred Eighty-Seven Thousand Four Hundred Fifty Dollars (\$1,487,450) of which One Million One Hundred Twenty Six Thousand Two Hundred Sixty-Three Dollars and Forty-One Cents (\$1,126,263.41) has been disbursed to date; (ii) a "Construction Component" in the amount of One Million One Hundred Twenty-Two Thousand Five Hundred Fifty Dollars (\$1,122,550) plus any portion of the Predevelopment Component not drawn as such; and (iii) a "Completion Component" in the amount of Two Hundred Ninety Thousand Dollars (\$290,000). The division of the Loan between the Predevelopment Component, the Construction Component and the Completion Component may be readjusted by the County Chief Executive Officer, Community Development and Housing Agency (CDHA) Deputy Executive Officer, or the Community Development and Housing Director on behalf of the County without the need for formal amendment of this Agreement. The County will disburse the Predevelopment Component subject to the conditions precedent set forth in subsection (b) below, the Construction Component at the Construction Closing subject to the conditions precedent set forth in subsection (c) below (but in no event before the Construction Closing), and the Completion Component at Permanent Closing subject to the conditions precedent set forth in subsection (d).

(b) Predevelopment Component. The maximum amount of funds to be disbursed to the Borrower pursuant to this Section as the Predevelopment Component shall not exceed One Million Four Hundred Eighty-Seven Thousand Four Hundred Fifty Dollars (\$1,487,450), unless otherwise approved by the County's Chief Executive Officer. The Parties agree and acknowledge that as of the Effective Date the sum of One Million One Hundred Twenty Six Thousand Two Hundred Sixty-Three and 41/100 Dollars (\$1,126,263.41) of the Predevelopment Component is deemed to have been disbursed to the Borrower. Any Predevelopment Component funds not previously disbursed to the Developer as of the Construction Closing shall be included and disbursed as part of the Construction Component of the Loan.

(c) Construction Component. The County is not obligated to make a disbursement of the Construction Component prior to the Construction Closing, or to take any other action under the Loan Documents unless the following conditions precedent are satisfied prior to each such disbursement of the Loan funds:

(1) There exists no Event of Default nor any act, failure, omission or condition that would constitute an Event of Default under this Agreement, or any other financing agreements or contracts between the County and Borrower or its Affiliates relating to the Development;

(2) The Housing Lease has been executed and the Borrower holds, or along with the first disbursement will hold, good and marketable leasehold interest to the Property;

(3) Borrower has delivered to the County a copy of Borrower's organizational documents and a corporate authorizing resolution authorizing Borrower's execution of the Loan Documents and the transactions contemplated by the Loan Documents;

(4) County has received and approved any necessary updates to the Approved Development Budget;

(5) The County has received a copy of the General Contractor's Construction Contract as required pursuant to Section 3.3 below, including evidence that the Major Trades have been properly bid, and all contractors and subcontractors have registered with the DIR in compliance with Labor Code Section 1771.1;

(6) The County has received and approved the labor and material (payment) bonds or alternative security as required pursuant to Section 3.5 below;

(7) Borrower has executed a Partnership Agreement approved by the County, with the Investor Limited Partner, in which the Investor Limited Partner is obligated to provide Borrower the Tax Credit Investor Equity;

(8) Borrower has closed, or is concurrently closing, on the Construction Loan and is eligible to receive the proceeds of all construction loans and has received, or is concurrently receiving, the amount of Tax Credit Investor Equity stated as the first installment in the Partnership Agreement (estimated to be approximately Two Million Four Hundred Ten Thousand Six Hundred Nineteen Dollars (\$2,410,619));

(9) Borrower has obtained all permits and approvals necessary for the construction of the Development, as required by Section 3.2, provided however the Borrower may satisfy this requirement with regards to the building permit, if the Borrower provides the County with a permit ready letter from the City Building Department;

(10) The Subdivision Map has been processed creating the Property.

(11) Borrower has submitted a certification from the architect certifying that the plans and specifications and design documents for the Development provide for the Units to be constructed in compliance with Section 3.8(g) of this Agreement;

(12) The County has received reasonable evidence that the local match requirements set forth in 24 C.F.R. Section 92.218 et seq., have been satisfied pursuant to Section 5.1 of this Agreement;

(13) Borrower has furnished the County with evidence of the insurance coverage meeting the requirements of Section 4.15 below;

(14) Borrower has caused to be executed and delivered to the County the Loan Documents and any other instruments, and policies required under the Loan Documents;

(15) The Deed of Trust and the Regulatory Agreement have been recorded against the Borrower's leasehold interest in the Property in the Office of the Recorder of the County of San Bernardino in a lien position approved by the County, and recorded copies have been delivered to the County;

(16) Borrower is in compliance with the Schedule of Performance;

(17) All environmental review necessary for the construction of the Development has been completed, and Borrower has provided the County evidence of compliance with all CEQA and NEPA mitigation measures;

(18) There exists no material adverse change in the financial condition of Borrower from that shown by the financial statements and other data and information furnished by Borrower to the County prior to the date of this Agreement;

(19) The County has determined the undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that Borrower has obtained in connection with the acquisition and construction of the Development, are not less than the amount the County determines is necessary to pay for the acquisition and construction of the Development and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement;

(20) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing an LP-10 2006 ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require. The Borrower shall provide whatever documentation (including an indemnification agreement), deposits or surety is reasonably required by the title company in order for the County's Deed of Trust to be senior in lien priority to any mechanics liens in connection with any start of construction that has occurred prior to the recordation of the Deed of Trust against the Property in the Office of the Recorder of the County of San Bernardino;

(21) The County has received a written draw request from Borrower, including: (i) certification that the condition set forth in Section 2.6(c)(1) continues to be satisfied; (ii) certification that the proposed uses of funds consistent with the Approved Development Budget; (iii) the amount of funds needed; and (iv) where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with improvements on the Property, the written request must be accompanied by: (A) certification by the Borrower's architect reasonably acceptable to the

County that the work for which disbursement is requested has been completed (although the County reserves the right to inspect the Property and make an independent evaluation); and (B) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the County;

(d) Completion Component. The County is not obligated to make a disbursement of the Completion Component at Permanent Closing, or to take any other action under the Loan Documents unless the following conditions precedent are satisfied prior to each such disbursement of the Loan funds:

(1) All requirements set forth in Section 2.6(a) and 2.6(b) have been and continue to be satisfied and there exists no Event of Default nor any act, failure, omission or condition that would constitute an Event of Default under this Agreement;

(2) The County has received a copy of the a Certificate of Occupancy issued by the City for the Development;

(3) The County has received satisfactory evidence that the Units are rented to eligible tenants at the required rents in compliance with the requirements of this Agreement and the Regulatory Agreement;

(4) The Borrower has satisfied all conditions for the receipt of the installment of the Tax Credit Investor Equity attributable to conversion of the Construction Loan to permanent financing, consistent with Borrower's Partnership Agreement;

(5) The County has received from Borrower current evidence of the insurance coverage meeting the requirements of Section 4.15 below;

(6) The County has received and approved a report setting forth: (i) the income, household size, race, and ethnicity of Tenants of the HOME-Assisted Units; (ii) the unit size, rent amount and utility allowance for all HOME-Assisted Units; and (iii) the accessible units in the Development pursuant to Section 3.8(g);

(7) The County has received a draft of the Final Cost Certification for the Development from Borrower showing all uses and sources;

(8) The County has received from Borrower and approved a form of Tenant lease;

(9) The County has received from Borrower and approved the Marketing Plan;

(10) The County has received from Borrower and approved a copy of the Services Plan for the provision of service to residents;

(11) The County has received from Borrower all relevant contract activity information, including compliance with Section 3 (including items included in Exhibit H of this Agreement, incorporated herein by this reference) and MBE/WBE requirements;

(12) Borrower has submitted a certification from the architect certifying that the Units have been constructed in compliance with Section 3.8(g) of this Agreement;

(13) The County has received from Borrower a copy of the management agreement and contact information for the property manager of the Development and the name and phone number of the on-site property manager;

(14) If Borrower is required to pay prevailing wages under the Davis-Bacon Act (40 U.S.C. 3141-3148), the Borrower has submitted copies of all certified payrolls to the County, and any identified payment issues have been resolved, or Borrower is working diligently to resolve any such issues;

(15) The County has received a written draw request from Borrower, including (1) certification that the conditions set forth in Section 2.6(a) and 2.6(b) continue to be satisfied, (2) certification that the proposed use of funds is consistent with the Approved Development Budget, (3) the amount of funds needed, and, (4) where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred.

(e) The Borrower hereby agrees and acknowledges that the County will have not less than forty-five days (45) days from the date the County receives a completed draw request to disburse funds under this Section 2.6.

(f) All funds to be disbursed pursuant to this Agreement shall be available to be disbursed to a Senior Lender, if and to the extent, the Senior Lender takes over the construction of the Development, the Senior Lender agrees to be bound to the terms hereof and the Senior Lender has cured any Event of Default of the Borrower.

Section 2.7 Repayment Schedule.

(a) Annual Payments. Subject to the full repayment of the Sponsor Dignity Loan, commencing on April 1st of the year following the Completion Date, and on April 1st of each year thereafter during the Term, Borrower shall make a Loan payment in an amount equal to the County's Prorata Percentage of Lenders' Share of Residual Receipts for the previous calendar year (each, an "Annual Payment"). The County shall apply all Annual Payments first, to accrued interest, and second, to principal. On or prior to the date that Borrower pays its Annual Payment, Borrower shall submit the following to the County:

(1) The Statement of Residual Receipts for the relevant period, for the subject property and the status of all reserve funds, including without limitation;

(2) A statement from the independent public accountant that audited the Borrower's financial records for the relevant period, which statement must confirm that Borrower's calculation of the Lenders' Share of Residual Receipts is accurate based on Gross Revenue and Annual Operating Expenses; and

(3) Any additional documentation reasonably required by the County to substantiate Borrower's calculation of Lenders' Share of Residual Receipts.

