

HOME INVESTMENT PARTNERSHIPS ACT LOAN AGREEMENT

Between

COUNTY OF SAN BERNARDINO

and

AMCAL Las Terrazas Fund, L.P.

(Las Terrazas- HOME Loan)

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS AND EXHIBITS.....	2
Section 1.1    Definitions. ....	2
Section 1.2    Exhibits. ....	10
ARTICLE 2. LOAN PROVISIONS.....	10
Section 2.1    Loan. ....	10
Section 2.2    Interest. ....	10
Section 2.3    Use of Loan Funds. ....	11
Section 2.4    Security. ....	11
Section 2.5    Subordination. ....	11
Section 2.6    Conditions Precedent to Disbursement of Loan Funds. ....	13
Section 2.7    Repayment Schedule. ....	17
Section 2.8    Non-Recourse. ....	19
ARTICLE 3. CONSTRUCTION OF THE IMPROVEMENTS .....	20
Section 3.1    Schedule of Performance. ....	20
Section 3.2    Permits and Approvals. ....	20
Section 3.3    Bid Package. ....	20
Section 3.4    Construction Contract. ....	20
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. ....	26
Section 3.13    Certificates of Completion. ....	26
Section 3.14    Mechanics Liens, Stop Notices, and Notices of Completion. ....	26
Section 3.15    Inspections. ....	27
Section 3.16    Approved Financing Plan. ....	28
Section 3.17    Developer Fee. ....	28
Section 3.18    Marketing Plan. ....	28
Section 3.19    Tenant Services Plan and Budget. ....	29
ARTICLE 4. LOAN REQUIREMENTS.....	30
Section 4.1    HOME Match and Per Unit Subsidy Requirement. ....	30
Section 4.2    Financial Accountings and Post-Completion Audits. ....	30
Section 4.3    Annual Operating Budget. ....	30
Section 4.4    Information. ....	30
Section 4.5    Records. ....	30



## TABLE OF CONTENTS

	<u>Page</u>
Section 4.6 County Audits. ....	32
Section 4.7 HOME Requirements. ....	33
Section 4.8 Hazardous Materials. ....	37
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. ....	41
Section 4.15 Insurance Requirements. ....	43
Section 4.16 Anti-Lobbying Certification. ....	46
Section 4.17 Covenants Regarding Approved Financing. ....	47
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 ....	54
Section 7.1 Relationship of Parties. ....	54
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. ....	55
Section 7.6 No Third Party Beneficiaries. ....	55
Section 7.7 Conflict of Interest. ....	55
Section 7.8 Notices, Demands and Communications. ....	56
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. ....	59

## TABLE OF CONTENTS

	<u>Page</u>
Section 7.18 Entire Understanding of the Parties. ....	59
Section 7.19 Multiple Originals; Counterpart.....	59
Section 7.20 Limited Partner Rights. ....	59
Section 7.21 Action by the County.....	60
Exhibit A: Legal Description of the Property	
Exhibit B: Approved Financing Plan	
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  
(Las Terrazas- HOME Loan)

This HOME Investment Partnerships Act Loan Agreement (the "Agreement") is dated as of November 17, 2020 (the "Effective Date"), and is between the County of San Bernardino, a political subdivision of the State of California (the "County") and AMCAL Las Terrazas Fund, 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. 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 County owns fee title interest in certain real property located on the corner of Valley Boulevard and North Cypress in an unincorporated area of the County, as more particularly described in Exhibit A (the "Property"). The Borrower has a leasehold interest in the Property pursuant to that certain Ground Lease dated on or about the date hereof (the "Housing Lease").

D. The Property is part of a development that includes one-hundred and twelve (112) units of affordable housing (including one unrestricted manager's unit) on the Property in order to provide increased affordable housing opportunities and related amenities include pre-school or day care space (the "Improvements"). The Improvements and the Property are referred to as the "Development."

E. Borrower desires to borrow from the County and the County desires to lend Borrower Nine Million One Hundred Seventy-Nine Thousand Five Hundred Fifty-Two Dollars (\$9,179,552) of HOME Investment Partnerships Act funds ("HOME Funds") to fund eligible activities for the Development as allowed under 24 C.F.R. 92.206 through 24 C.F.R. 92.209 (the "Loan"). The Loan will be evidenced by the Note and secured by the Deed of Trust, as defined below.

F. 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 to Borrower pursuant to this Agreement, the County has classified forty-eight (48) 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 include thirty-three (33) one-bedroom Units, eleven (11) two-bedroom Units, and four (4) 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 two-bedroom unit shall be the manager's unit, which shall not be restricted.

G. Pursuant to the CEQA and its implementing guidelines, the County (in its capacity as "lead agency"), prepared, reviewed and approved the Mitigated Negative Declaration (the "Mitigated Negative Declaration") on May 24, 2016, for the transactions contemplated by this Agreement, following a duly noticed public hearing.

H. In accordance with National Environmental Policy Act ("NEPA"), prior to approval of this Agreement, County staff prepared and circulated for public review an environmental assessment, consistent with 24 CFR §58.40, and notice of intent to adopt a finding of no significant impact, consistent with 24 CFR 58.43, for this Agreement and the development contemplated by this Agreement (the "FONSI"). The County thereafter approved the FONSI, after concluding that any mitigation measures set forth in the mitigated FONSI will mitigate any significant environmental impacts associated with the development contemplated by this Agreement to a level of insignificance.

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. 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.

(b) "Agreement" means this HOME Investment Partnerships Act Loan Agreement, as such may be amended from time to time.

(c) "AMCAL" means AMCAL Multi-Housing Inc., a California corporation.

(d) "Annual Operating Expenses" with respect to a particular calendar year means the following costs reasonably and actually incurred for operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles:

(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 in the Approved Financing Plan;

(3) Property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry, and pursuant to a management contract approved by the County;

(4) Premiums for property damage and liability insurance;

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

(6) Annual regulatory compliance monitoring fee of \$7,500 payable to the County;

(7) Security services;

(8) Advertising and marketing costs;

(9) Cash deposited into reserves for capital replacements of the Development in an amount to be approved by the County as part of the Approved Affordable Housing Financing Plan, as the same may increase during the Term with the approval of the County;

(10) Cash deposited into an operating reserve in an amount to be approved by the County as part of the Approved Financing Plan, as the same may increase during the Term with the approval of the County, and annual operating budgets, but with the operating reserve capped at six (6) months of gross rent from the Development (as such rent may vary from time to time);

(11) A partnership management fee and, for the first seventeen (17) years of the Term, an asset management fee, in the amount approved by the County as part of the Approved Financing Plan;

(12) Utility services not paid for directly by tenants, including without limitation, water, sewer, and trash collection;

(13) Maintenance and repair, including pest control, landscaping, grounds maintenance, painting and decorating, cleaning, common systems repair, janitorial supplies and services;

(14) Social services fees and expenses;

(15) Annual audit fees, inspection fees, or monitoring fees required in relation to any Approved Financing;



(16) Extraordinary operating costs specifically approved by the County in its reasonable discretion; and

(17) 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,

(18) Reasonable accounting fees and legal fees; and

(19) Payments of Deferred Developer Fee; and

(20) Other ordinary and reasonable operating expenses approved by the County in its reasonable discretion and not listed above.

(21) Annual Operating Expenses shall exclude the following: depreciation, amortization, depletion or other non-cash expenses or, any amount expended from a reserve account.

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

(f) "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, which include the following, estimated as of the Effective Date:

(1) A loan in the approximate amount of approximately Twenty-Eight Million One Hundred Seventy Seven Thousand Nine Hundred Four Dollars (\$28,177,904) (the "Construction Loan") of which approximately Eight Million Three Hundred Eighty Four Thousand Dollars (\$8,384,000) will be converted to a permanent loan;

(2) Low Income Housing Tax Credits, Tax Credit Investor limited partner capital contribution in the approximate amount of Twenty Two Million One Hundred Twenty Three Thousand Five Hundred Seventy Nine Dollars (\$22,123,579), (the "Tax Credit Investor Equity");

(3) State Low Income Housing Tax Credits in the approximate amount of Seven Million Two Hundred Twenty-Seven Thousand Eight Hundred Eighty-Two Dollars (\$7,227,882) (the "State Credit Equity");

(4) A loan of Two Million Five Hundred Ninety One Thousand Dollars (\$2,591,000) of No Place Like Home program funding from the California Department of Housing and Community Development (the "NPLH Loan"); and

(5) County Loan of approximately Four Million Nine Hundred Ninety-Five Thousand Two Hundred Eighty-Nine Dollars (\$4,995,289), consisting of Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000) representing the capitalize rent value of the Property (established by an appraisal), One Million One Hundred Eighty Thousand Three Hundred Seventeen (\$1,180,317) of County Housing Monies, Eight Hundred Fifty Thousand (\$850,000) in NSP3 funds (that have been previously disbursed) and accrued interest in the

amount of Five Hundred Fourteen Thousand Nine Hundred Seventy-One Dollars and Seventy-Eight Cents (\$514,971.78).

(g) "Approved Financing Plan" means the Financing Plan approved by the County as of the date of this Agreement, attached to this Agreement as Exhibit B, incorporated herein by this reference, as the same may be amended pursuant to Section 3.16. The Approved Financing Plan shall be updated at the Close of Escrow without need for amendment of this Agreement and shall be included in the Construction Loan estoppel letter issued by the County at the Close of Escrow.

(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 Major Trades for the Development. The Bid Package is to include the following: (1) an invitation to bid; (2) copy of the proposed construction contract; (3) a form of bid guarantee that is reasonably acceptable to the County; and (4) all Construction Plans.

(j) "Board of Supervisors" means County of San Bernardino's Board of Supervisors.

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

(l) "CEQA" has the meaning set forth in Paragraph G of the Recitals.

(m) "Certificate of Completion" means the final Certificate of Completion issued by the County, or comparable County sign-off on the completion of construction of the Development, in the form attached to the DDA as Exhibit M, thereof.

(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 Completion, or equivalent document is issued by the County 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 Financing Plan 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 3.4.

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

(v) "Construction Plans" means all construction documentation upon which Borrower and the General Contractor rely in constructing the Improvement on the Property (including the units in the Improvement, landscaping, parking, and common areas) as approved by the County, 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. Construction Plans shall also mean the plans and specifications approved by the County under the DDA.

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

(x) "County Executive Officer" means the County's Chief Executive Officer.

(y) "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.

(z) "DDA" means that certain Amended and Restated Land Disposition, Development and Loan Agreement by and between the County and the Borrower dated as of January 7, 2020, as may be amended from time to time.

(aa) "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.

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

(cc) "Developer Fee" has the meaning set forth in Section 3.17.

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

(ee) "Escrow" means the escrow account established by the Borrower for the closing of Development financing with Commonwealth Land Title Company in its Los Angeles



office, located at 888 South Figueroa Street, Suite 2100, Los Angeles, CA 90017, or another escrow company satisfactory to the County.

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

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

(hh) Intentionally omitted.

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

(1) All rents, fees and charges paid by tenants, payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income to Borrower;

(2) The proceeds of business interruption or similar insurance;

(3) Any payment received in consideration for the leasing or other use of any portion of the Development;

(4) Subject to the rights of Senior Lenders, the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development (or applied toward the cost of recovering such proceeds);

(5) Subject to the rights of Senior Lenders, condemnation awards for a taking of part or all of the Development for a temporary period; and

(6) Gross Revenue shall exclude tenants' security deposits, loan proceeds, capital contributions or other similar advances

(jj) "Hazardous Materials" has the meaning set forth in Section 4.8.