(b) Special Repayment From Net Proceeds. Subject to the rights of Senior Lenders, and to the extent of additional subordinate loan proceeds, equity or surplus development sources following the Final Cost Certification, no later than ten (10) days after the date Borrower receives its final Tax Credit Investor Equity contribution, Borrower shall pay to the County, the Authority and the City, as a special repayment of the Local Loans, their prorata percentage of the of the Net Proceeds of Permanent Financing (resulting from dividing their respective loan funds disbursed to Borrower by the sum of the Local Loans actually disbursed), as a special repayment of the Loan and the other Local Loans. No later than one hundred twenty (120) days following completion of construction of the Development, Borrower shall submit to the County for its review a preliminary calculation of the Net Proceeds of Permanent Financing and a draft of the Final Cost Certification as defined Section 4.1 below. The County shall approve or disapprove Borrower's determination of the amount of the Net Proceeds of Permanent Financing in writing within thirty (30) days of receipt. If Borrower's determination is disapproved by the County, Borrower shall re-submit documentation to the County until the County approval is obtained. Subject to the rights of Senior Lenders, notwithstanding anything to the contrary, the Borrower may request a deduction from the Net Proceeds of Permanent Financing to reduce the outstanding balance of the Deferred Developer Fee (subject to the restrictions in Section 3.16 hereof) upon approval from the County, which approval shall not be unreasonably withheld.

(c) Special Repayment For Un-leased Units. As required under 24 C.F.R. 92.252, if Borrower fails to lease any one of the HOME-Assisted Units within eighteen (18) months of the Completion of Construction of the Development, the Borrower shall repay to the County a proportionate share of the indebtedness of Borrower to the County under this Agreement and the Note attributable to each of the HOME-Assisted Units that has remained un-leased for the entire eighteen (18) month period, together with any accrued interest thereon calculated pursuant to Section 2.2, which amount shall be immediately due and payable. Interest payments required to be paid pursuant to this subsection that are not immediately paid as required hereunder a result of the limitations set forth in subsection (g) shall be added to the outstanding principal of the Loan and become part of the secured obligation of the Borrower.

(d) Payment in Full. Borrower shall pay all outstanding principal and accrued interest on the Loan, in full, on the earliest to occur of: (1) an Event of Default; and (2) the expiration of the Term.

(e) Prepayment. Borrower may prepay the Loan at any time without premium or penalty. However, the Regulatory Agreement and the Deed of Trust will remain in effect for the entire Term, regardless of any prepayment.

Section 2.8 Non-Recourse.

Except as provided below, upon recordation of the Deed of Trust against the Property, neither Borrower, nor any partner of Borrower, will have any direct or indirect personal liability for payment of the principal of, and interest on, the Loan or the performance of the covenants of Borrower under the Deed of Trust. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the principal of, or interest on, the Note and defaults by Borrower in the performance of its covenants under the Deed of Trust will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of

liability limits or impairs the enforcement of all the rights and remedies of the County against all such security for the Note, or impairs the right of County to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation to repay the principal of, and payment of interest on the Note and the performance of Borrower's obligations under the Deed of Trust. Except as hereafter set forth; nothing contained herein is intended to relieve Borrower of its obligation to indemnify the County under Sections 3.8, 4.6, 4.7, and 7.4 of this Agreement, or liability for: (a) loss or damage of any kind resulting from waste, fraud or willful misrepresentation; (b) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (c) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (d) the misappropriation of any proceeds under any insurance policies or awards resulting from: (i) condemnation or the exercise of the power of eminent domain; or (ii) damage, loss, or destruction to any portion of the Property.

ARTICLE 3. CONSTRUCTION OF THE DEVELOPMENT

Section 3.1 Schedule of Performance.

Borrower shall perform the tasks described in the Schedule of Performance no later than the dates set forth in the Schedule of Performance, subject to Section 7.15. The Schedule of Performance may be modified in writing by the County Chief Executive Officer or the Community Development and Housing Agency (CDHA) Deputy Executive Officer on behalf of the County without the need for formal amendment of this Agreement or further approval by the Board of Supervisors.

Section 3.2 Permits and Approvals.

Borrower shall obtain all permits and approvals and shall have processed all Subdivision Maps necessary for the construction of the Development no later than the date set forth in the Schedule of Performance.

Section 3.3 Construction Contract.

(a) Not later than thirty (30) days prior to the proposed Commencement of Construction, Borrower shall submit to the County for its approval a draft of the proposed construction contract for the Development (the "Construction Contract") with Borrower's general contractor (the "General Contractor"). All construction work and professional services are to be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California. The Construction Contract is to provide the guaranteed maximum construction cost or stipulated sum consistent with the Approved Development Budget and at least ten percent (10%) of the hard costs incurred will be payable only upon completion of the construction, or such other amount that may be allowed under the Senior Loan subject to written approval by the County. The Construction Contract must include all applicable HOME requirements set forth in Section 4.6 below. The County's approval of the

Construction Contract may not be deemed to constitute approval of or concurrence with any term or condition of the Construction Contract except as such term or condition may be required by this Agreement.

(b) The Borrower may award the construction contract to a related contractor/builder (Identity of Interest) if the related contractor/builder has met HUD requirements under either 24 CFR 905.604(i)(1) or 24 CFR 905.604(i)(2). The Parties intend that NCRC's Construction Division (the "Contractor") will be the general contractor for the Development so long as profit, overhead, and general conditions do not exceed the maximum allowed by TCAC. The Contractor shall ensure that all subcontracts and suppliers are competitively bid out by the Contractor, and subject to the approval of lenders, investors and regulators and subject to the requirements set forth in this Section.

(c) Borrower shall use its best efforts to coordinate with the local County Workforce Development Department (WDD), and all other applicable County requirements, to maximize the practicable opportunity to participate in the construction of the Development. Borrower shall, at a minimum, make contact with the County WDD and provide project information for local hire opportunities. Documentation of such notifications must be maintained by Borrower and available to the County as requested.

Section 3.4 Bid Package.

The Borrower shall cause Borrower's General Contractor to provide the Bid Package to all subcontractors, as required under Section 3.3(b).

Section 3.5 Construction Bonds.

(a) As a condition precedent to the first draw request under the Construction Component of the Loan, the Borrower shall deliver to the County copies of labor and material bonds and performance bonds for the construction of the Development in an amount equal to one hundred percent (100%) of the scheduled cost of the construction of the Development. The bonds required under this Section shall be issued by a surety licensed to do business in California and reasonably acceptable to the County. Such bonds must name the County as a co-obligee.

(b) The County shall either reasonably approve or disapprove the submitted proposed Construction Bonds within fifteen (15) days from the date the County receives the Construction Bonds. If the proposed Construction Bonds are not approved by the County, then the County shall notify the Borrower in writing of the reasons for disapproval and the required revisions to the previously submitted Construction Bonds. The Borrower shall thereafter submit revised proposed Construction Bonds within fifteen (15) days of the notification of disapproval. The County shall either approve or disapprove the submitted revised Construction Bonds within fifteen (15) days of the date such revised Construction Bonds are received by the County. The County shall approve the initial or revised Construction Bonds if they meet the standards set forth in subsection (a) above. Such County-approved bonds shall be delivered to the County prior to, or in conjunction with, the Construction Closing. Notwithstanding the foregoing, the County shall consider other reasonable forms of security for the completion of the construction of the Improvements, from either the Borrower or the Borrower's general contractor, in lieu of such Construction Bonds described in this section provided that: (i) the Investor and all lenders

set forth on the Approved Development Budget have agreed to such other security, and (ii) the County has the same enforcement rights under such security as the Investor and all lenders set forth in the Approved Development Budget.

Section 3.6 Commencement of Construction.

Borrower shall cause the Commencement of Construction of the Development no later than the date set forth in the Schedule of Performance, which in no event shall be any later than twelve (12) months from the Effective Date. For the purposes of this Agreement, "Commencement of Construction" means the date set for the start of construction of the Development in the notice to proceed issued by Borrower to Borrower's general contractor.

Section 3.7 Completion of Construction.

For purposes of this Agreement, "Completion of Construction" means the following:

- (a) Borrower shall diligently prosecute construction of the Development to completion, and shall cause the completion of the construction of the Development no later than the date set forth in the Schedule of Performance.
- (b) Borrower shall record a Notice of Completion within ten (10) days of completion of construction of the Development and provide the County a copy of the recorded Notice of Completion.
- (c) Borrower shall provide the County a copy of the Certificate of Occupancy, or other evidence of completion of the Development within ten (10) days of receipt from the City.

Section 3.8 Construction Pursuant to Plans and Laws; Prevailing Wages; Accessibility.

(a) Changes. Borrower shall construct the Development in conformance with the Construction Plans approved by the City's Building Department. Borrower shall notify the County in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the Construction Plans. A written change order authorized by the County must be obtained before any of the following changes, additions, or deletions in work for the Development may be performed: (1) any change in the work the cost of which exceeds Seventy-Five Thousand Dollars (\$75,000); or (2) any set of changes in the work the cost of which cumulatively exceeds Two Hundred Fifty Thousand Dollars (\$250,000). Consent to any additions, changes, or deletions to the work do not relieve or release Borrower from any other obligations under this Agreement, or relieve or release Borrower or its surety from any surety bond.

(b) Compliance with Laws. To the extent applicable, Borrower shall cause all work performed in connection with the Development to be performed in compliance with all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter including without limitation and to the extent applicable, (1) the property standards set out in 24 C.F.R. 5.701 et

seq. and 24 C.F.R. 92.251 or adopted by the County in conformance therewith; and (2) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work will proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower shall be responsible to the agency for the procurement and maintenance thereof, as may be required of Borrower and all entities engaged in work on the Development.

(c) Prevailing Wages. To the extent applicable, Borrower shall and shall cause its respective contractors and subcontractors to pay prevailing wages in performing the development activities as may be required under federal Davis-Bacon Act (40 USC 3141-3148) and the labor compliance provisions in the attached Exhibit H incorporated herein by this reference, and pursuant to Labor Code Sections 1720 et seq. (the "Prevailing Wage Requirements"), and the implementing regulations of the Department of Industrial Relations (the "DIR"), to employ apprentices as required by Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR and comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., 1810-1815, and implementing regulations of the DIR. To the extent Prevailing Wage Requirements are applicable, Borrower shall and shall cause its respective contractors and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and shall, from time to time upon the request of the County provide to the County such records and other documentation reasonably requested by the County. Copies of the currently applicable per diem prevailing wages are available from the County. To the extent Prevailing Wage Requirements are applicable, Borrower shall post the applicable prevailing rates of per diem wages at the project site. To the extent Prevailing Wage Requirements are applicable, Borrower shall cause its respective contractors and subcontractors to be registered as set forth in Labor Code Section 1725.5. In addition and only to the extent Prevailing Wage Requirements are applicable, Borrower shall cause its respective contractors and subcontractors to do all the following:

(1) All calls for bids, bidding materials and the construction contract documents for the Development must specify that: (i) No contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Development unless registered with the DIR pursuant to Labor Code Section 1725.5; and (ii) The Development is subject to compliance monitoring and enforcement by the DIR;

(2) To the extent required by law: (i) Borrower is required to provide the County all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within two (2) days of the award of the contract (<https://www.dir.ca.gov/pwc100ext/>); (ii) Borrower shall cause its respective contractors to post job site notices, as prescribed by applicable DIR regulations; and (iii) Borrower shall cause its respective contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner:

(d) Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County and its boardmembers, officers and employees

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 Borrower, its consultants and contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq. and prevailing wage requirements of the federal Davis-Bacon Act (40 USC 3141-3148), to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the performance of the development activities or any other work undertaken or in connection with the Property. The requirements in this subsection survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

(e) The general contractor and all Subcontractors shall be required to pay their laborers and mechanics employed under this Contract, a wage not less than minimum wage classification, as specified in the applicable Federal law when the Contract amount for the Prime contract exceeds \$2,000. The General Contractor is responsible for ensuring Subcontractor compliance with Davis-Bacon and Related Act Requirements. Federal Labor Standards Provisions (HUD 4010) apply to this Development. Certified payroll submitted to the County are required during the term of construction, and Borrower shall copy the County on all such submissions. Payment of disbursement components may be delayed when certified payrolls are not properly submitted.

(f) The prime contractor and all subcontractors shall be required to pay their laborers and mechanics employed under this Agreement, a wage not less than minimum wage classification, as specified in the applicable Federal law when the contract amount for the prime contract exceeds \$2,000. The prime contractor is responsible for ensuring subcontractor compliance with Davis-Bacon Act and related requirements. Federal Labor Standards Provisions (HUD 4010) apply to the Development. A weekly certified payroll submitted through LCP Tracker (as defined in Exhibit H) is required during the term of construction of the Development. Payment of disbursement components may be delayed when certified payrolls are not properly submitted.

(g) Accessibility Requirements. The Borrower shall construct the Development to comply with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act, Section 504 of the Construction Act of 1973, Title II and/or Title III of the Americans with Disabilities Act of 1990, Title 24 of the California Code of Regulations and the Uniform Federal Accessibility Standards ("UFAS"). In compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.), a minimum of five percent (5%) of all Units shall be constructed to be fully accessible to households with a mobility impaired member and an additional two percent (2%) of all Units shall be fully accessible to hearing and/or visually impaired persons. All Units in the Development shall also be built to comply with the Uniform Federal Accessibility Standards under 49 C.F.R. 31528.

Section 3.9 Equal Opportunity.

(a) During the construction of the Development there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, gender identity,

marital status, national origin or ancestry, or source of income, in the hiring, firing, promoting or demoting of any person engaged in the construction work.

(b) In providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, program participants shall not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. A faith-based organization that is a recipient or subrecipient of HOME funds is eligible to use such funds as provided under the regulations of this part without impairing its independence, autonomy, expression of religious beliefs, or religious character. Such organization will retain its independence from federal, State, and local government, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, such as worship, religious instruction, or proselytization, or any manner prohibited by law. Among other things, faith-based organizations may use space in their facilities to provide program-funded services, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, a HOME program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

Section 3.10 Minority and Women-Owned Contractors.

Borrower shall use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the construction of the Development. Borrower shall, at a minimum, notify applicable minority-owned and women-owned business firms located in San Bernardino County of bid opportunities for the construction of the Development. A listing of minority owned and women owned businesses located in the County and neighboring counties is available from the County. Documentation of such notifications must be maintained by Borrower and available to the County as requested.

Section 3.11 Progress Reports.

From the date of execution of this Agreement and until such time as Borrower has received a Certificate of Occupancy from the City for the Development, Borrower shall provide the County with quarterly progress reports regarding the status of the construction of the Development, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time pursuant to Section 3.15 below.

Section 3.12 Construction Responsibilities.

(a) Borrower is responsible for the coordination and scheduling of the work to be performed so that commencement and completion of the construction of the Development will take place in accordance with this Agreement.

(b) Borrower is solely responsible for all aspects of Borrower's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the County with reference to the Development is solely for the purpose of determining whether Borrower is properly discharging its obligations to the County, and may not be relied upon by Borrower or by any third parties as a warranty or representation by the County as to the quality of the design or construction of the Development.

Section 3.13 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on the County or any other lender or other third party in connection with the Development, then Borrower shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the County a surety bond in sufficient form and amount, or provide the County with other assurance satisfactory to the County that the claim of lien or stop notice will be paid or discharged.

(b) If Borrower fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the County may (but is under no obligation to) discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternately, the County may require Borrower to immediately deposit with the County the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The County may use such deposit to satisfy any claim or lien that is adversely determined against Borrower.

(c) Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Development for a continuous period of thirty (30) days or more, and take all other steps necessary to forestall the assertion of claims of lien against the Property. Borrower authorizes the County, but the County has no obligation, to record any notices of completion or cessation of labor, or any other notice that the County deems necessary or desirable to protect its interest in the Development and Property.

Section 3.14 Inspections.

(a) Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development, during construction and after completion of construction, by the County and by any public authorities during reasonable business hours for the purposes of determining compliance with this Agreement upon not less than forty-eight (48) hours' notice. Borrower agrees and acknowledges that the County must conduct or cause to be conducted on-site inspections, consistent with the requirements of 24 C.F.R. 92.504(d), to determine compliance with the property standards set forth in 24 C.F.R. 92.251 and 24 C.F.R. 92.355, at least once every three (3) years after the completion of construction of the Development.

(b) After the completion of an inspection the County shall deliver a copy of the Uniform Physical Conditions Standards inspection report, in a form provided by the County, to the Borrower. If the County determines as a result of such inspection that there are any life-threatening health and safety related deficiencies, Borrower has the obligation to correct such deficiencies immediately, in accordance with 24 C.F.R. 92.251. If the County determines as a result of the inspection that there are any deficiencies for any of the inspectable items in the Development, the Borrower shall correct such deficiencies within fifteen (15) days from the delivery of the inspection report or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible. In addition, the Borrower acknowledges that the County may re-inspect the Development to verify all deficiencies have been corrected or rely on third party documentation submitted by the Borrower for non-hazardous deficiencies in conformance with 24 C.F.R. 92.504(d).

Section 3.15 Approved Development Budget; Revisions to Budget.

As of the date of this Agreement, the County has approved the Approved Development Budget set forth in Exhibit B. Borrower shall submit any proposed or required amendments to the Approved Development Budget, along with evidence that the changes to the Approved Development Budget are reasonable and necessary, to the County for approval within five (5) days of the date Borrower receives information indicating that actual costs of the Development materially vary or will vary from the costs shown on the Approved Development Budget, which approval shall not be unreasonably withheld or delayed. Written consent of the County will be required to amend the Approved Development Budget. The County will make best efforts to respond in writing within seven (7) days after receipt of a proposed amendment to the Approved Development Budget.

Section 3.16 Developer Fee.

(a) The maximum cumulative Developer Fee that may be paid to any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, may not exceed Nine Million Four Hundred Dollars (\$9,400,00), of which all or a portion of the Developer Fee may be deferred subject to subsection (c) below, and in no event may exceed the amount allowed by TCAC and as approved by the County; provided however that not less than Six Million Four Hundred Thousand Dollars (\$6,400,000) shall be contributed by the General Partner as General Partner equity. For the purposes of this Agreement "Developer Fee" has the meaning set forth in California Code of Regulations, Title 4, Section 10302. Except for the Developer Fee and amounts payable to the General Contractor under the Construction Contract, no compensation from any source shall be received by or be payable to the Borrower or any affiliate of the Borrower in connection with the provision of development and construction management services for the acquisition and construction of the Development.

(b) Cost savings at completion. Subject to the rights of Senior Lenders, pursuant to Section 2.7(c), the Borrower may request to reduce the outstanding balance of the Deferred Developer Fee subject to the County's reasonable approval. Although no County approval is required in order to increase the Deferred Developer Fee from the amount listed in Section 3.16(a), the Borrower shall notify the County of any change to the amount of Deferred Developer Fee.

Section 3.17 Marketing Plan.

(a) No later than six (6) months prior to the projected date of the Completion of Construction of the Improvements, Borrower shall submit to the County for approval its plan for marketing the Development to income-eligible households as required pursuant to the Regulatory Agreement, including information on affirmative marketing efforts and compliance with fair housing laws and 24 C.F.R. 92.351(a) (the "Marketing Plan").