(kk) "Hazardous Materials Claims" has the meaning set forth in Section 4.8.

(ll) "Hazardous Materials Law" has the meaning set forth in Section 4.8.

(mm) "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.

(nn) "HOME-Assisted Units" has the meaning set forth in Recital H.

(oo) "HOME Funds" has the meaning set forth in Paragraph B of the Recitals.

(pp) "HOME Term" means the period beginning on the date of this Agreement and ending on the twentieth (20<sup>th</sup>) anniversary of the Completion Date.

- (qq) "HOME Regulations" has the meaning set forth in Recital B.
- (rr) "Housing Lease" has the meaning set forth in Recital C.
- (ss) "HUD" has the meaning set forth in Paragraph B of the Recitals.
- (tt) "Improvements" has the meaning set forth in Paragraph D of the Recitals.
- (uu) "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.
- (vv) "Lenders' Share of Residual Receipts" means fifty percent (50%) of the Residual Receipts, inclusive of any Residual Receipts payment due under the Public Loans.
- (ww) "Loan" has the meaning set forth in Paragraph E of the Recitals.
- (xx) "Loan Documents" means this Agreement, the Note, the Regulatory Agreement, and the Deed of Trust.
- (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 3.18(a).
- (aaa) "NEPA" has the meaning set forth in Paragraph H of the Recitals.
- (bbb) "Net Proceeds of Permanent Financing" means the portion of the Approved Financing for the construction of the Development that is not required to pay the costs of acquiring a leasehold interest in and financing, development and construction of the Development (including but not limited to the funding of reserves and repayment of construction financing). Net Proceeds of Permanent Financing, if any, shall be determined pursuant to the procedure for determining "Net Excess Proceeds" set forth in Section 3.5(c) of the DDA.
- (ccc) "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.
- (ddd) "Notice of Completion" means the Notice of Completion executed by Borrower in the form specified in California Civil Code Section 3093.
- (eee) "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 4.14(c) hereof.
- (fff) "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 Financing Plan), have been recorded against the Borrower's leasehold interest in the Property, or if



previously recorded, the loan secured thereby has converted to the permanent phase thereof, which shall also be referenced as the "Conversion Date".

(ggg) "Permanent Financing" means the sources of approved permanent financing for the Development as listed in the Financing Plan for the Development approved by the County, as such may be amended.

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

(iii) "Permitted Transfer" has the meaning set forth in Section 4.14(c).

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

(kkk) "Public Loans" means the County Loan, NPLH Loan and the HOME Loan, and any other Approved Financing soft loan.

(lll) "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.

(mmm) "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).

(nnn) "Risk Management" means the County of San Bernardino's Department of Risk Management.

(ooo) "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.

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

(qqq) "Services Budget" has the meaning set forth in Section 3.19.

(rrr) "Services Plan" has the meaning set forth in Section 3.19.

(sss) "Special Limited Partner" means the special limited partner admitted to the Borrower.

(ttt) "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 31<sup>st</sup> of that same year. Subsequent statements of Residual Receipts will cover the twelve-month period that ends on December 31 of each year. The form of Residual Receipts Report provided pursuant to Section 3.5 of the DDA shall be deemed to satisfy the requirement hereof.

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

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

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

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

(yyy) "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 eighty-fifth (85<sup>th</sup>) anniversary of the Completion Date.

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

(aaa) "Unit" means one (1) of the approximately one-hundred and twelve (112) affordable housing units to be constructed at the Development, other than one (1) manager's 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 Financing Plan
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) 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.

### Section 2.3 Use of Loan Funds.

(a) Allowable Uses. The Borrower may use the Loan to fund the construction and permanent financing of the Development consistent with the Approved Financing Plan and consistent with eligible activities requirements under 24 C.F.R. 92.206 through 24 C.F.R. 92.209. 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 applicable 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. The Assignment of Collateral Documents delivered by the Borrower to the County pursuant to Section 3.4 of the DDA, shall secure the Loan and shall be deemed to satisfy the requirements under this Section 2.4.

(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.

### Section 2.5 Subordination.



(a) The County agrees to subordinate the Deed of Trust to an encumbrance securing and/or evidencing Approved Financing as well as any refinancing of any Approved Financing so long as the refinancing loan does not exceed the then outstanding principal balance of the existing loan being refinanced plus any commercially reasonable closing costs associated with such refinancing plus any reserves or holdbacks reasonably required by such refinancing lender that do not exceed Five Hundred Thousand Dollars (\$500,000) (each such Approved Financing and each such refinancing of an Approved Financing, a "Senior Loan"), will be subject to the satisfaction of each of the following conditions:

(1) The proposed lender of a Senior Loan (each a "Senior Lender") must be a state or federally chartered financial institution, an entity qualified to make loans in the State of California, a nonprofit corporation or a public entity that is not affiliated with Borrower or the General Partners, AMCAL or any AMCAL Affiliate, other than as a depositor or a lender;

(2) Borrower demonstrates to the County's reasonable satisfaction that subordination of the Leasehold 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, with, with County hereby agreeing that subordination to any Approved Financing (or refinancing of any Approved Financing so long as the term of the refinancing loan does not exceed the then outstanding principal balance of the existing Senior Lien plus any commercially reasonable closing costs associated with such refinancing plus any reserves or holdbacks reasonably required by such refinancing lender that do not exceed Five Hundred Thousand Dollars (\$500,000)) is hereby deemed necessary. Except as set forth above, 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 refinanced Senior Loan is necessary to provide adequate 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;

(3) The subordination agreement(s) is structured to minimize the risk that the Leasehold 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;

(4) The subordination(s) described in this Section may be effective only during the original term of the Senior Loan and any extension of its term or refinancing permitted herein or approved in writing by the County;

(b) No subordination may limit the effect of the Leasehold 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 Executive Officer that the conditions in this Section have been satisfied, the County Executive Officer or the County Executive

Officer's 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 will not subordinate the Regulatory Agreements to an encumbrance securing any other financing. In no event shall the County subordinate its fee interest in any portion of the Property to any mortgage, deed of trust, or regulatory agreement, with the exception of that certain Lease Rider Agreement required by TCAC to be recorded against the County's fee interest in the Property. The County acknowledges that it may be requested to record or attach a lease rider on the Housing Lease, as required by TCAC, and the consent to the recordation of such document against Borrower's leasehold interest in the Property will not be unreasonably conditioned, delayed or withheld.

#### 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 two components: (i) a "Construction Component" in the amount Eight Million Two Hundred Sixty-One Thousand Five Hundred Ninety-Seven Dollars (\$8,261,597) and (ii) a "Completion Component" in the amount of Nine Hundred Seventeen Thousand Nine Hundred Fifty-Five Dollars (\$917,955). Subject to Borrower's written request, the division of the Loan between the Construction Component and the Completion Component may be readjusted by the County Executive Officer on behalf of the County without the need for formal amendment of this Agreement. The County will disburse the Construction Component at the Construction Closing subject to the conditions precedent set forth in subsection (b) 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 (c).

(b) 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) This Agreement has been executed by the Borrower and the County and delivered to the County;

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



(4) 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;

(5) The County has received and approved any necessary updates to the Approved Financing Plan;

(6) The County has received and approved the general contractor's construction contract that the Borrower has entered or proposed to enter for construction of the Development as required under the terms of Section 3.4 of this Agreement, 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;

(7) County has approved or received copies of the plans and specifications for the Development;

(8) The County has received copies of (1) labor and material payment and performance bonds; or (2) other reasonable forms of security for the completion of the construction of the Development, from either the Borrower or the Borrower's general contractor;

(9) Borrower has obtained all permits and approvals necessary for the construction of the Improvement, (or is entitled to receive such building permits subject to the payment of fees therefor) necessary to perform the construction work pursuant to the terms of this Agreement;

(10) The Borrower has submitted a certification from the architect or the Certified Access Specialist certifying that the HOME-Assisted Units have been designed in compliance with Section 3.8(f) of this Agreement or has provided the County with other evidence that the Development has been designed to comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.) and the Uniform Federal Accessibility Standards (UFAS);

(11) Borrower's general partners have executed a Partnership Agreement for the Borrower 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 and the Special Limited Partner;

(12) 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;

(13) As applicable, the Subdivision Map has been processed creating the Property.

(14) 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 4.1 of this Agreement;

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

(16) 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, in accordance with the terms of this Agreement, and recorded copies have been arranged to be delivered to the County;

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

(18) 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;

(19) 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;

(20) The County has determined the undisbursed proceeds of the County Loan, together with other funds or firm commitments for funds that the Borrower has obtained, or reasonably expects to obtain, 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;

(21) 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;

(22) The County has received a written draw request from the Borrower, including certification that the condition set forth in Section 2.6(b)(1) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Financing Plan for the Development, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred;

(c) 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(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 satisfactory evidence that the Units are rented, or available to be rented, to eligible tenants at the required rents in compliance with the requirements of this Agreement and the Regulatory Agreement;

(3) The Borrower has satisfied all conditions for the receipt of the completion installment of the Tax Credit Investor Equity, consistent with Borrower's Partnership Agreement;

(4) The County has received from the Borrower copies of the final Certificate of Completion for the Development and the Notice of Completion has been recorded against leasehold title to the Property, or other equivalent document;

(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(f);

(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, in accordance with Section 3.18 hereof;

(10) The County has received from the Borrower evidence of marketing for any vacant units in the Development such as copies of flyers, list of media ads, list of agencies and organizations receiving information on availability of units, as applicable;

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

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

(13) Borrower has submitted a certification from the architect or a County approved Certified Access Specialist certifying that the Development has been constructed in compliance with Section 3.8 of this Agreement or has provided the County with other evidence that the Development, as built, complies with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.) and the Uniform Federal Accessibility Standards (UFAS);



(14) 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;

(15) In compliance with 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;

(16) The Borrower has submitted copies of all certified payrolls and provided the County all information required by Labor Code Section 17773.3, and any identified payment issues have been resolved, or Borrower is working diligently to resolve any such issues; and

(17) The County has received a written draw request from Borrower, including (i) certification that the conditions set forth in Section 2.6(a) continue to be satisfied, (ii) certification that the proposed use of funds is consistent with the Approved Financing Plan, (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) The Borrower hereby agrees and acknowledges that the County will have forty-five days (45) days from the date the County receives a completed draw request to disburse funds under this Section 2.6.

(e) 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 Improvement, the Senior Lender agrees to be bound to the terms hereof and the Senior Lender has cured any Event of Default of the Borrower that is not personal to the Borrower and is capable of being cured by such Senior Lender.

(f) Notwithstanding any other provisions of this Agreement, the County shall have no further obligation to disburse any portion of the Loan to Borrower under this Agreement following: (i) termination of this Agreement; (ii) notification by the County to the Borrower of an Event of Default (excluding any Event of Default of the County) under terms of this Agreement until such time as the Event of Default has been cured.

## Section 2.7 Repayment Schedule.

(a) Annual Payments. Commencing on May 1 following the first full year after the Completion of Construction, and on May 1 of each year thereafter through the fifty-seventh (57th) year of 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.