(b) Upon receipt of the Marketing Plan, the County will promptly review the Marketing Plan and will approve or disapprove it within fifteen (15) days after submission. If the Marketing Plan is not approved, Borrower shall submit a revised Marketing Plan within fifteen (15) days. Borrower shall follow this procedure for resubmission of a revised Marketing Plan until the Marketing Plan is approved by the County.

(c) If after five (5) months after the Completion of Construction any HOME-Assisted Unit remains unoccupied, the Borrower shall submit a detail report of the ongoing marketing efforts, and if deemed appropriate by the County, any necessary amendments or updates to the Marketing Plan aimed at ensuring any unoccupied HOME-Assisted Unit is promptly leased. If any of the HOME-Assisted Units remain unoccupied eleven (11) months after the Completion of Construction, the Borrower shall submit a detailed report of the ongoing marketing efforts and submit to the County an update to the Marketing Plan. Failure to lease all of the HOME-Assisted Units to an eligible tenant within eighteen (18) months of Completion of Construction shall trigger the special repayment pursuant to Section 2.7(d).

Section 3.18 Tenant Services Plan and Budget.

(a) Borrower will be providing on-site services to all tenants in the Development (the "Tenant Services"). No later than six (6) months prior to the projected date of the Completion of Construction of the Improvements, Borrower shall submit to the County for approval a proposed services plan which shall include written guidelines or procedures for providing the Tenant Services (the "Services Plan"), and a proposed budget for the provision of Tenant Services (the "Services Budget").

(b) The Services Plan shall include the types of Tenant Services provided, staffing levels (including caseload and hours of employment), and overall coordination of the Tenant Services.

(c) The Services Budget shall show required expenditures from Annual Operating Expenses in an approximate amount of approximately Eighty-Eight Thousand Three Hundred Twenty Dollars (\$88,320) (\$7,360 per Month) subject to an annual increase that is equal to the greater of three percent (3%) or the percentage increase in CPI to fund Tenant Services.

(d) Upon receipt of the proposed Services Plan and Services Budget, the County shall promptly review the proposed Services Plan and Services Budget and shall approve or disapprove them within thirty (30) days after submission. If either the Services Plan or Services Budget is not approved, the Borrower shall submit a revised Services Plan and/or Services Budget within thirty (30) days following the Borrower's receipt of the County's written

disapproval. If the County does not approve the revised Services Plan and/or Services Budget because the Borrower fails to make specific revisions requested by the County, the Borrower shall be in default hereunder.

Section 3.19 AHSC Grant.

Borrower shall have no responsibility for the AHSC Grant. NCRC shall use the AHSC Grant to fund off-site improvements consistent with Exhibit B of the AHSC Standard Agreement.

ARTICLE 4. LOAN REQUIREMENTS

Section 4.1 HOME Match and Per Unit Subsidy Requirement.

(a) The Borrower shall ensure that the Loan is matched with a minimum of Seven Hundred Thousand Dollars (\$700,000) in other, non-federal sources to be used to fund the construction of the Development.

(b) The total amount of the Loan may not exceed the maximum per unit subsidy for HOME-Assisted Units amount established under 24 C.F.R. §92.250. The County has determined that the applicable maximum per unit subsidy applicable to the Development at the time of this Agreement is: (1) One Hundred Sixty Eight Thousand Six Hundred Dollars (\$168,600) for a one-bedroom unit; (2) Two Hundred Five Thousand Five Hundred Two Dollars (\$205,502) for a two-bedroom unit; (3) Two Hundred Sixty-Five Thousand Two Hundred Twenty-Nine Dollars (\$265,229) for a three-bedroom unit; and (4) Two Hundred Ninety-One Thousand One Hundred Fourteen Dollars (\$291,114) for a four-bedroom unit.

Section 4.2 Financial Accountings and Post-Completion Audits.

(a) No later than ninety (90) days following issuance of the Certificate of Occupancy for the Development, Borrower shall provide to the County for its review and approval a financial accounting of all sources and uses of funds for the Development.

(b) No later than one hundred eighty (180) days following Completion of Construction of the Development, or such other period as may be allowed by TCAC for a similar requirement, Borrower shall submit an audited financial report showing the sources and uses of all funds utilized for the Development. This requirement may be satisfied by providing the Final Cost Certification to the County. "Final Cost Certification" means the Final Cost Certification Sources and Uses of Funds prepared by Borrower for the Development that: (1) Borrower submits to TCAC; and (2) has been prepared using generally accepted accounting procedures in effect in the United States from time to time, consistently applied.

Section 4.3 Annual Operating Budget.

At the beginning of each year of the Term, Borrower shall provide to the County an annual budget for the operation of the Development. Unless rejected by the County in writing within fifteen (15) days after receipt of the budget, the budget will be deemed accepted. If

rejected by the County in whole or in part, Borrower shall submit a new or corrected budget within thirty (30) calendar days of notification of the County's rejection and the reasons therefor. The provisions of this Section relating to time periods for resubmission of new or corrected budgets will continue to apply until such budget has been approved by the County.

Section 4.4 Information.

Borrower shall provide any information related to the Development reasonably requested by the County in connection with the Development, including (but not limited to) any information required by HUD in connection with Borrower's use of the Loan funds.

Section 4.5 Records.

(a) Borrower shall keep and maintain at the Development, or at the corporate offices of the Borrower's general partner, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts, and disbursements of Residual Receipts. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement. All applicable financial documents are to be kept and maintained in accordance with generally accepted accounting principles consistently applied. All such books, records, and accounts are to be open to and available for inspection and copying by HUD, the County, its auditors or other authorized representatives at reasonable intervals during normal business hours. Borrower shall preserve such records for a period of not less than five (5) years after the creation of such records in compliance with all HUD records and accounting requirements. Copies of all tax returns and other reports that Borrower may be required to furnish to any governmental agency are to be open for inspection by the County at all reasonable times at the place that the books, records and accounts of Borrower are kept. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Loan is pending at the end of the record retention period stated herein, then Borrower shall retain the records until such action and all related issues are resolved. The records are to include all invoices, receipts, and other documents related to expenditures from the Loan funds. Borrower shall cause records to be accurate and current and in such a form as to allow the County to comply with the record keeping requirements contained in 24 C.F.R. 92.508. Such records are to include but are not limited to:

(1) Records providing a full description of the activities undertaken with the use of the Loan funds.

(2) Records demonstrating compliance with County and HUD property standards and lead-based paint requirements, including, as applicable, the Uniform Physical Conditions Standards established by HUD pursuant to 24 C.F.R. 5.703;

(3) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;

(4) Financial records as required by 24 C.F.R. 92.505, and OMB Circular A-110 (24 C.F.R. Part 84);

(5) Records demonstrating compliance with the Tenant Selection Plan requirements pursuant to 24 C.F.R. 92.253(d), and HOME affordability and income requirements;

(6) Records demonstrating compliance with MBE/WBE requirements;

(7) Records demonstrating compliance with 24 C.F.R. Part 135 which implements Section 3 of the Housing Development Act of 1968 (including those in Exhibit H of this Agreement);

(8) Records demonstrating compliance with applicable relocation requirements, which must be retained for at least five (5) years after the date by which persons displaced from the property have received final payments;

(9) Records demonstrating compliance with applicable labor requirements including certified payrolls from Borrower's General Contractor evidencing that applicable prevailing wages have been paid.

(10) Records demonstrating compliance with 24 C.F.R. 8.20.

(b) The County shall notify Borrower of any records it deems insufficient. Borrower has fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the County in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

Section 4.6 County Audits.

(a) Each year, Borrower shall provide the County with a copy of Borrower's annual audited financial statements, which is to include information on all of Borrower's activities, in addition the Borrower's general partners shall submit audited financial statements and the Borrower and the Borrower's general partners shall submit all other financial information pertaining to the Development as is reasonably requested by the County determined by the County as necessary for compliance with the requirements of 24 C.F.R. 504(d). Borrower shall also follow audit requirements of the Single Audit Act and OMB Circulars A-122 and 110.

(b) In addition, the County or any designated agent or employee of the County at any time, upon three-business days' prior written notice, is entitled to audit the Residual Receipts of the Development, and all of Borrower's books, records, and accounts pertaining to the Development, excluding any privileged or confidential materials. Such audit is to be conducted during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the draft completion of an audit, the County shall deliver a copy of the results of the audit to Borrower. If it is determined as a result of such audit that there has been a deficiency in a loan repayment to the County, then such deficiency will become immediately due and payable with interest at the Default Rate from the date the deficient amount should have been paid. In addition, if any audit conducted pursuant to this Section 4.5 determines that Residual Receipts have been understated for any fiscal year by more than five percent (5%), then the Borrower shall pay, in addition to the amounts set forth above,

all of the costs and expenses incurred by the County in connection with the audit and review of Borrower's accounts or records. In addition, upon the occurrence of an uncured Event of Default, the County or any designated agent or employee of the County at any time, upon three-business days' prior written notice, is entitled to audit all of books, records, and accounts pertaining to any of the Sponsor's development activities, excluding any privileged or confidential materials.

(c) If Borrower contests the draft conclusions of any audit, Borrower shall have thirty (30) days to provide the County and its auditor with a detailed explanation of its position and supporting documentation. The County and its auditor shall consider Borrower's position in good faith. At any party's request, Borrower and the County (and/or their respective auditors or accountants) shall meet to resolve factual or interpretive disputes, following which the County shall notify Borrower of final audit conclusions. Borrower shall be deemed to have acceded to such conclusions unless Borrower within fifteen (15) days notifies the County of its objection, in which event either party would have such rights and remedies as provided in this Agreement and by applicable law. The County's cost of any review or contest pursuant to this paragraph shall be borne by Borrower unless the final audit determines that any understatement of Residual Receipts by Borrower in any fiscal year was less than five percent (5%). Notwithstanding anything to the contrary herein, the Borrower shall bear its own costs to review or contest findings made hereunder.