The information provided by the Borrower under Section 3.5 of the DDA shall be deemed to satisfy the requirements of this Section.

The entire principal and accrued interest on the Loan shall be due and payable prior to the end of the fifty-seventh (57th) year of the Term.

(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 one-hundred percent (100%) of the Net Excess Proceeds, as a special repayment of the Loan. Notwithstanding anything to the contrary, the County Executive Officer is authorized to approve a reduced special repayment from Net Excess Proceeds of the Loan pursuant to this subsection in the event the County Executive Officer determines in the County Executive Officer's sole and absolute discretion that such funds are required to pay project costs reasonably incurred by the Borrower and approved by the County pursuant to the Approved Financing Plan. Any amounts required to be paid hereunder, shall be apportioned among subordinate lenders.

(c) Determination of Net Excess Proceeds. The amount of the Net Excess Proceeds shall be determined by the Borrower and submitted to the County for approval on the date the Borrower submits the final cost certificate audit for the Development to TCAC. The Borrower shall also submit to the County any additional documentation sufficient to verify the amount of the Net Excess Proceeds. The County shall reasonably approve or disapprove the Borrower's determination of the amount of the Net Excess Proceeds in writing within sixty (60) days of the receipt of the Borrower's cost audit and supplemental documentation. If the County disapproves the Borrower's determination of the amount of Next Excess Proceeds, the County shall specify in writing the reasons for the disapproval. If the Borrower's determination is disapproved by the County, the Borrower shall re-submit documentation to the County until the County approval is obtained. The County's share of the Net Excess Proceeds shall be due the County from the Borrower within ten (10) days after the Borrower receives the final equity contribution from its Tax Credit Investor.

(d) 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 unleased for the entire eighteen (18) month period, which amount shall be immediately due and payable.

(e) Payment in Full. Borrower shall pay all outstanding principal and accrued interest on the Loan, in full, on the earliest to occur of: (1) the County's acceleration of the Note in accordance with Section 6.2 hereof; and (2) the expiration of the fifty-seventh (57th) year of the Term.

(f) 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.

(a) Except as provided below, upon recordation of the Deed of Trust against the Borrower's leasehold interest in 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 shall:

(1) Limit or impairs the enforcement of all the rights and remedies of the County against all such security for the Note;

(2) Be deemed in any way to impair 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;

(3) Be deemed in any way to limit the rights of the County to obtain specific performance by the Borrower of its covenants under the County Documents, other than the covenants to pay the County principal and interest due under the Promissory Note

(b) 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 this Agreement, or liability for:

(1) Fraud or willful misrepresentation of the Borrower;

(2) 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);

(3) 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/or

(4) The misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain; or by reason of damage, loss, or destruction to any portion of the Property.

### ARTICLE 3. CONSTRUCTION OF THE IMPROVEMENTS

#### 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 Borrower and the County 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 applicable Subdivision Maps necessary for the construction of the Development no later than the date set forth in the Schedule of Performance. The applications for permits and approvals shall be consistent with and incorporate the approved plans and specifications.

#### Section 3.3 Bid Package.

No later than thirty (30) days prior to Borrower's proposed date for advertising the Bid Package, Borrower shall submit to the County a copy of Borrower's general contractor's proposed Bid Package. The County Executive Officer, or his/her designee, shall approve or disapprove the Bid Package within fifteen (15) days after receipt of the Bid Package by the County. If the County rejects the proposed Bid Package the reasons therefor must be given to Borrower. Borrower will then have fifteen (15) days to submit a revised Bid Package. The County shall review and approve Borrower's new or corrected Bid Package within fifteen (15) days of receipt of the new or corrected Bid Package. The provisions of this Section will continue to apply until a proposed Bid Package has been approved by the County. Borrower may not publish a proposed Bid Package until it has been approved by the County.

#### Section 3.4 Construction Contract.

(a) No later than the date set forth in the Schedule of Performance, the Borrower shall submit to the County for its limited approval the proposed construction contract for the Development. All construction and professional services are to be performed by persons or entities licensed or otherwise authorized in the State of California. The County's review and approval shall be limited exclusively to a determination whether: (i) the guaranteed maximum construction cost or stipulated sum set forth in the construction contract is consistent with the Approved Financing Plan; (ii) the Major Trades were properly bid and that the contract is with

Portrait Construction, Inc., as contractor; or a contractor approved by the County; (iii) the construction contract contains provisions consistent with Sections 3.8(c), 3.9, and 3.10 of this Agreement; and (iv) the construction contracts require a retention of ten percent (10%) of hard costs until completion of the Development; or as approved by the County at its sole discretion, provided that that Borrower may release retention for the following trades prior to completion of the Development: grading, foundations, site work, framing, sewer and water.

(b) The County's approval of the construction contract for the Development shall in no way be deemed to constitute approval of or concurrence with any other term or condition of the construction contract, except as such term or condition may be required by this Agreement.

(c) Upon receipt by the County of the proposed construction contract, the County shall promptly review same and approve it within ten (10) days if the contract satisfies the limited criteria set forth above. If the construction contract is not approved by the County, the County shall set forth in writing and notify the Borrower of the County's reasons for withholding such approval. The Borrower shall thereafter submit a revised construction contract for County approval, which approval shall be granted or denied in ten (10) days in accordance with the criteria and procedures set forth above. Any construction contract executed by the Borrower for the Development shall be in a form approved by the County.

(d) Borrower and their contractors shall use best efforts to coordinate with the local County Workforce Development Department (WDD) and any other entity identified by the County (including but not limited to the Housing Authority), 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 3.5 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 3.5 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.

(c) Notwithstanding the foregoing, the County shall consider other reasonable forms of security for the completion of the construction of the Improvements, including (1) from either the Borrower or the Borrower's general contractor, in lieu of such Construction Bonds described in this section provided that: (A) the Investor and all lenders set forth on the Approved Financing Plan have agreed to such other security, and (B) the County has the same enforcement rights under such security as the Investor and all lenders set forth in the Approved Financing Plan; or (2) delivery of the executed Completion Guaranty Agreement, in the form attached hereto as Exhibit L to the DDA.

### 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.

(a) The Borrower shall diligently prosecute to completion the construction of the Development no later than the date set forth in the Schedule of Performance, but in no event later than November 1, 2022, unless the County and the Borrower agree to extend such date as a result extensions pursuant to Section 7.15.

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

(1) 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, subject to Section 7.15 hereof.

(2) 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.

(3) Borrower shall provide the County a copy of the Certificate of Completion, or other evidence of completion of the Development within ten (10) days of receipt.

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

(a) Changes. Borrower shall construct the Development substantially in accordance with the conceptual site plans and plans and specifications and the terms and conditions of the land use permits and approvals and building permits, including any variances



granted. 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. 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 required by law, in the construction of the Development, 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 board members, 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 contractors and subcontractors) 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 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.

(f) 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 six (6) Units, representing five percent (5%) of the Units in the Development, shall be constructed to be readily accessible and usable by households with a mobility impaired member and a minimum of three (3) Units, representing two percent (2%) of the Units in the Development) shall be constructed and to be readily accessible and usable by households with a hearing or visually impaired member. 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.

(c) Nothing in this Section prohibits the Borrower from requiring Units in the Development to be available to and occupied by income eligible households in accordance with the Regulatory Agreements, or from requiring the IEHP-Assisted Units in the Development to be available to and occupied by income eligible IEHP Housing Initiative Participants in accordance with the Regulatory Agreements.

#### 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.

(a) From the date of execution of this Agreement and until such time as Borrower has received a Certificate of Completion for the Development, Borrower shall provide the County with quarterly progress reports regarding the status of the construction of the Development.

(b) The Borrower shall provide any information reasonably requested by the County in connection with the Development.

#### 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 Certificates of Completion.

(a) Promptly after completion of the Development, and upon written request from the Borrower, in accordance with those provisions of this Agreement relating solely to the obligations of the Borrower to construct the Development; and the County's determination that the Borrower various obligations with regards to completion of the Development under this Agreement have been met; the County will provide the Borrower with one or more Certificates of Completion for the Development. If upon the written request from the Borrower, the County determines, at its sole discretion, that the requesting Borrower is not entitled to a Certificate of Completion, the County shall within twenty (20) days of such request, provide such Borrower with a written response stating with specificity the obligations required to be completed as a condition for issuing the Certificate of Completion. If the County fails to issue or fails to provide a written response stating with specificity the reasons the County will not issue a Certificate of Completion to a requesting Borrower within twenty (20) days of a request hereunder, then the requesting Borrower shall be deemed to be entitled to receive such Certificate of Completion.

(b) Such Certificates of Completion shall be conclusive evidence that the covenants in this Agreement with respect to the obligations of Borrower to construct their portions of the Development described in such certificates and the dates for the beginning and completion thereof have been met; provided, however, such certifications shall not be conclusive evidence regarding Borrower satisfaction of the prevailing wage requirements of Section 3.8(c) above. Such Certificates of Completion shall be in such form as will enable them to be recorded among the official records of the County. Such certifications and determinations shall not constitute evidence of compliance with or satisfaction of any obligation of the Borrower to any holder of a deed of trust securing money loaned to finance any portion of the Development or any part thereof and shall not be deemed a notice of completion under the California Civil Code.

#### Section 3.14 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 or obtain a surety bond, 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.

#### Section 3.15 Inspections.

(a) The Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection of the Development by the County and by public authorities during reasonable business hours upon forty-eight (48) hours' written notice for the purposes of determining compliance with this Agreement, provided, however, that nothing in this Agreement shall entitle the County to enter an occupied unit in the Development without notice to the tenant thereof, which the Borrower shall deliver on behalf of the County, and permission from such tenant to the extent such permission is required by law. Such inspections do not relieve the Borrower, or its contractors, from any applicable requirement to obtain other County inspections in connection with the construction of the Improvements.

(b) After the completion of an inspection the County shall deliver a copy of the inspection report 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 3.16 Approved Financing Plan.

As of the date of this Agreement, the County has approved the Approved Financing Plan set forth in Exhibit B. Borrower shall submit any proposed or required amendments to the Approved Financing Plan, along with evidence that the changes to the Approved Financing Plan are reasonable and necessary, to the County for approval within fifteen (15) 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 Financing Plan, which approval shall not be unreasonably withheld or delayed. Written consent of the County will be required to amend the Approved Financing Plan, which consent will be granted or denied in accordance with Section 5.6(c) of the DDA. The County will make best efforts to respond in writing within seven (7) days after receipt of a proposed amendment to the Approved Financing Plan.

Section 3.17 Developer Fee.

(a) The amount and the terms of the County Loan, as provided in this Article 3, have been established by taking into account the anticipated costs of development, including a Developer Fee not to exceed Two Million Dollars (\$2,000,000) to be paid for development and construction management services, of which Eight Hundred Forty-Eight Thousand Dollars (\$848,000) is expected to be deferred "Deferred Developer Fee"). Except for the Developer Fee, no compensation from any source shall be received by or be payable to the Borrower or AMCAL, or any affiliate of the Borrower or AMCAL (collectively the "Developer Fee Recipient") in connection with the provision of development and construction management services for the acquisition and construction of the Development. The maximum cumulative Developer Fee that may be paid to the Developer Fee Recipient or any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, may not exceed Two Million Dollars (\$2,000,000) and as approved by the County. For the purposes of this Agreement "Developer Fee" has the meaning set forth in California Code of Regulations, Title 4, Section 10302.

(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 3.18 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) business days after submission. If the Marketing Plan is not approved, Borrower shall submit a revised Marketing



Plan within fifteen (15) business 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 3.19 Tenant Services Plan and Budget.

(a) Borrower will be providing on-site services to all tenants in the Development which are required to be provided by the Borrower under its award of Tax Credits by TCAC (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, 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 Eighteen Thousand Dollars (\$18,000) per year, One Thousand Five Hundred Fifty Dollars (\$1,550) per month (subject to an annual increase that is equal to three percent (3%) 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. If the County does not approve or disapprove updates to Resident Services Plan or Resident Services Budget within the timeframe specified herein, then the Resident Services Plan or Resident Services Budget, as applicable, from the prior year shall remain in effect. Notwithstanding anything to the contrary, the County may not require the Borrower to reduce the Tenant Services or the Services Budget below those required to be provided by the Borrower under its award of Tax Credits by TCAC.

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 One Million Eight Hundred Thirty-Five Thousand and Nine Hundred Ten Dollars (\$1,835,910) in other, non-federal sources to be used to fund the construction of the Development, which other sources may include among others, tax credit equity.

(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 Seventy-Five Thousand Seven Hundred Fifty-Two Dollars (\$175,752) for a one-bedroom unit; (2) Two Hundred Thirteen Thousand Seven Hundred Eighteen Dollars (\$213,718) for a two-bedroom unit; and (3) Two Hundred Seventy-Six Thousand Four Hundred Eighty-Two Dollars (\$276,482) for a three-bedroom unit.

Section 4.2    Financial Accountings and Post-Completion Audits.

(a)    No later than ninety (90) days following Completion of Construction of the Development and issuance of the Certificate of Completion for the Development, Borrower shall provide to the County a financial accounting of all sources and uses of funds for the Development. No later than one hundred fifty (150) 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 to the County a copy of the cost certification report prepared by the Borrower's accountant and submitted to TCAC showing the sources and uses of all funds utilized for the Development Improvements

(b)    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. The information provided under Section 8.9(c) of the DDA shall be deemed to satisfy the requirements hereunder.

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 shall at reasonable times 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 and forty-eight hours' prior written notice to Borrower. 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 thirty (30) 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 thirty (30) days is reasonably necessary to correct the deficiency, then Borrower must begin to correct the deficiency within thirty (30) 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) The receipt by the County of any statement pursuant to subsection (a) above or any payment by the Borrower or acceptance by the County of any loan repayment for any period shall not bind the County as to the correctness of such statement or such payment. In addition, within three (3) years after the receipt of any such statement the County or any designated agent or employee of the County at any time, upon three (3) 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 4.6 determines that Residual Receipts have been understated for any fiscal year by more than five percent (5%) and the County is entitled to any additional County Loan repayment as a result of said understatement, then the Borrower shall pay, in addition to the amounts set forth above, all of the reasonable 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 (3) 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. If and to the extent applicable, 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:

(A) 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.

(B) 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.

(C) 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.

(D) 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.

(E) 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.

(F) 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.

(G) As applicable, 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 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. Borrower may pay for such physical needs assessment from the Monitoring Fee Funds, as such term is defined in Section 3.14(c) of the DDA.

#### 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, provided that no such payment of attorney's fees will be required if the Hazardous Materials Claims arise as a result of the activities of the County or the Park District under the Community Center Facility Lease. 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 Housing 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. The indemnity under this Section 4.8 is subject to the terms and conditions of Section 8.7(e) of the DDA, and any conflicts between the two sections shall be resolved by relying on Section 8.7(e) of the DDA.

(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 (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims.

#### Section 4.9 Maintenance and Damage.

(a) During the course of both construction and operation of the Development, Borrower shall maintain the Development in good repair and in a neat, clean and orderly condition, consistent with quality affordable housing developments owned or operated by

AMCAL or AMCAL affiliates. 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, 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.

(b) County acknowledges that the Borrower intends to apply 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. The conditions and obligations set forth in this Section shall apply for the entire Term of this Agreement.

#### 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 County 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 or cause the property manager to 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 Executive Officer is authorized to execute assignment and assumption agreements on behalf of the County to implement any approved Transfer.

(b) Prohibition. Except as expressly permitted in this Agreement, the Borrower represents and agrees that the Borrower shall not make or create, or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the County.

(1) The limitations on Transfers set forth in this Section shall apply throughout the Term.

(2) Any Transfer made in contravention of this Section shall be void and shall be deemed to be a default under this Agreement whether or not the Borrower knew of or participated in such Transfer.

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

(1) Any Transfer creating a Security Financing Interest either: (A) permitted pursuant to the Approved Financing Plan; or (B) following the issuance of a certificate of occupancy, created as a result of a loan made to developer that replaces any existing Security Financing Interest, so long as such replacement Security Financing Interest does not secure an obligation in excess of the then outstanding balance of the original principal amount of the replaced Security Financing Interest plus any commercially reasonable closing costs associated with such refinancing plus any reserves or holdbacks reasonably required by such refinancing lender that do not exceed Five Hundred Thousand Dollars (\$500,000).

(2) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest or as otherwise permitted under this Agreement.

(3) 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 and Special Limited Partner into the Borrower, provided that: (i) all documents associated with the admission of an Investor Limited Partner and Special 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 Financing Plan; 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 Financing Plan or as otherwise approved by the County in its reasonable discretion. The County hereby approves the admission of Hudson Housing Capital LLC, or an affiliate thereof as Investor Limited Partner and HHTCF XCVIII SLP LLC as the Special Limited Partner.

(4) In the event the Borrower admits an Investor Limited Partner, the County hereby approves future Transfers of the limited partner interest in the partnership (including the pledging and encumbering of the interest of the Investor Limited Partner to or for the benefit of any financial institution which enables the Investor Limited Partner to make its capital contributions to the Borrower as well as the taking of such interests by such financial institution and their admission as a partner in the Borrower) 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)(8) 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.

(5) 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 Financing Plan.

(d) Except as expressly set forth in this Agreement, 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.

(e) Any transfer permitted under Section 9.4 and made in accordance with Section 9.5 of the DDA (but subject to the notification requirements of 4.14(d) above, as applicable) shall be deemed Permitted Transfers hereunder.

#### 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.

(A) 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.

(B) 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 Director of Risk Management.

(C) 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) Commercial 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:

(A) Premises operations and mobile equipment.

(B) Products and completed operations.



operations). (C) Broad form property damage (including completed

(D) Explosion, collapse, and underground hazards.

(E) Personal injury.

(F) Contractual liability.

(G) \$2,000,000 general aggregate limit.

(3) Commercial Automobile Liability.

(A) 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).

(B) 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.

(C) 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.

(D) 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 Commercial General Liability and Commercial Automobile Liability insurance policies must be endorsed to name as an additional insured the County and its officers, agents, employees and members of the 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 coverages 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 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) Subject to Section 4.14(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, which consent shall not be unreasonably withheld, conditioned or delayed.

(d) Subject to Section 4.14(c), 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 3.15 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 charge an annual affordability monitoring charge of Twenty-Two Thousand Five Hundred Dollars (\$22,500) which will be used by the County to pay for monitoring compliance with this Agreement and 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. The amounts due under subsections (d) shall constitute the annual regulatory compliance monitoring fee paid to the County in accordance with Section 3.14(c) of the DDA.

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

(f) 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.

For the entire Term, the Borrower shall cause the property managers 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 four (4) training phases and a Final Certification (Phase V) shall be achieved and maintained by the 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) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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 ten (10) 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 forty-five (45) days after receipt of written notice thereof from the County to Borrower, if Borrower is incapable of curing a default within such forty-five (45) day period, the County will give the Borrower one hundred twenty (120) days to cure such default provided Borrower has commenced to cure within such forty-five (45) 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.

(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.

(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 thirty (30) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the County.

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

(12) 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.

(13) 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 unless Borrower makes the repayment required under Section 2.7(d) above.

(14) Applicability to General Partners. The occurrence of any of the events set forth in subsection (7), subsection (8), or subsection (9) in relation to any of the Borrower's general partners.

## 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:

(A) 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.

(B) 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 Borrower 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

(C) 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.

(D) 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.

(E) 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. However, if the Borrower is in good faith contesting a claim of default under a loan or grant and the County's interest is not imminently threatened by such default, in the County's sole judgment, the County shall not have the right to cure such default. 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, including Hudson Las Terrazas LP and HHTCF XCVIII SLP LLC ("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 regard 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 lease 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: Community Development and Housing Agency Director

with a copy to:

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

Borrower:

AMCAL Las Terrazas Fund, L.P.  
c/o AMCAL Multi-Housing Inc.  
30141 Agoura Rd., Suite 100  
Agoura Hills, CA 91301  
Attn: President

With a copy to:

Bocarsly Emden Cowan Esmail & Arndt, LLP  
633 West Fifth Street, 64<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attn: Kyle Arndt

with a copy to:

Las Palmas Foundation  
531 Encinitas Blvd., Suite 206  
Encinitas, CA 92024  
Attn: Joseph Michaels

with a copy to:

HHTCF XCVIII SLP LLC  
630 Fifth Avenue, 28th Floor  
New York, NY 10111  
Attention: Joseph A. Macari

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 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 Board of Supervisors.

Section 7.10 County Approval.

The County has authorized the County 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 hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of god; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather or soils conditions which, in the opinion of the Borrower' contractor, will necessitate delays; inability to secure necessary labor, materials or tools; acts of the other party; acts or failure to act of any public or governmental County or entity (other than the acts or failure to act of the County); or any other 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) business days from the date the party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other party within ten (10) business days of receipt of the notice. Times of performance under this Agreement may also be extended in writing by the County and the Borrower. In no event shall the cumulative delays during the Term of this Agreement exceed one hundred eighty (180) days, unless otherwise agreed to by the Parties in writing. As allowed under Section 7.21 of this Agreement, the County Executive Officer at the County Executive Officer's reasonable discretion may extend the cumulative delay limit without need for additional Board of Supervisor approval.

#### 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 Borrower's Investor Limited Partner and Special Limited Partner:

(a) The County will give the Investor Limited Partner and Special 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 and Special Limited Partner ten (10) days after the their 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 and Special 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 and Special Limited Partner sixty (60) days to cure such default provided either the Investor Limited Partner or Special 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 or Special 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 Borrowers 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.