Section 4.7 HOME Requirements.

(a) Borrower shall comply with all applicable laws and regulations governing the use of the HOME Loan funds as set forth in 24 C.F.R. Part 92, including the requirements of the Regulatory Agreement. In the event of any conflict between this Agreement and applicable laws and regulations governing the use of the Loan funds, the applicable laws and regulations govern. During the HOME Term, these requirements are federal requirements, implemented by the County; thereafter, these requirements are deemed local County requirements.

(b) The laws and regulations governing the use of the Loan funds include (but are not limited to) the following:

(1) Eligible Project Costs. Restrictions on funding only eligible project costs as defined under 24 C.F.R. 92.206 (subject to Section 2.3 above).

(2) Environmental and Historic Preservation. 24 C.F.R. Part 50 and 24 C.F.R. Part 58, which prescribe procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5.

(3) Applicability of OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102, Revised, A-110, A-122, and A-133.

(4) Debarred, Suspended or Ineligible Contractors. The prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 C.F.R. Part 24.

(5) Civil Rights, Housing and Community Development, and Age Discrimination Acts. The Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Construction Act of 1973 (29 USC 794, et seq.); the Age Discrimination Act of 1975 (42 USC 6101, et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by Executive Order 12608, Executive Order 13672 concerning Gender Identity.

(6) Lead-Based Paint. The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. Part 35 and 24 C.F.R. 92.355.

(7) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24; 24 C.F.R. 570.606; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq.; 24 C.F.R. 92.353; and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Sections 6000 et seq. If and to the extent that development of the Development results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Borrower shall comply with all applicable local, state, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. Borrower shall prepare and submit a relocation plan to the County for approval. Borrower is solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. Borrower shall indemnify, defend (with counsel reasonably chosen by the County), and hold harmless the County against all claims that arise out of relocation obligations to residential tenants, homeowners, or businesses permanently or temporarily displaced by the Development.

(8) Discrimination against the Disabled. The requirements of the Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Uniform Federal Accessibility Standards (24 C.F.R. 8.20, et seq. 8.51) and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), and federal regulations issued pursuant thereto.

(9) Clean Air and Water Acts. The Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 1500, as amended from time to time.

(10) Uniform Administrative Requirements. The provisions of 24 C.F.R. 92.505 regarding cost and auditing requirements.

(11) Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3") and implementing regulations 24 C.F.R. 135 et seq., requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. Borrower agrees to include the following language in all subcontracts executed under this Agreement:

(i) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(ii) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(iii) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause; and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference; shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(iv) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

(v) The contractor will certify that any vacant employment positions, including training positions, that are filled (A) after the contractor is selected but before the contract is executed; and (B) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.

(vi) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(vii) With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians; and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

(12) Labor Standards. The labor requirements set forth in 24 C.F.R. 92.354; the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 3141-3148); the Copeland "Anti-Kickback" Act (40 U.S.C. 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

(13) Drug Free Workplace. The requirements of the Drug Free Workplace Act of 1988 (P.L. 100-690) and implementing regulations at 24 C.F.R. Part 24.

(14) Anti-Lobbying; Disclosure Requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 C.F.R. Part 87.

(15) Historic Preservation. The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. Section 470) and the procedures set forth in 36 C.F.R. Part 800. If archeological, cultural, or historic period resources are discovered during construction, all construction work must come to a halt and Borrower shall immediately notify the County. Borrower shall not shall alter or move the discovered material(s) until all appropriate procedures for "post-review discoveries" set forth in Section 106 of the National Historic Preservation Act have taken place, which include, but are not limited to, consultation with the California State Historic Preservation Officer and evaluation of the discovered material(s) by a qualified professional archeologist.

(16) Flood Disaster Protection. The requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) (the "Flood Act"). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of the Flood Act, for use in an area identified by HUD as having special flood hazards which is not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of the Flood Act. The use of any assistance

provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program is subject to the mandatory purchase of flood insurance requirements of Section 102(a) of the Flood Act. If the Property is located in an area identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., the property owner and its successors or assigns must obtain and maintain, during the ownership of the Property, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(s) of the Flood Act. Such provisions are required notwithstanding the fact that the construction on the Property is not itself funded with assistance provided under this Agreement.

(17) Religious Organizations. If the Borrower is a religious organization, as defined by the HOME requirements, the Borrower shall comply with all conditions prescribed by HUD for the use of HOME funds by religious organizations, including the First Amendment of the United States Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 C.F.R. 92.257.

(18) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the Loan funds.

(19) Physical Needs Assessment. The Borrower shall conduct, or caused to be conducted, a physical needs assessment on the Development once every five (5) years from the date that the Construction of the Development is completed. The Borrower shall comply with all HUD requirements for conducting and documenting the physical needs assessment and shall provide the County with a copy of all documentation related to each physical needs assessment conducted, or caused to be conducted, by the Borrower.

Section 4.8 Hazardous Materials.

(a) Borrower shall keep and maintain the Property in compliance with, and may not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Borrower may not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential property of this type.

(b) Borrower shall immediately advise the County in writing if at any time it receives written notice of: (1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (2) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery

compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (1) and (2) above are hereinafter referred to as "Hazardous Materials Claims"); and (3) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" (as defined in California Health and Safety Code Section 25117.4) under the provision of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The County has the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower. Borrower shall indemnify and hold harmless the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (1) all foreseeable consequential damages; (2) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans and (3) all reasonable costs and expenses incurred by the County in connection with clauses (1) and (2), including but not limited to reasonable attorneys' fees and consultant's fees; provided, however, that Borrower shall have no obligation to indemnify or hold harmless the County with respect to conditions that first existed on the Property prior to the "Commencement Date" as defined in the ground lease by which Borrower has obtained an interest in the Property, unless and to the extent liability arises from the Borrower's failure to address such conditions in the manner required by law. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (A) losses attributable to diminution in the value of the Property; (B) loss or restriction of use of rentable space on the Property; (C) adverse effect on the marketing of any rental space on the Property; and (D) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify will survive termination of this Agreement.

(d) Without the County's prior written consent, which will not be unreasonably withheld, Borrower may not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the County's judgment, impair the value of the County's security hereunder; provided, however, that the County's prior consent is not necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the County's consent before taking such action, provided that in such event Borrower shall notify the County as soon as practicable of any action so taken. The County agrees not to withhold its consent, where such consent is required hereunder, if: (1) a

particular remedial action is ordered by a court of competent jurisdiction; (2) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (3) Borrower establishes to the satisfaction of the County that there is no reasonable alternative to such remedial action which would result in less impairment of the County's security hereunder; or (4) the action has been agreed to by the County.

(e) Borrower hereby acknowledges and agrees that: (1) this Section is intended as the County's written request for information (and Borrower's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5; and (2) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(f) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the County's or the trustee's rights and remedies under the Deed of Trust, the County may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to: (1) waive its lien on such environmentally impaired or affected portion of the Property; and (2) exercise (i) the rights and remedies of an unsecured creditor, including reduction of its claim against Borrower to judgment, and (ii) any other rights and remedies permitted by law. For purposes of determining the County's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Borrower will be deemed to have willfully permitted or acquiesced in a release or threatened release of Hazardous Materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the County in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) and the maximum rate permitted by law, until paid, will be added to the indebtedness secured by the Deed of Trust and is due and payable to the County upon its demand made at any time following the conclusion of such action.

Section 4.9 Maintenance and Damage.

(a) During the course of both construction and operation of the Development, Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving written notice from the County of such a condition, if Borrower is incapable of curing a default within such thirty (30) day period, the County will give the Borrower ninety (90) days to cure such default provided Borrower has commenced to cure within such thirty (30) day period and is diligently proceeding to cure such default through the end of such period, then in addition to any other

rights available to the County, the County may perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property, subject to the provisions provided in subsection (b) below.

(b) Subject to the requirements of Senior Lenders, and if economically feasible in the County's judgment after consultation with Borrower, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the County with such changes as have been approved by the County. Such work or repair is to be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the County in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and is to be completed within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction are to be applied to the cost of such repairs or restoration and, if such insurance proceeds are insufficient for such purpose, then Borrower shall make up the deficiency. If Borrower does not promptly make such repairs then any insurance proceeds collected for such damage or destruction are to be promptly delivered by Borrower to the County as a special repayment of the Loan, subject to the rights of HUD and the Senior Lenders, as applicable.

Section 4.10 Fees and Taxes.

(a) Borrower is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development, and shall pay such charges prior to delinquency. However, Borrower is not required to pay and discharge any such charge so long as: (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings; and (b) if requested by the County, Borrower deposits with the County any funds or other forms of assurance that the County in good faith from time to time determines appropriate to protect the County from the consequences of the contest being unsuccessful.

(b) Borrower acknowledges that the Borrower is prohibited from applying to the State Board of Equalization for a welfare exemption from property taxes under California Revenue and Taxation Code Section 214 for the Development.

Section 4.11 Notice of Litigation.

Borrower shall promptly notify the County in writing of any litigation related to the Development, and any litigation related to the Borrower for which the amount claimed or at issue is in excess of Fifty Thousand Dollars (\$50,000), and of any claims or disputes that involve a material risk of such litigation.

Section 4.12 Operation of Development as Affordable Housing.

(a) Promptly after completion of construction Borrower shall operate the Development as an affordable housing development consistent with: (1) HUD's requirements for use of the HOME Funds; (2) the Regulatory Agreement; and (3) any other regulatory requirements imposed on Borrower including but not limited to regulatory agreements associated with the Authority Loan, and Low Income Housing Tax Credits provided by TCAC.