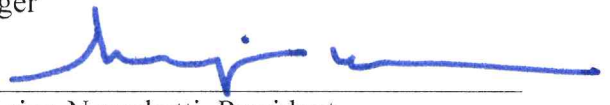
**BORROWER:**

AMCAL LAS TERRAZAS FUND, L.P., a California limited partnership

By: AMCAL FNMA LLC,  
a California limited liability company,  
its administrative general partner

By: AMCAL Multi-Housing Inc.,  
a California corporation,  
its manager

By:

  
Arjun Nagarkatti, President

By: Brandon Affordable Housing, LLC,  
a California limited liability company,  
its managing general partner

By: Las Palmas Foundation,  
a California nonprofit public benefit corporation,  
its manager

By:

\_\_\_\_\_  
Joseph M. Michaels, President

**(Signature Must be Notarized)**

*[Signature Page Continues]*



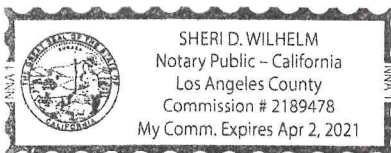
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF Los Angeles )

On 10/15/2020, before me, Sheri D. Wilhelm, Notary Public, personally appeared Arun Nagarkatti, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Sheri D. Wilhelm  
Name: Sheri D. Wilhelm  
Name: Notary Public

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

**BORROWER:**

AMCAL LAS TERRAZAS FUND, L.P., a California limited partnership

By: AMCAL FNMA LLC,  
a California limited liability company,  
its administrative general partner

By: AMCAL Multi-Housing Inc.,  
a California corporation,  
its manager

By: \_\_\_\_\_  
Arjun Nagarkatti, President

By: Brandon Affordable Housing, LLC,  
a California limited liability company,  
its managing general partner

By: Las Palmas Foundation,  
a California nonprofit public benefit corporation,  
its manager

By:  \_\_\_\_\_  
Joseph M. Michaels, President

**(Signature Must be Notarized)**

***[Signature Page Continues]***

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

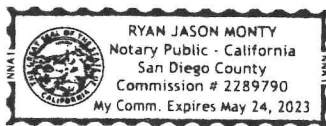
STATE OF CALIFORNIA )

COUNTY OF San Diego )

On October 15, 2020, before me, Ryan Jason Monty, Notary Public, personally appeared Joseph M. Michaels, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Ryan Jason Monty  
Name: Ryan Jason Monty  
Name: Notary Public



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

**BORROWER:**

AMCAL LAS TERRAZAS FUND, L.P., a California limited partnership

By: AMCAL FNMA LLC,  
a California limited liability company,  
its administrative general partner

By: AMCAL Multi-Housing Inc.,  
a California corporation,  
its manager

By: \_\_\_\_\_  
Arjun Nagarkatti, President

By: Brandon Affordable Housing, LLC,  
a California limited liability company,  
its managing general partner

By: Las Palmas Foundation,  
a California nonprofit public benefit corporation,  
its manager

By: \_\_\_\_\_  
Joseph M. Michaels, President

**(Signature Must be Notarized)**

***[Signature Page Continues]***

**COUNTY:**

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

By: \_\_\_\_\_  
Curt Hagman, Chair of Board of Supervisor

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

Lynna Monell  
Clerk of the Board of Supervisors  
of the County of San Bernardino

By: \_\_\_\_\_  
Deputy

APPROVED AS TO LEGAL FORM:  
MICHELLE BLAKEMORE  
County Counsel

By: \_\_\_\_\_  
Robert Messinger  
Principal Assistant County Counsel

**(Signatures Must be Notarized)**

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Name: \_\_\_\_\_  
Name: Notary Public



## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

The land is situated in the State of California, County of San Bernardino, and is described as follows:

PARCEL A: (APN: 0274-182-34-0-000)

THAT PORTION OF BLOCK 43, ORANGE LAND AND WATER COMPANY'S SUBDIVISION, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 11, PAGE 9, OF MAPS](#), AND THAT PORTION OF THE WEST 10 FEET OF CYPRESS AVENUE, VACATED BY ORDINANCE OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, ADJOINING SAID BLOCK 43 ON THE EAST, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF CYPRESS STREET AND "I" STREET AS SHOWN ON SAID MAP:

THENCE NORTH 279 FEET ALONG THE CENTER LINE OF CYPRESS AVENUE:

THENCE WEST 30 FEET PARALLEL WITH THE CENTER LINE OF "I" STREET TO THE TRUE POINT OF BEGINNING:

THENCE WEST 200 FEET PARALLEL WITH THE CENTER-LINE OF "I" STREET:

THENCE NORTH 94 FEET PARALLEL WITH THE CENTER LINE OF CYPRESS AVENUE:

THENCE EAST 200 FEET PARALLEL WITH THE CENTER LINE OF "I" STREET TO A POINT IN THE WEST LINE OF CYPRESS AVENUE AS THE SAME NOW EXISTS:

THENCE SOUTH 94 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE WESTERLY 45 FEET.

PARCEL B: (APN: 0274-182-43-0-000)

PARCEL 2 OF PARCEL MAP 8726, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 89, PAGE\(S\) 23 OF PARCEL MAPS](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL C: (APN: 0274-182-46-0-000)

PARCEL C-1:

THAT PORTION OF LOT 43, ORANGE LAND AND WATER COMPANY'S ADDITION TO THE CITY OF COLTON, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA RECORDED IN [BOOK 11 OF MAPS, PAGE 9](#), DESCRIBED AS FOLLOWS:

COMMENCING 50' NORTH AND 30' WEST OF THE INTERSECTION OF CYPRESS AND "I" STREETS:

THENCE WEST 200', NORTH 155', EAST 200', AND SOUTH 155' TO THE POINT OF BEGINNING.

PARCEL C-2:

THAT PORTION OF BLOCK 43, ORANGE LAND AND WATER COMPANY'S ADDITION TO THE CITY OF COLTON, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 11 OF MAPS, PAGE 9](#) AND THAT PORTION OF THE WEST 10 FEET OF CYPRESS AVENUE, VACATED BY ORDINANCE OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY ADJOINING SAID BLOCK 43 OF THE EAST, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS NORTHERLY 205 FEET MEASURED ALONG THE CENTERLINE OF CYPRESS AVENUE AS SHOWN ON SAID MAP; AND WESTERLY, 30 FEET ON A LINE PARALLEL WITH THE CENTERLINE OF "I" STREET, MEASURED FROM THE INTERSECTIONS OF SAID CENTERLINES; THENCE WESTERLY PARALLEL WITH SAID CENTERLINE OF "I" STREET ALONG THE SOUTHERLY LINE OF THAT

**EXHIBIT A**  
(Continued)

PARCEL DESCRIBED AS THE 1ST PARCEL UNDER ITEM NO. 7. IN THE DECREE OF DISTRIBUTION RECORDED JULY 28, 1958, IN BOOK 4564, PAGE 67 OFFICIAL RECORDS A DISTANCE OF 155 FEET TO THE SOUTHEAST CORNER OF THAT CERTAIN PROPERTY CONVEYED TO HERBERT E. ROWLEY, ET AL. DESCRIBED AS PARCEL NO. 1 IN THE DEED RECORDED MARCH 20, 1978 IN BOOK 9392, PAGE 1284 OFFICIAL RECORD; THENCE NORTH ALONG THE EAST LINE OF SAID HERBERT E. ROWLEY PROPERTY, 74 FEET PARALLEL WITH THE CENTER LINE OF CYPRESS STREET, TO THE NORTHEAST CORNER THEREOF; THENCE EASTERLY PARALLEL WITH THE CENTERLINE OF "I" STREET, 155 FEET TO A POINT ON THE WEST LINE OF CYPRESS AVENUE, AS SAME NOW EXISTS; THENCE SOUTH ALONG THE WEST LINE OF CYPRESS AVENUE, 74 FEET TO THE POINT OF BEGINNING.

SAID LEGAL DESCRIPTION IS PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE NO. E0041-84 M.S. NO. LLA/E84F-0041 AS APPROVED BY THE ENVIRONMENTAL PUBLIC WORKS AGENCY, LAND MANAGEMENT DEPARTMENT OF THE COUNTY OF SAN BERNARDINO AS EVIDENCED BY DOCUMENT RECORDED MARCH 9, 1984 AS INSTRUMENT NO. 84-055456 OFFICIAL RECORDS.

PARCEL C-3:

THAT PORTION OF BLOCK 43, ORANGE LAND AND WATER COMPANY'S ADDITION TO THE CITY OF COLTON, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT THEREOF, RECORDED IN BOOK 11 OF MAPS, PAGE 9, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF THE WEST 10 FEET OF CYPRESS AVENUE, VACATED BY ORDER OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, ADJOINING SAID BLOCK 43 ON THE EAST DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT WHICH IS NORTHERLY 205 FEET, MEASURED ALONG THE CENTERLINE OF CYPRESS AVENUE AS SHOWN ON SAID MAP, AND WESTERLY 30 FEET ON A LINE PARALLEL WITH THE CENTERLINE OF "I" STREET, MEASURED FROM THE INTERSECTION OF SAID CENTERLINES; THENCE WESTERLY PARALLEL WITH SAID CENTERLINE OF "I" STREET, ALONG THE SOUTHERLY LINE OF THAT PARCEL DESCRIBED AS THE 1ST PARCEL UNDER ITEM NO. 7 IN THAT DECREE OF DISTRIBUTION RECORDED JULY 28, 1958 IN BOOK 4564, PAGE 67 OFFICIAL RECORDS, A DISTANCE OF 155 FEET TO THE SOUTHEAST CORNER OF THAT CERTAIN PROPERTY CONVEYED TO HERBERT E. ROWLEY, ET AL., DESCRIBED AS PARCEL NO. 1 IN DEED RECORDED MARCH 20, 1978 IN BOOK 9392 PAGE 1284 OFFICIAL RECORDS OF SAID COUNTY SAID POINT BEING THE TRUE POINT OF BEGINNING OF THAT LEGAL TO BE DESCRIBED:

THENCE CONTINUING WEST (N 86° 03' 45" WEST) ALONG SAID PROLONGATION 45.00 FEET;

THENCE NORTH (N 04° 08' 00" EAST) 74.00 FEET MORE OR LESS;

THENCE EAST (N 86° 06' 40" WEST) 45.00 FEET;

THENCE SOUTH (N 04° 08' 00" EAST) 74.04 FEET MORE OR LESS TO THE TRUE POINT OF BEGINNING.

APN: 0274-182-34-0-000, 0274-182-43-0-000, 0274-182-46-0-000, (NEW APN: 0274-182-47-0-000)

EXHIBIT B

APPROVED FINANCING PLAN



# Exhibit B

PROFORMA - LIHTC										Updated:		11/4/2020		By: RK		Notes:	
Project name		Las Terrazas Apartments			Geographic		Inland Empire		LIBOR		Equity from Fed. Tax Credits		15,165,138				
City / County		San Bernardino			Housing Type		Family		Cap. Rate		Permanent Loan		8,247,617				
Type of Credits		4%			Land Acreage		5.920		Const. Period		DDF + Soft \$		-				
Set Aside		n/a			Project Type		New Constr.		Lease+Stabiliz		Annual Fed. Tax Credits		1,703,948				
DDA or QCT		yes							5 months		Fed. Tax Credit Price		\$0.890				
Affordable Units																	
Unit	Square Feet	# of Bedrooms	# of Units	Proposed Rents less Utilities	Rents TCAC	Rents Sec 8	Section 8 Overhang Calc	Aggregate Monthly Rents	Monthly Utility Allow.	Aggregate Rents + Utility	Market Rents	Aggregate Market Rents	% AMI				
570	1bd/1ba	3	0	0	0	1,060	0	-	0	-	1200	3,600	20%				
570	1bd/1ba	9	0	0	0	1,060	0	-	0	-	1200	10,800	20%				
570	1bd/1ba	12	694	694	706		0	8,328	12	8,472	1200	14,400	50%				
570	1bd/1ba	15	836	836	848		0	12,540	12	12,720	1200	18,000	60%				
570	1bd/1ba	0	0	0			0	-	0	-	1200	-					
570	1bd/1ba	0	0	0			0	-	0	-	1200	-					
835	2bd/1ba	0	0	0			0	-	13	-	1425	-					
835	2bd/1ba	0	0	0			0	-	13	-	1425	-					
835	2bd/1ba	11	834	834	847		0	9,174	13	9,317	1425	15,675	50%				
835	2bd/1ba	28	1119	1119	1,132		0	31,332	13	31,696	1425	39,900	70%				
835	2bd/1ba	0	0	0	1,294		0	-	13	-	1425	-	80%				
1100	3bd/2ba	0	0	0			0	-	14	-	1675	-					
1100	3bd/2ba	4	965	965	979		0	3,860	14	3,916	1675	6,700	50%				
1100	3bd/2ba	29	1293	1293	1,307		0	37,497	14	37,903	1675	48,575	70%				
1100	3bd/2ba	0	0	0	1,494		0	-	14	-	1675	-	80%				
1100	4bd/2ba	0	0	0			0	-	0	-	0	-					
1100	4bd/2ba	0	0	0			0	-	0	-	0	-					
1100	4bd/2ba	0	0	0			0	-	0	-	0	-					
1100	4bd/2ba	0	0	0			0	-	0	-	0	-					
Avg. Income:								58.38%		Totals:		\$102,731		\$104,024		\$157,650	
Market Rate Units																	
100	1bd/1ba	0	0					-		-							
100	2bd/1ba	0	0					-		-							
Manager Units																	
1100	2bd/1ba	1	0	0				-		-							
1100	4bd/2ba	0	0	0				-		-							
Total Units:		112	39 1bd units	35%			40 2bd units		36%	33 3bd units		29%	0 4bd units	0%			
Density: 19 du/ac																	
# Bedrooms: 218																	
Residential Building Structures:																	
Sqft excl. Mgr. Units		91,095		net sf		Total Units excluding Mgr :		111		Type		Residential Garage Parking:					
Sqft incl. Mgr. Units		92,195				Total Low-Income Units:		111		No. Stalls		0					
Sqft low-income Unit:		91,095				Unit fraction:		100.00%		Sqft per stall		171					
Efficiency loss		20,238		18%		Floor space fraction:		100.00%		Garage sqft		0					
Total Bldg Sqft		112,433		gross sf		Applicable Fraction:		100.00%									



**COST BREAKDOWN**

	111 Affordable Units	1 Mgr. Units	0 Market Rate Units	
	Project Cost	Basis	Non Basis	% Proj. Cost
				\$ Per D.U.
				\$ per gross sf
<b>Acquisition</b>				
Land Cost or Land Value	2,450,000		2,450,000	21,875
Land Lease Rent Prepayment	-		-	5.01%
Land Closing Cost	20,000		20,000	0.00%
Land Carrying Cost	1,399,262		1,399,262	179
Demolition & Remediation	-		-	0.04%
Off Site Development	904,771		-	12,493
		904,771	-	2.86%
			-	0.00%
			8,078	0.00%
				1.85%
<b>New Construction</b>				
<b>Sitework</b>				
Onsites/Common Area	8,656,701		8,656,701	77,292
Underground Garage	-		-	17.71%
Structures				0.00%
Direct Building Const.	16,660,906		16,660,906	148,758
GC Contingency	786,671		786,671	34.09%
General Requirements	1,573,343		1,573,343	7,024
Contractor Overhead	857,472		857,472	1.61%
Contractor Profit	1,429,119		1,429,119	14,048
Commercial (non-basis)	-		-	3.22%
Total:	30,868,983		-	7,656
				7.63
				12.71
				0.00%
				0.00%
<b>Architectural Fees</b>				
Design	993,000		993,000	8,865
Supervision	-		-	2.03%
Survey & Engineering	872,215		872,215	0.00%
Environmental Consultants	560,000		560,000	7,788
Misc Consultants	320,866		320,866	5,000
Soft Goods	-		-	1.78%
				1.15%
				0.66%
				0.00%
				0.00%
<b>Construction Interest and Fees</b>				
Const'n Loan Origination Fee	284,065		284,065	2,536
Const'n Loan Interest Reserve	1,180,629		1,062,566	10,541
Payment & Performance Bond	308,691		308,691	2,756
Improvement Bond Premium	3,563		3,563	32
Closing Costs	31,000		31,000	277
Legal - Constr. Lender	70,000		70,000	0.01%
Property Taxes	99,065		99,065	0.06%
Insurance	541,620		541,620	885
Title and Recording	25,000		25,000	4,836
				223
<b>Permanent Financing</b>				
Loan Origination Fee	-		-	0.20%
				1.11%
				0.05%
				0.00%



Closing Fees & Reports	155,551	155,551	1,389	0.32%	1.38
Legal	-	-	-	0.00%	0.00
Credit Enhancement	-	-	-	0.00%	0.00
Title and Recording	-	-	-	0.00%	0.00
Property Taxes	-	-	-	0.00%	0.00
<b>Legal Fees</b>					
Partnership Legal	84,555	59,188	755	0.17%	0.75
Investor Due Diligence	50,000	50,000	446	0.10%	0.44
<b>Reserves</b>					
Operating Reserve	595,410	595,410	5,316	1.22%	5.30
Lease-up Reserve	75,000	75,000	670	0.15%	0.67
Capitalized Operating Subsidy Reserve	588,317	588,317	5,253	1.20%	5.23
Capitalized Transition Reserve	76,745	76,745	685	0.16%	0.68
<b>Appraisal Costs</b>					
	18,050	18,050	161	0.04%	0.16
<b>Other</b>					
<b>TCAC Fees</b>					
Permit Processing Fees	135,207	135,207	1,207	0.28%	1.20
			-	0.00%	0.00
Onsite (impact) Fees, Permits	1,875,581	1,875,581	16,746	3.84%	16.68
Bldg. Permit Fees	646,227	646,227	5,770	1.32%	5.75
Marketing	92,000	92,000	550	0.19%	0.82
Furnishings/Appliances	174,384	174,384	1,557	0.36%	1.55
Market Study	18,050	18,050	161	0.04%	0.16
Relocation Expenses	-	-	-	0.00%	0.00
Accounting / Audit	35,000	35,000	313	0.07%	0.31
Hard Cost Contingency	1,543,449	1,543,449	13,781	3.16%	13.73
Soft Cost Contingency	682,763	407,763	6,096	1.40%	6.07
<b>Developer Costs</b>					
Developer Overhead/Profit	1,900,000	1,900,000	16,964	3.89%	16.90
Consultant/Processing Agent	-	-	-	0.00%	0.00
Other: Non-profit Partner	100,000	100,000	893	0.20%	0.89
Other: Special Ltd. Partner	-	-	-	0.00%	0.00
<b>Total Project Costs</b>	<b>48,874,248</b>	<b>42,556,147</b>	<b>436,377</b>	<b>100%</b>	<b>434.70</b>

SOURCES	CONSTRUCTION PERIOD	Per Project
Tax-Exempt Bond	74% LTV	24,037,673
Taxable Tail - Construction Loan	18% LTV	5,863,869
Deferred Developer Fee		1,814,250
County DDA Loan		4,347,772
County HOME Loan		8,261,597

LP's Bridge Loan/Tax Credit Equity:	20.31%	of Tax Credit Equity
		4,549,087
		48,874,248

---

---

Project costs at construction completion	48,874,248
--	------------

SOURCES	PERMANENT PERIOD
Federal 4% Tax Credit Equity	15,163,622
New State 4% Tax Credit Equity	7,227,882
Deferred Developer Fee	1,469,287
HCD NPLH	2,591,000
County DDA Loan	4,995,289
County HOME Loan	9,179,552
Permanent Loan (Tax Exempt)	8,247,617

<b>Total Project Costs</b>	<b>48,874,248</b>
----------------------------	-------------------

TAX CREDIT CALCULATIONS - Federal		Gap (deficit) or surplus:	0
		basis	credits/equity
Total Eligible Basis		42,556,147	
Deduct Threshold Basis Overage		-	
Deduct Ineligible Amounts and Voluntary Basis Reduction		-	
Requested Unadjusted Eligible Basis		42,556,147	
Total Adjusted Eligible Basis	130%	55,322,991	
Qualified Basis	100%	55,322,991	
Voluntary Credit Reduction	0%	-	
Total Adjusted Qualified Basis		55,322,991	
Maximum Federal Credits Available	3.08%		17,039,481
Equity Raised from Sale of Fed Credits	\$0.89 price	10 Yr. Federal Credit Reservation:	15,165,138

## TAX CREDIT CALCULATIONS - State

TAX CREDIT CALCULATIONS - State	
Maximum State Credits Available	12,766,844
State Credits Necessary for Feasibility	8,503,390
Equity Raised from Sale of State Credits	State Credit Reservation: <u>8,504,241</u>
Blended Tax Credit Price	<u>\$0.85</u> price n/a

## PERMANENT LOAN CALCULATIONS

First Trust Deed Loan			
A.			
Amort. (yrs)	35	Loan:	\$ 6,717,801
DCR	1.20	PMT:	328,051
int. rate	3.39%	LTV:	83%
B.			
CAP	5.0%	Loan:	\$ 6,507,521
LTV	80.00%	PMT:	317,783
		DCR:	128%
Lessor of A & B: \$ 6,507,521			
Additional Loan Amount From Project-Based Voucher Overhang			
A.			
Amort. (yrs)	35	Loan:	\$ 1,855,913
DCR	1.20	PMT:	90,630
int. rate	3.39%	LTV:	85%
B.			
CAP	5.0%	Loan:	\$ 1,740,096
LTV	80.00%	PMT:	84,974
		DCR:	128%
Lessor of A & B: \$ 1,740,096			



## EXHIBIT C

### SCHEDULE OF PERFORMANCE

This Schedule of Performance sets forth the schedule for various activities under the Agreement to which this exhibit is attached. The description of items in this Schedule of Performance is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. Times for performance are subject to Force Majeure, as further provided in Section 7.15 of the Agreement, and the notice and cure rights as further provided in Section of the Agreement.

As provided in the Agreement, this Schedule of Performance may only be modified in a writing executed by all Parties, in accordance with Section 7.9 of the Agreement.

Milestone	Date
Convey Property to County	February 9, 2017. Deemed Completed
HOME Commitment Resolution	December 10, 2019
Execute DDLA	February 14, 2017
Execute First Amended and Restated DDLA	January 17, 2020
Submit tax credit application	December 11, 2019 and follow up application on January 17, 2020
Obtain tax credit allocation	April 14, 2020
Submit plans and application(s) for plan check and building permit	May 1, 2020
Borrower submits evidence of availability of funds	Two (2) business days prior to Close of Escrow
Obtain Building Permits	Concurrently with the Close of Escrow
Close of Escrow- Transfer Lease Interest under Ground Lease	No later than November 30, 2020
Approval of Construction Contract	Not less than 15 days prior to the Close of Escrow
Close Construction Financing	November 30, 2020
Submit Evidence of Insurance	No later than November 30, 2020
Begin construction	Within 10 days of Close of Construction Financing
Submit and obtain approval of Management Plan	Not less than 6 months prior to the expected date of construction completion
Complete construction	Within 24 months after commencement of construction,

Milestone	Date
	but in no event later than December 1, 2022
Permanent Loan Closing	Within thirteen (13) months of completion of construction

EXHIBIT D

FORM OF PROMISSORY NOTE



## EXHIBIT "D"

### PROMISSORY NOTE (Las Terrazas- HOME Loan)

\$9,179,552

San Bernardino, California  
November 17, 2020

FOR VALUE RECEIVED, AMCAL Las Terrazas Fund, L.P., a California limited partnership (the "Borrower"), promises to pay to the County of San Bernardino, a political subdivision of the State of California (the "County"), or order, the principal sum of up to Nine Million One Hundred Seventy-Nine Thousand Five Hundred Fifty-Two Dollars (\$9,179,552) of HOME Funds, or so much as is disbursed to Borrower, plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note (the "Note") evidences the Borrower's obligation to pay the County the principal amount of consisting of Nine Million One Hundred Seventy-Nine Thousand Five Hundred Fifty-Two Dollars (\$9,179,552), together with interest, for funds loaned to the Borrower by the County to finance the construction and operation of the Development pursuant to that certain HOME Investment Partnership Act Loan Agreement between, among others, the Borrower and the County, dated as of November 17, 2020, as such may be amended (the "Loan Agreement"). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the Loan Agreement.