(b) Before leasing any HOME-Assisted Unit in the Development Borrower shall submit its proposed form of lease agreement for the County's review and approval. The Lease must not contain any provision which is prohibited by 24 C.F.R. 92.253(b) and any modifications thereto. The initial term of the lease for any Unit in the Development is to be for no less than one (1) year, except by mutual agreement between Borrower and the Tenant. Any Borrower termination of a lease agreement for any unit in the Development or refusal to renew must be in conformance with 24 C.F.R. 92.253(c), and must be preceded by not less than sixty (60) days written notice to the Tenant by Borrower specifying the grounds for the action.

(c) Before leasing any HOME-Assisted Unit in the Development, Borrower shall provide the County, for its review and approval, with Borrower's written tenant selection plan (the "Tenant Selection Plan"), which plan shall be in compliance with the requirements of 24 C.F.R. 92.253(d), and the Marketing Plan.

(d) Borrower shall evaluate the income eligibility of each Tenant household in Units pursuant to the County's approved Tenant certification procedures within sixty (60) days before the household's expected occupancy of one of the Units. For all HOME-Assisted Units, Borrower shall certify each Tenant household's income on an annual basis.

(e) Borrower shall maintain all documents setting forth the household income of each household occupying a Unit, and the total amount for rent, utilities, and related services charged to each household occupying the Development, as prescribed by the Regulatory Agreement and all other recorded regulatory restrictions.

Section 4.13 Nondiscrimination.

(a) Borrower herein covenants by and for itself, its heirs, executors, administrators, successors and assigns, and all persons claiming under or through them, that there will be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age (except for lawful senior housing in accordance with state and federal law), familial status, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor may Borrower or any person claiming under or through Borrower 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, subtenants, sublessees or vendees in the Property. Borrower shall comply with Executive Orders 11246, 11375, 11625, 12138, 12431, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and local laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted. The foregoing covenant will run with the land.

Section 4.14 Transfer.

(a) Definition. For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (1) any rights and/or duties under this Agreement; and/or (2) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the

Development is transferred and Borrower retains title. The term "Transfer" excludes the leasing of a Unit in the Development to an occupant in compliance with the Regulatory Agreement, and the leasing of any unrestricted units. The County Chief Executive Officer, Community Development and Housing Agency (CDHA) Deputy Executive Officer, or the Community Development and Housing Director are authorized to execute assignment and assumption agreements on behalf of the County to implement any approved Transfer.

(b) Prohibition. No Transfer is permitted without the prior written consent of the County, which the County may withhold in its sole discretion. The Loan will automatically accelerate and be due in full upon any Transfer made without the prior written consent of the County.

(c) Permitted Transfers. Notwithstanding the foregoing, the following are permitted Transfers approved by the County (each a "Permitted Transfer"):

(1) The grant of the security interests in the Development for Approved Financing.

(2) The Borrower anticipates syndicating partnership interests based in part on the low income housing tax credits that will be generated by the Development. The County hereby approves the admission of an Investor Limited Partner into the Borrower, provided that: (i) all documents associated with the admission of an Investor Limited Partner to the Borrower, including the Partnership Agreement, are submitted to the County for review and approval, which approval shall not be unreasonably withheld or delayed; (ii) that the Partnership Agreement and other partnership documents are consistent with and do not conflict with the Loan Documents and the Approved Development Budget; and (iii) the partnership documents provide for capital contributions by the Investor Limited Partner in the Partnership in amounts not less than those set forth in the Approved Development Budget or as otherwise approved by the County in its reasonable discretion. The County hereby approves the admission of Bank of America, N.A., a national banking association, and Banc of America CDC Special Holding Company, Inc., a North Carolina corporation as Investor Limited Partner.

(3) In the event the Borrower admits and Investor Limited Partner, the County hereby approves future Transfers of the limited partner interest in the Partnership provided that: (i) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the Partnership Agreement last approved by the County pursuant to Section 2.6(b)(7) or Section 4.14(c)(2); and; (ii) either (A) in subsequent Transfers, a wholly owned affiliate of the initial Investor Limited Partner retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner; or (B) in subsequent Transfers the initial limited partner remains liable for all unpaid capital contributions. Notwithstanding anything to the contrary, once all capital contributions provided for in the Partnership Agreement have been made, the limited partner interest in the Borrower may be transferred with prior written notice to the County.

(4) The removal, or withdrawal in lieu of removal, of Borrower's general partner for cause pursuant to the Partnership Agreement shall not require the County's consent or constitute a default under this Agreement. Notwithstanding anything to the contrary set forth in this Agreement or any of the Loan Documents, in the event that the general partner of

Borrower is removed by the limited partner of Borrower, or withdraws in lieu of being removed, for cause following default under the Borrower's Partnership Agreement, the County hereby approves the transfer of the general partner interest to an affiliate of the Investor Limited Partner of Borrower (which affiliate is not a 501(c)(3) tax-exempt public benefit corporation and does not meet the requirements of Section 4.6(c) or 5.1(b) hereof) to act as the interim replacement general partner for a period of time not longer than one hundred twenty (120) days, with the understanding and agreement that the replacement general partner following the interim general partner shall be approved in advance and in writing by the County, which approval shall not be unreasonably withheld, provided that: (i) all documents associated with the removal of the general partner, including the Partnership Agreement, are submitted to the County for review and approval, which approval shall not be unreasonably withheld or delayed; (ii) that the Partnership Agreement and other partnership documents are consistent with and do not conflict with the Loan Documents and the approved Development Budget.

(d) During the term of the Loan, Borrower will not refinance, re-syndicate, take out a line of credit or otherwise further encumber the property or restructure the debt constituting the Approved Financing without prior notification and approval of the County. Notwithstanding anything to the contrary, Borrower will make best efforts to provide written notification to the County at least one hundred twenty (120) days **prior to submittal** of applications, and in no event will provide written notification to the County no later than ninety (90) days **prior to the closing**, for refinancing, tax credits, lines of credit and any other application in which the property may be used as security.

Section 4.15 Insurance Requirements.

(a) Borrower shall maintain the following insurance coverage throughout the Term of the Loan written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII". If the Borrower uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Borrower agrees to amend, supplement, or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

(b) Without in anyway affecting the indemnity herein provided and in addition thereto, the Borrower shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

(1) Workers' Compensation/Employers Liability.

(i) Workers' Compensation A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Borrower and all risks to such persons under this Agreement.

(ii) If Borrower has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

(iii) With respect to borrowers that are non-profit corporations organized under California or federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

(2) Comprehensive General Liability. General Liability Insurance covering all operations performed by or on behalf of Borrower providing coverage for bodily injury and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000), per occurrence. The policy coverage must include:

- (i) Premises operations and mobile equipment.
- (ii) Products and completed operations.
- (iii) Broad form property damage (including completed operations).
- (iv) Explosion, collapse, and underground hazards.
- (v) Personal injury.
- (vi) Contractual liability.
- (vii) \$2,000,000 general aggregate limit.

(3) Comprehensive Automobile Liability.

(i) Primary insurance coverage must be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol I (any auto).

(ii) The policy must have a combined single limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

(iii) If the Borrower is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy must have a combined single limit of Two Million Dollars (\$2,000,000) for bodily injury and property damage per occurrence.

(iv) If the Borrower owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(4) Builders' Risk/Property Insurance. Builders' Risk insurance during the course of construction, and upon completion of construction, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the County, naming the County as a Loss Payee, as its interests may appear. Flood insurance must be obtained if required by applicable federal regulations.

(5) Commercial Crime. Commercial crime insurance covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount approved by the County, naming the County a Loss Payee, as its interests may appear.

(c) Borrower shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with Borrower or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (1), (2), and (3) above, meeting all of the general requirements of subsections (e) and (f) below and naming the County as an additional insured. The Borrower agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

(d) An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy must apply to bodily injury/property damage, personal injury/advertising injury and must include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage must also apply to automobile liability.

(e) The required insurance must be provided under an occurrence form, and Borrower shall maintain the coverage described in subsections (a) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit must be three times the occurrence limits specified above.

(f) Comprehensive General Liability and Comprehensive Automobile Liability insurance policies must be endorsed to name as an additional insured the County and its officers, agents, employees and members of the County Board of Supervisors. The additional insured endorsements must not limit the scope of coverage for the County to vicarious liability but must allow coverage for the County to the full extent provided by the policy. Such additional insured coverage must be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

(g) All policies and bonds are to contain: (1) the agreement of the insurer to give the County at least thirty (30) days notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (2) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the County; (3) a provision that no act or omission of Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (4) a waiver by the insurer of all rights of subrogation against the County and its authorized parties in connection with any loss or damage thereby insured against.

(h) Construction contracts for projects over Three Million Dollars (\$3,000,000) and less than Five Million Dollars (\$5,000,000) require limits of not less than Five Million Dollars (\$5,000,000) in General Liability and Auto Liability coverage.

(i) The Borrower shall require the carriers of required coverage's to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit

the Borrower and Borrower's employees or agents from waiving the right of subrogation prior to a loss or claim. The Borrower hereby waives all rights of subrogation against the County.

(j) All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

(k) The Borrower shall furnish Certificates of Insurance to the County Department administering the contract evidencing the insurance coverage prior to the close of Escrow, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Borrower shall maintain such insurance from the time Borrower commences performance of services hereunder until the completion of such services. Within fifteen (15) days following the close of Escrow, the Borrower shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

(l) The Borrower agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Borrower and the County or between the County and any other insured or additional insured under the policy.

(m) Any and all deductibles or self-insured retentions in excess of Ten Thousand Dollars (\$10,000) shall be declared to and approved by Risk Management.

(n) In the event that any policy of insurance required in this Section does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to obtain such insurance it deems necessary and any premiums paid by the County will be promptly reimbursed by Borrower or County disbursements to Borrower will be reduced to pay for the County purchased insurance.

(o) Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced and available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Borrower agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

Section 4.16 Anti-Lobbying Certification.

(a) Borrower certifies, to the best of Borrower's knowledge or belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(b) This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and no more than One Hundred Thousand Dollars (\$100,000) for such failure.

Section 4.17 Covenants Regarding Approved Financing

(a) Borrower shall promptly pay the principal and interest when due on any Approved Financing.

(b) Borrower shall promptly notify the County in writing of the existence of any default under any documents evidencing Approved Financing, including formally declared defaults and defaults that have not been formally declared by the lender but the existence of the potential default has been communicated to the Borrower by the lender in writing or otherwise, and provide the County copies of any notice of default.

(c) Borrower may not materially amend, modify, supplement, cancel or terminate any of the documents evidencing Approved Financing without the prior written consent of the County.

(d) Borrower may not incur any indebtedness of any kind other than Approved Financing or encumber the Development with any liens (other than liens for Approved Financing approved by the County or as otherwise allowed under the County approved Partnership Agreement) without the prior written consent of the County.

Section 4.18 Affordability and Project Monitoring.

(a) Throughout the Term, the Borrower shall comply with all applicable record keeping and monitoring requirements set forth in (24 C.F.R. Section 92.508) of the HOME Regulations and shall annually complete and submit to County a Certification of Continuing Program Compliance in the form attached hereto as Exhibit G, and incorporated herein.

(b) Representatives of the County (and HUD or its authorized representatives) shall be entitled to enter the Property upon at least forty-eight (48) hours' notice at reasonable times to monitor compliance with this Agreement, to inspect the records of the Development with respect to the HOME-Assisted Units, and to conduct an independent audit of such records. The Borrower agrees to cooperate with the County in making the Property available for such inspection. If for any reason the County is unable to obtain the Borrower's consent to such an inspection, the Borrower understands and agrees that the County may obtain, at the Borrower's expense, an administrative inspection warrant or other appropriate legal order to obtain access to and search the Property. The Borrower agrees to maintain records in a business-like manner and to make such records available to the County upon forty-eight (48) hours' notice at reasonable times. Unless the County otherwise approves, such records shall be maintained for the most recent five years until five years after the expiration of the HOME Term.

(c) Throughout the Term, the Borrower grants the County inspection rights as set forth in Section 3.14 above, and Borrower shall make best efforts to allow the County to comply with all applicable physical monitoring requirements set forth in (24 C.F.R. Section 92.504(d) and 24 C.F.R. 92.251) of the HOME Regulations.

(d) The County will enforce a per-unit affordability monitoring charge on all HOME assisted developments. HOME assisted developments will be charged as follows:

- 1-20 HOME-Assisted units = \$35.00 per unit/ annually
- 20+ HOME-Assisted units = \$25.00 per unit/ annually

(e) The County will enforce a physical inspection charge on all HOME assisted developments. The inspection charge for HOME assisted development will be the lesser of: (1) Five Thousand Dollars (\$5,000) per inspection; or (2) the actual costs incurred by the County to secure a qualified third party, independent of the Borrower, to conduct the physical inspections in accordance with the requirements set forth in this Agreement, and any related staffing costs incurred by the County in association therewith.

(f) The Borrower shall pay such charge within seven (7) days of receipt of an invoice from the County.

(g) The County reserves the right to waive or defer a portion of the monitoring charge if a development is unable to pay these costs. All waivers must be submitted in writing, with adequate supporting financial documentation, for review by the County EDA Administrator.

Section 4.19 Crime-Free Multi-Housing Unit Program Participation.

Property owners and managers shall be required to participate in the San Bernardino County Sheriff Department's Crime Free Multi-Housing Unit Program, wherein specialized training and other resources are provided to multi-family property owners and managers to reduce the potential for onsite criminal activity. Completion of the Department's training and designation as a Certified Crime-Free Property shall be achieved and maintained by the owner/representative and onsite property manager.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 5.1 Representations and Warranties.

Borrower hereby represents and warrants to the County as follows and acknowledges, understands, and agrees that the representations and warranties set forth in this Article 5 are deemed to be continuing during all times when any or all of the Loan remains outstanding. The Borrower shall immediately advise the County in writing if there is any material change relating to any matters set forth or referenced in the items set forth below:

(a) Organization. Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted. Copies of the documents evidencing the organization of the Borrower delivered to the County are true and correct copies of the originals.

(b) CHDO Requirement. The sole member of the general partner of the Borrower is a qualified CHDO as defined in 24 C.F.R. 92.2, such that the Borrower qualifies for CHDO set aside HOME Funds.

(c) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(d) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(e) Valid Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so

executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.

(f) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Borrower, or any provision of the organizational documents of Borrower, or will conflict with or constitute a breach of or a default under any agreement to which Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(g) Compliance with Laws, Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(h) Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to repay the Loan or impair the security to be given to the County pursuant hereto.

(i) Title to Land. At the time of recordation of the Deed of Trust, Borrower will have good and marketable leasehold title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and liens ancillary to the Approved Financing and liens in favor of the County or approved in writing by the County.

(j) Financial Statements. The financial statements of Borrower and other financial data and information furnished by Borrower to the County fairly and accurately present the information contained therein. As of the date of this Agreement, there has not been any material adverse change in the financial condition of Borrower from that shown by such financial statements and other data and information.

(k) Sufficient Funds. Borrower holds or reasonably expects to receive firm financial commitments for sufficient funds to complete the acquisition of the Property and the construction of the Development in accordance with the plans and specifications approved by the County.

(l) Taxes. Borrower and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or the Property otherwise due and payable, except those which are being contested in

good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. There is no proposed tax assessment against Borrower or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect upon the Property, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of Borrower and its subsidiaries, taken as a whole, which would be expected to result in a material impairment of the ability of Borrower to perform under any Loan Document to which it is a party, or a material adverse effect upon the legality, validity, binding effect or enforceability against Borrower of any Loan Document.

ARTICLE 6. DEFAULT AND REMEDIES

Section 6.1 Events of Default.

(a) Subject to Section 7.15, each of the following constitutes an "Event of Default" by Borrower under this Agreement:

(1) Failure to Construct. Failure of Borrower to obtain permits, commence, and prosecute to completion, construction of the Development within the times set forth in the Schedule of Performance, subject to extensions for reasons of force majeure under Section 7.15.

(2) Failure to Make Payment. Failure to repay the principal and any interest on the Loan within five (5) days of when such payment is due pursuant to the Loan Documents.

(3) Failure to Comply with the Management Plan. Failure to comply with the Management Plan approved by the County and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the County to the Borrower, which notice provides reasonable detail of the default and the required cure for such default.

(4) Failure to Comply with the Marketing Plan. Failure to comply with the Marketing Plan approved by the County and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the County to the Borrower, which notice provides reasonable detail of the default and the required cure for such default.

(5) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and Borrower fails to cure such default within thirty (30) days after receipt of written notice thereof from the County to Borrower, if Borrower is incapable of curing a default within such thirty (30) day period, the County will give the Borrower ninety (90) days to cure such default provided Borrower has commenced to cure within such thirty (30) day period and is diligently proceeding to cure such default through the end of such period; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control.

(6) Default Under Other Loans. A default is declared under any other financing for the Development by the lender of such financing and such default remains uncured following any applicable notice and cure period.

(7) Insolvency. A court having jurisdiction makes or enters any decree or order: (1) adjudging Borrower to be bankrupt or insolvent; (2) approving as properly filed a petition seeking reorganization of Borrower, or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (3) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties; (4) directing the winding up or liquidation of Borrower if any such decree or order described in clauses (1) to (4), inclusive, is unstayed or undischarged for a period of ninety (90) calendar days; or (5) Borrower admits in writing its inability to pay its debts as they fall due or will have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (1) to (4), inclusive. The occurrence of any of the Events of Default in this paragraph will act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

(8) Assignment; Attachment. Borrower assigns its assets for the benefit of its creditors or suffers a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon is returned or released within ninety (90) calendar days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

(9) Suspension; Termination. Borrower or its general partner shall have: (1) the operation of their business voluntarily or involuntarily suspended by the State of California, (2) voluntarily stopped or terminated the operation of their business; (3) the Borrower shall have the operation of the partnership voluntarily or involuntarily dissolved, suspended or terminated by the State of California.

(10) Liens on Property and the Development. Any claim of lien (other than liens approved in writing by the County) is filed against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the County.

(11) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development, except that condemnation by the County shall cause the Loan to accelerate but shall not be a Default.

(12) Unauthorized Transfer. Any Transfer other than as permitted pursuant to Section 4.14.

(13) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial

statement, certificate, or report submitted to the County in connection with any of the Loan Documents, proves to have been incorrect in any material respect when made.

(14) Failure to Timely Lease. Failure of Borrower to lease all of the HOME-Assisted Units within eighteen (18) months of the Completion of Construction of the Development.

(15) Applicability to General Partner. The occurrence of any of the events set forth in subsection (5), subsection (6), or subsection (7) in relation to Borrower's managing general partner.

Section 6.2 Remedies.

(a) Upon the occurrence of an Event of Default and following the expiration of all applicable notice and cure periods the County: (1) is relieved of any obligation to make or continue the Loan; and (2) has the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(i) Acceleration of Note. The County may cause all indebtedness of Borrower to the County under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. Borrower is liable to pay the County on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the County in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(ii) Assignment of Documents. Subject to the rights of Senior Lenders, the County may exercise all rights under the Assignment of Documents executed in connection with the Loan Documents. Subject to the rights of Senior Lenders, the Developer shall promptly deliver to the County copies of all plans and specifications for the Development, all permits and approvals obtained in connection with the Development, and all applications for permits and approvals not yet obtained but needed in connection with the Development

(iii) Specific Performance. The County has the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Loan Documents.

(iv) Termination. The County has the right to terminate this Agreement and, at its sole option, to seek any remedies at law or equity available hereunder.