2. Interest.

(a) Interest Rate. Subject to the provisions of Section (b) below, the outstanding principal balance of the Loan shall bear three percent (3%) simple interest.

(b) Default Rate. In the event of a Default, interest on the Loan shall begin to accrue, as of the date of Default and continuing until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

3. Term and Repayment Requirements.

(a) The term of the Loan shall commence on the date of this Note and shall expire fifty-five (55) years from the Completion Date (as defined in the Loan Agreement), but in no event later than December 31, 2077.

(b) This Note shall be due and payable as set forth in Section 2.7 of the Loan Agreement. Repayment of this Note shall be non-recourse to the Borrower pursuant to Section 2.8 of the Loan Agreement, each of which sections are incorporated herein by this reference.

4. No Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the County as provided in the Loan Agreement.

5. Security. This Note is secured by the Leasehold Deed of Trust recorded against the Borrower's leasehold interest in the Development and is secured by the Assignment of Documents (as defined in the Loan Agreement).

6. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to the County at 385 North Arrowhead Ave., Third Floor, San Bernardino, CA 92415-0140, Attention: Community Development and Housing Director or to such other place as the County may from time to time designate in writing.

(c) All payments on this Note shall be without expense to the County, and the Borrower agrees to pay all costs and expenses, including reconveyance fees and reasonable attorney's fees of the County, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the County may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

(e) The obligations of Borrower under this Note are absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

7. Default.

(a) Any of the following shall constitute an Event of Default under this Note:

(1) Any failure to pay, in full, any payment required under this Note when due following written notice by the County of such failure and ten (10) days opportunity to cure;

(2) Any failure in the performance by the Borrower of any term, condition, provision or covenant set forth in this Note subject to the notice and cure period set forth in Section 6.1 and 7.8 of the Loan Agreement; and

(3) The occurrence of any Event of Default under the Loan Agreement, the Leasehold Deed of Trust, the Regulatory Agreement, or another instrument securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by the Borrower to the County pursuant to the Loan Agreement or the Leasehold Deed of Trust, after expiration of applicable notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of such an Event of Default and continuance after expiration of any notice and cure period, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note shall at the option of the County become immediately due and payable upon written notice by the County to the Borrower without further demand.

(c) The County's failure to exercise the remedy set forth in Subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing Events of Default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other Event of Default. The acceptance by the County of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the County, except as and to the extent otherwise provided by law.

#### 8. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, notice of dishonor and notice of non-payment of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the County may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the County with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

#### 9. Miscellaneous Provisions.

(a) All notices to the County or the Borrower shall be given in the manner and at the addresses set forth in the Loan Agreement, or to such addresses as the County and the Borrower may hereinafter designate.



(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by the County in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the Loan Documents (as defined in the Loan Agreement), contains the entire agreement between the parties as to the Loan. This Note may not be modified except upon written consent of the parties.

***[Signature Pages Follow.]***

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the first date written above.

**BORROWER:**

AMCAL LAS TERRAZAS FUND, L.P., a California  
limited partnership

By: AMCAL FNMA LLC,  
a California limited liability company,  
its administrative general partner

By: AMCAL Multi-Housing Inc.,  
a California corporation,  
its manager

By:

---

Arjun Nagarkatti, President

By: Brandon Affordable Housing, LLC,  
a California limited liability company,  
its managing general partner

By: Las Palmas Foundation,  
a California nonprofit public benefit  
corporation,  
its manager

By:

---

Joseph M. Michaels, President

EXHIBIT E

FORM OF LEASEHOLD DEED OF TRUST



**EXHIBIT “E”**

[ADD COUNTY RECORDER'S COVER SHEET]

**LEASEHOLD DEED OF TRUST WITH ASSIGNMENT OF RENTS  
AND SECURITY AGREEMENT**  
(Las Terrazas- County HOME Loan)

## EXHIBIT "E"

### LEASEHOLD DEED OF TRUST WITH ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (Las Terrazas- HOME Loan)

THIS LEASEHOLD DEED OF TRUST WITH ASSIGNMENT OF RENTS AND SECURITY AGREEMENT ("Leasehold Deed of Trust") is dated as of November 1, 2020, by and among AMCAL Las Terrazas Fund, L.P., a California limited partnership ("Trustor"), Commonwealth Land Title Company, a California corporation ("Trustee"), and County of San Bernardino, a political subdivision of the State of California ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's interest [Note: Covers leasehold interest in the land and fee interest in the improvements] in certain real property located on the corner of Valley Boulevard and North Cypress in an unincorporated area of the County, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Paragraph 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the "Security." To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS (collectively the "Secured Obligations").

(a) Payment of just indebtedness of Trustor to Beneficiary as set forth in the Note (defined below) until paid or cancelled and any other amounts owing under the Loan Documents (defined below). Said principal and other payments shall be due and payable as provided in the Note or other Loan Documents. Said Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced; and

(b) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Leasehold Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

(c) Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents (defined below).

(d) All modifications, extensions and renewals of any of the Secured Obligations made in accordance with the terms of the Loan Documents (including without limitation: (1) modifications, extensions or renewals at a different rate of interest; or (2) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole



or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

AND TO PROTECT THE SECURITY OF THIS LEASEHOLD DEED OF TRUST,  
TRUSTOR COVENANTS AND AGREES:

ARTICLE 1.  
DEFINITIONS

In addition to the terms defined elsewhere in this Leasehold Deed of Trust, the following terms shall have the following meanings in this Leasehold Deed of Trust:

Section 1.1 "Housing Lease" means that certain Housing Lease, by and between Trustor and Beneficiary dated and recorded in the official Records of San Bernardino County concurrently herewith.

Section 1.2 "Loan" means the loan made by the Beneficiary to the Trustor in the amount up to Nine Million One Hundred Seventy-Nine Thousand Five Hundred Fifty-Two Dollars (\$9,179,552).

Section 1.3 "Loan Agreement" means that certain HOME Investment Partnership Act Loan Agreement between Trustor and Beneficiary, dated as of November 17, 2020, as such may be amended from time to time, providing for the Beneficiary to loan to Trustor up to Nine Million One Hundred Seventy-Nine Thousand Five Hundred Fifty-Two Dollars (\$9,179,552), subject to Section 2.1 of the Loan Agreement.

Section 1.4 "Loan Documents" means this Leasehold Deed of Trust, the Note, the Loan Agreement, the Regulatory Agreement, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Loan.

Section 1.5 "Note" means the promissory note in the principal amount not to exceed Nine Million One Hundred Seventy-Nine Thousand Five Hundred Fifty-Two Dollars (\$9,179,552), of even date herewith, executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Leasehold Deed of Trust (The Note is on file with the Beneficiary and terms and provisions of the Note are incorporated herein by reference.).

Section 1.6 "Principal" means the amount required to be paid under the Note.

Section 1.7 "Regulatory Agreement" means the regulatory agreement by and between the Beneficiary and the Trustor, dated and recorded in the official Records of San Bernardino County concurrently herewith.

Section 1.8 "Senior Lender" means any lender making a senior loan under the Approved Financing as defined in Section 1.1 of the Loan Agreement.

ARTICLE 2.  
MAINTENANCE AND MODIFICATION  
OF THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

(a) The Trustor agrees that at all times prior to full payment of the sum owed under the Note, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

(b) Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file or record any notices of completion or cessation of labor or any other notice that Beneficiary reasonably deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

(c) Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor, shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of San Bernardino County, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien, or provide other form of security acceptable to the Beneficiary at the Beneficiary's sole and absolute discretion.

Section 2.2 Granting of Easements. Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, cable, telephone and internet connectivity, or those required by law and as approved, in writing, by Beneficiary, such approval shall not be unreasonably withheld, conditioned, or delayed.

Section 2.3 Assignment of Rents.

(a) Subject to the rights of any approved Senior Lender, as part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and

unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the sums secured by this Leasehold Deed of Trust with the balance, so long as no such breach has occurred, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section as the same becomes due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

(b) Except as previously approved by the Beneficiary as set forth in the Disposition and Funding Agreement or otherwise approved in writing by Beneficiary, Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section, and that at the time of execution of this Leasehold Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenant that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

(c) Upon Trustor's breach of any covenant or agreement of Trustor in the Loan Documents beyond any applicable notice and cure periods, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts



providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Leasehold Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Leasehold Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

(d) All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this Leasehold Deed of Trust. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section.

(e) If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become indebtedness of Trustor to Beneficiary secured by this Leasehold Deed of Trust pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in Section 3.3 hereof.

(f) Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Leasehold Deed of Trust ceases to secure indebtedness held by Beneficiary. The rights of the Beneficiary under this Section are subject to the rights of any approved Senior Lender, as defined in Section 2.5 of the Loan Agreement.

### ARTICLE 3. TAXES AND INSURANCE; ADVANCES

#### Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

(a) Trustor shall pay, or cause to be paid, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as:

(1) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings; and (2) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (2) of the first sentence of this paragraph, the provisions of this Section shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

(b) In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, shall become an additional obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay all such amounts.

#### Section 3.2 Provisions Respecting Insurance.

(a) Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Leasehold Deed of Trust have been paid and all other obligations secured hereunder fulfilled, and this Leasehold Deed of Trust reconveyed.

(b) All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to the Beneficiary's receipt of the entire Principal and all amounts secured by this Leasehold Deed of Trust.

Section 3.3 Advances. In the event the Trustor shall fail to maintain the full insurance coverage required by this Leasehold Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Beneficiary, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.



ARTICLE 4.  
DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages. Subject to the rights of any Senior Lender and the Housing Lease, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of: (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain; (b) any damage to or destruction of the Property or in any part thereof by insured casualty; and (c) any other injury or damage to all or any part of the Property ("Funds") are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option, but in all events consistent with the terms and conditions of the Loan Agreement and the Housing Lease. Subject to the rights of any Senior Lender and the Housing Lease, the Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Leasehold Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition, and Beneficiary agrees to release Funds to Trustor to rebuild the Project on the Property provided Trustor demonstrates to Beneficiary that such rebuilding is economically feasible. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Leasehold Deed of Trust. The rights of the Beneficiary under this Section are subject to the rights of any Senior Lender and the terms of the Housing Lease.