(v) Right to Cure at Borrower's Expense. The County has the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. Borrower shall reimburse the County for any funds advanced by the County to cure a

monetary default by Borrower upon demand therefor, together with interest thereon at the lesser of the maximum rate permitted by law and ten percent (10%) per annum (the "Default Rate") from the date of expenditure until the date of reimbursement.

Section 6.3 Right of Contest.

Borrower may contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest is to be prosecuted diligently and in a manner unprejudicial to the County or the rights of the County hereunder.

Section 6.4 Remedies Cumulative.

No right, power, or remedy given to the County by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy will be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies will operate as a waiver thereof, nor does any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 6.5 Limited Partner Cure Rights

In addition to the provisions of Section 7.20 below, the County agrees to provide any limited partner of Borrower who has requested written notice from the County ("Permitted Limited Partner") a duplicate copy of all notices of default that the County may give to or serve in writing upon Borrower pursuant to the terms of the Loan Documents, at the address provided to the County, provided, the County shall have no liability to the Permitted Limited Partner for its failure to do so. The Permitted Limited Partner shall have the right, but not the obligation, to cure any Default of Borrower set forth in such notice, during any applicable cure period described in the Loan Documents, and the County will accept tender of such cure as if delivered by Borrower. If the Permitted Limited Partner is unable to cure a default because Borrower's general partner is in bankruptcy and/or because the cure requires removal of the general partner of Borrower and the Permitted Limited Partner is proceeding diligently to remove the general partner of Borrower in order to effect a cure of the Default, the cure period will be extended for such reasonable time as is necessary for the Permitted Limited Partner to effect a cure of the Default, but in no event longer than 60 days after the date of receipt by the Permitted Limited Partner of written notice of the default.

ARTICLE 7. GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

Nothing contained in this Agreement is to 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 County and Borrower or its agents, employees or contractors, and Borrower will at all times be deemed an independent

contractor and to be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the construction and operation of the Development, Borrower is solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and must include requirements in each contract that contractors are solely responsible for similar matters relating to their employees. Borrower is solely responsible for its own acts and those of its agents and employees.

Section 7.2 No Claims.

Nothing contained in this Agreement creates or justifies any claim against the County by any person that Borrower may have employed or with whom Borrower 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 purchase of the Property, the construction or operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the construction or operation of the Development.

Section 7.3 Discretion Retained By County.

The County's execution of this Agreement in no way limits the discretion of the County in the permit and approval process in connection with the construction of the Development.

Section 7.4 Indemnification.

The Borrower agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers ("Indemnities") from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnities, except as provided in the following sentence. The Borrower's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "gross negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. This indemnification provision is not intended to and does not limit, negate, modify, nullify, or change the nonrecourse provisions of this Agreement or any other agreement, document, instrument, certificate or covenant executed by Borrower. The provisions of this Section will survive the expiration of the Term and the reconveyance of the Deed of Trust.

Section 7.5 Non-Liability of County Officials, Employees and Agents.

No board member, official, employee or agent of the County is personally liable to Borrower in the event of any default or breach by the County or for any amount that may become due to Borrower or its successor or on any obligation under the terms of this Agreement.

Section 7.6 No Third Party Beneficiaries.

There are no third party beneficiaries to this Agreement.

Section 7.7 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.7(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or financial benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Borrower shall exercise due diligence to ensure that the prohibition in this Section 7.7(a) is followed.

(b) The conflict of interest provisions of Section 7.7(a) above apply to any person who is an employee, agent, consultant, officer of the County, or any immediate family member of such person, or any elected or appointed official of the County, or any person related within the third (3rd) degree of such person.

(c) In accordance with California Government Code Section 1090 and the Political Reform Act, California Government Code section 87100 et seq., no person who is a director, officer, partner, trustee or employee or consultant of Borrower, or immediate family member of any of the preceding, may make or participate in a decision, made by the County or a County board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Borrower. Interpretation of this section is governed by the definitions and provisions used in the Political Reform Act, California Government Code Section 87100 et seq., its implementing regulations manual and codes, and California Government Code Section 1090.

(d) Borrower shall comply with the conflict of interest provisions set forth in 24 C.F.R. 92.356.

Section 7.8 Notices, Demands and Communications.

All notices required or permitted by any provision of this Agreement must be in writing and sent 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 Parties as follows:

County: Community Development and Housing Agency
County of San Bernardino
385 North Arrowhead Ave Third Floor
San Bernardino, CA 92415-0043
Attn:

With a copy to:

Goldfarb & Lipman, LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attn: Rafael Yaquian

Borrower:

Waterman Gardens Partners 2, L.P.
c/o National Community Renaissance of California
9421 Haven Avenue
Rancho Cucamonga, CA 91730
Attn: Steve PonTell, President/CEO

With a copy to:

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

With a copy to:

WG 2 DGP LLC
c/o The Clancy Company, LLC
22 Boatswain Lane
Kennebunkport, Maine 04046
Attn: Patrick Clancy, Managing Member

With a copy to:

Waterman Affordable 3 LLC
c/o Housing Partners I, Inc.
715 East Brier Drive
San Bernardino, CA 92408-2841
Attn: President

With a copy to:

Bank of America, N.A.
MA1-225-02-02
225 Franklin Street
Boston, MA 02110
Attention: Asset Management
Facsimile: 617-346-2257

And:

Banc of America CDC Special Holding Company, Inc.

MA1-225-02-02
225 Franklin Street
Boston, MA 02110
Attention: Asset Management
Facsimile: 617-346-2257

And:

Buchalter, a Professional Corporation
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017
Attn: Michael A. Williamson, Esq.
Facsimile: (213) 630-5799
Matter No: B0965-0428

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 will be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 7.9 Amendments.

No alteration or variation of the terms of this Agreement is valid unless made in writing by the Parties. The County Chief Executive Officer or Community Development and Housing Agency (CDHA) Deputy Executive Officer is authorized to execute on behalf of the County amendments to the Loan Documents or amended and restated Loan Documents as long as any material change in the amount or terms of this Agreement is approved by the County Board of Supervisors.

Section 7.10 County Approval.

The County has authorized the County Chief Executive Officer or Community Development and Housing Agency (CDHA) Deputy Executive Officer to execute the ancillary Loan documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel certificates concerning the status of the Loan and the existence of Borrower defaults under the Loan Documents, including subordination agreements substantially consistent with the terms of Section 2.5 above.

Section 7.11 Applicable Law and Venue.

This Agreement is governed by the laws of the State of California. Any action brought claiming a breach of this Agreement or interpreting this Agreement shall be brought and venued in San Bernardino County, California

Section 7.12 Parties Bound.

Except as otherwise limited herein, this Agreement binds and inures to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors, and assigns.

This Agreement is intended to run with the land and to bind Borrower and its successors and assigns in the Property and the Development for the entire Term, and the benefit hereof is to inure to the benefit of the County and its successors and assigns.

Section 7.13 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

Section 7.14 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.15 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party will not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, court order, governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement), or any other similar causes (other than the Borrower's inability to obtain financing for the Improvements) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event will the County be required to agree to cumulative delays in excess of one hundred eighty (180) days be allowed under this Section.

Section 7.16 Waivers.

Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement does not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Borrower may not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 7.17 Title of Parts and Sections.

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

Section 7.18 Entire Understanding of the Parties

The Loan Documents constitute the entire agreement of the Parties with respect to the Loan.

Section 7.19 Multiple Originals; Counterpart.

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

Section 7.20 Limited Partner Rights.

The County agrees to the following provisions for the benefit of the Developer's Investor Limited Partner:

(a) The County will give the Investor Limited Partner a copy of any written notice that the County gives to Borrower under this Agreement and the other Loan Documents;

(b) The County will give the Investor Limited Partner ten (10) days after the Investor Limited Partner's receipt of such notice to cure a non-payment of any sum due under the Loan Documents;

(c) The County will give the Investor Limited Partner thirty (30) days after the Investor Limited Partner's receipt of such notice to cure any other default under this Agreement and other Loan Documents;

(d) If a default is incapable of being cured within thirty days, the County will give the Investor Limited Partner sixty (60) days to cure such default provided the Investor Limited Partner has commenced to cure such default and is diligently proceeding to cure such default through the end of such period;

(e) If the Investor Limited Partner makes any such payment or otherwise cures such default, the County will accept such action as curing such Default as if such payment or cure were made by Borrower;

(f) The County will permit insurance and condemnation proceeds to be used to rebuild the Development provided that: (1) sufficient funds are provided from other sources to effectively rebuild the Affordable Development to a lawful multifamily housing complex, and (2) subject to the rights of any senior lenders, the County shall hold all such proceeds and disburse them based on the progress of construction, subject to such additional reasonable conditions as the County may impose.

Section 7.21 Action by the County. Except as may be otherwise specifically provided in this Agreement or any other of the Loan Documents, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the County is required or permitted under this Agreement or any other of the Loan Documents, such action shall be given, made, taken, refused, denied or withheld by the County Executive Officer, at the County Executive Officer's reasonable discretion (unless some other standard is expressly stated), or by any person who

shall have been designated in writing to the Developers by the County Executive Officer, without further approval by the County Board. Any such action shall be in writing.

WHEREAS, this Agreement has been entered into by the undersigned as of the Effective Date.

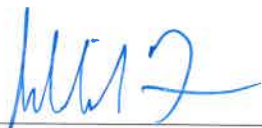
BORROWER:

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

Date:


8/1/19

COUNTY:

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

By:


Curt Hagman, Chairman
Board of Supervisors

Date of Execution: **AUG 06 2019**

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

LYNNA MONELL
Clerk of the Board of Supervisors



APPROVED AS TO LEGAL FORM:

MICHELLE D. BLAKEMORE
County Counsel

By:


Robert F. Messinger
Principal Assistant County Counsel