ARTICLE 5.  
AGREEMENTS AFFECTING THE PROPERTY; FURTHER ASSURANCES;  
PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1 Other Agreements Affecting Property. The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses. In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Leasehold Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Leasehold Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.



Section 5.3 Payment of the Principal. The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4 Personal Property. To the maximum extent permitted by law, the personal property subject to this Leasehold Deed of Trust shall be deemed to be fixtures and part of the real property and this Leasehold Deed of Trust shall constitute a fixtures filing under the California Uniform Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Leasehold Deed of Trust shall constitute a security agreement under the California Uniform Commercial Code.

Section 5.5 Financing Statement. The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security. The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Leasehold Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents. Notwithstanding anything to the contrary, leases to tenants in accordance with the Regulatory Agreement shall not be considered a transfer of the any portion of the Security.

Section 5.7 Inspection of the Security.

At any and all reasonable times upon forty-eight (48) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security; provided, however, that any such inspection shall not unreasonably disturb any tenants or other occupants of the Development (as defined in Section 1.1 of the Loan Agreement).

Section 5.8 Nondiscrimination.

(a) The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection,

location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

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

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

## ARTICLE 6. HAZARDOUS WASTE

### Section 6.1 Hazardous Waste.

(a) Trustor shall keep and maintain the Property in compliance with, and shall 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. Trustor shall 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 kept and used in and about multifamily residential property.

(b) Trustor shall immediately advise Beneficiary 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 Trustor 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 Trustor 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 hereinafter referred to a "Hazardous Materials Claims"); and (3) Trustor'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" under the provision of California Health and Safety Code, Sections 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) Beneficiary shall have 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 Trustor. Trustor agrees to indemnify, protect, hold harmless and defend (by counsel reasonably selected by the Beneficiary) the Beneficiary, its governing board members, officers, representatives, agents, assigns and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Trustor or any other person or entity to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Development on or after the date of conveyance of the Property to the Trustor; (2) the presence in, on or under the Development of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Development to the extent it arises on or after the date of conveyance of the Property to the Trustor; (3) any activity carried on or undertaken on or off the Development, subsequent to the conveyance of the Property to the Trustor, and whether by the Trustor or any successor in title or any employees, agents, contractors or subcontractors of the Trustor or any successor in title, or any third persons at any time occupying or present on the Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Development; the foregoing indemnity shall further apply to any residual contamination on or under the Development, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

(d) Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall 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 Beneficiary's reasonable judgement, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be 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 Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken.

(e) Beneficiary agrees not to withhold, condition or delay its consent, where such consent is required hereunder, if either: (1) a particular remedial action is ordered by a court of competent jurisdiction; (2) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (3) Trustor establishes to the reasonable



satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (4) the action has been agreed to by Beneficiary.

(f) The Trustor hereby acknowledges and agrees that: (1) this Article is intended as the Beneficiary's written request for information (and the Trustor'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 Leasehold Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(g) 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 Beneficiary's or the Trustee's rights and remedies under this Leasehold Deed of Trust, the Beneficiary 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 the Trustor to judgment, and (ii) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor shall 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 the Trustor knew or in the exercise of reasonable diligence 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 Beneficiary 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 default rate specified in the Note until paid, shall be added to the indebtedness secured by this Leasehold Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

(h) The Trustor is aware that California Civil Code Section 2955.5(a) provides as follows: "No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property."

ARTICLE 7.  
EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default. The following shall constitute Events of Default following the expiration of any applicable notice and cure periods: (a) failure to make any payment to be paid by Trustor under the Loan Documents; (b) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination; (c) failure to make any payment or perform any of Trustor's other covenants, agreements, or obligations under any other debt instruments or regulatory agreement secured by the Property, which default shall not be cured within the times and in the manner provided therein.

Section 7.2 Acceleration of Maturity. If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and the unpaid Principal of the Note shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 7.3 Beneficiary's Right to Enter and Take Possession. If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Default (as defined below) hereunder or invalidate any act done in response to such Default or pursuant to such Notice of Default and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Leasehold Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Leasehold Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Default and Election to Sell"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of San Bernardino County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.



#### Section 7.4 Foreclosure by Power of Sale.

(a) Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall give notice to the Trustee (the "Notice of Default and Election to Sell") and shall deposit with Trustee this Leasehold Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the Secured Obligations are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(b) Upon receipt of Notice of Default and Election to Sell from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Leasehold Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and Election to Sell having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Default and Election to Sell, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(c) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (1) the unpaid Principal amount of the Note; (2) all other amounts owed to Beneficiary under the Loan Documents; (3) all other sums then secured hereby; and (4) the remainder, if any, to Trustor.

(d) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 7.5 Receiver. If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.



Section 7.6 Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Beneficiary by this Leasehold Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Leasehold Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. Beneficiary's express or implied consent to a breach by Trustor, or a waiver of any obligation of Trustor hereunder shall not be deemed or construed to be a consent to any subsequent breach, or further waiver, of such obligation or of any other obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary: (1) grants forbearance or an extension of time for the payment or performance of the Secured Obligations; (2) takes other or additional security or the payment of any sums secured hereby; (3) waives or does not exercise any right granted in the Loan Documents; (4) releases any part of the Security from the lien of this Leasehold Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents; (5) consents to the granting of any easement or other right affecting the Security; or (6) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Leasehold Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Leasehold Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security. The Beneficiary shall have power to: (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Leasehold Deed of Trust; (b) preserve or protect its interest (as described in this Leasehold Deed of Trust) in the Security; and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 7.9 Trustee May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Trustee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

Section 7.10 Waiver. The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any Secured Obligations or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Leasehold Deed of Trust.

## ARTICLE 8. MISCELLANEOUS

Section 8.1 Amendments. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.2 Reconveyance by Trustee. Upon written request of Beneficiary stating that all Secured Obligations have been paid or forgiven, and all obligations under the Loan Documents have been performed in full, and upon expiration of the term of the Regulatory Agreement, and upon surrender of this Leasehold Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3 Notices. If at any time after the execution of this Leasehold Deed of Trust it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid; and if intended for Beneficiary shall be addressed to:

Beneficiary:

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

with a copy to:

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

and (ii) if intended for Trustor shall be addressed to:

AMCAL Las Terrazas Fund, L.P.  
c/o AMCAL Multi-Housing, Inc.  
30141 Agoura Rd., Suite 100  
Agoura Hills, CA 91301  
Attn: President

with a copy to:

Bocarsly Emden Cowan Esmail & Arndt, LLP  
633 West Fifth Street, 64<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attn: Kyle Arndt

with a copy to:

Las Palmas Foundation  
531 Encinitas Blvd., Suite 206  
Encinitas, CA 92024  
Attn: Joseph Michaels

with a copy to:

HHTCF XCVIII SLP LLC  
630 Fifth Avenue, 28th Floor  
New York, NY 10111  
Attention: Joseph A. Macari

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

Copies of notices to Trustor from the Beneficiary shall also be provided by the Beneficiary to any limited partner of Trustor who requests such notice in writing and provides the Beneficiary with written notice of its address in accordance with this Section.

Section 8.4 Successors and Joint Trustors. Where an obligation created herein is binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Leasehold Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be joint and several obligations of the Trustor and such transferee. Where Trustor is more than one entity or person,



all obligations of Trustor shall be deemed to be joint and several obligations of each and every entity and person comprising Trustor.

Section 8.5 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Leasehold Deed of Trust.

Section 8.6 Invalidity of Certain Provisions. Every provision of this Leasehold Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Leasehold Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Leasehold Deed of Trust.

Section 8.7 Governing Law. This Leasehold Deed of Trust shall be governed by and construed in accordance with 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 8.8 Gender and Number. In this Leasehold Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 8.9 Deed of Trust, Mortgage. Any reference in this Leasehold Deed of Trust to a mortgage shall also refer to a Leasehold Deed of Trust and any reference to a Deed of Trust shall also refer to a mortgage.

Section 8.10 Actions. Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 8.11 Substitution of Trustee. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Leasehold Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 8.12 Statute of Limitations. The pleading of any statute of limitations as a defense to any and all obligations secured by this Leasehold Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.13 Acceptance by Trustee. Trustee accepts this Trust when this Leasehold Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Leasehold Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

Section 8.14 Tax Credit Provisions. Notwithstanding anything to the contrary contained herein or in any documents secured by this Leasehold Deed of Trust or contained in any subordination agreement, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Property encumbered by this Leasehold Deed of Trust, the following rule contained in 26 U.S.C. Section 42(h)(6)(E)(ii), as amended, shall apply.

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the Regulatory Agreement with the California Tax Credit Allocation Committee: (1) none of the tenants occupying those units at the time of foreclosure may be evicted or their tenancy terminated (other than for good cause); (2) nor may any rent be increased except as otherwise permitted under Section 42 of the Internal Revenue Code.

**[Signature Page Follows]**

IN WITNESS WHEREOF, Trustor has executed this Leasehold Deed of Trust as of the day and year first above written.

**TRUSTOR:**

AMCAL LAS TERRAZAS Fund, L.P., a California limited partnership

By: AMCAL FNMA LLC,  
a California limited liability company,  
its administrative general partner

By: AMCAL Multi-Housing Inc.,  
a California corporation,  
its manager

By:

---

Arjun Nagarkatti, President

By: Brandon Affordable Housing, LLC,  
a California limited liability company,  
its managing general partner

By: Las Palmas Foundation,  
a California nonprofit public benefit  
corporation,  
its manager

By:

---

Joseph M. Michaels, President

**[Signatures Must Be Notarized]**



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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Name: \_\_\_\_\_  
Notary Public

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF THE PROPERTY**

The land is situated in the County of San Bernardino, State of California, and is described as follows:

PARCEL A: (APN: 0274-182-34-0-000)

THAT PORTION OF BLOCK 43, ORANGE LAND AND WATER COMPANY'S SUBDIVISION, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 11, PAGE 9, OF MAPS](#), AND THAT PORTION OF THE WEST 10 FEET OF CYPRESS AVENUE, VACATED BY ORDINANCE OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, ADJOINING SAID BLOCK 43 ON THE EAST, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF CYPRESS STREET AND "I" STREET AS SHOWN ON SAID MAP:

THENCE NORTH 279 FEET ALONG THE CENTER LINE OF CYPRESS AVENUE:

THENCE WEST 30 FEET PARALLEL WITH THE CENTER LINE OF "I" STREET TO THE TRUE POINT OF BEGINNING:

THENCE WEST 200 FEET PARALLEL WITH THE CENTER-LINE OF "I" STREET:

THENCE NORTH 94 FEET PARALLEL WITH THE CENTER LINE OF CYPRESS AVENUE:

THENCE EAST 200 FEET PARALLEL WITH THE CENTER LINE OF "I" STREET TO A POINT IN THE WEST LINE OF CYPRESS AVENUE AS THE SAME NOW EXISTS:

THENCE SOUTH 94 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE WESTERLY 45 FEET.

PARCEL B: (APN: 0274-182-43-0-000)

PARCEL 2 OF PARCEL MAP 8726, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 89, PAGE\(S\) 23 OF PARCEL MAPS](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL C: (APN: 0274-182-46-0-000)

PARCEL C-1:

THAT PORTION OF LOT 43, ORANGE LAND AND WATER COMPANY'S ADDITION TO THE CITY OF COLTON, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA RECORDED IN [BOOK 11 OF MAPS, PAGE 9](#), DESCRIBED AS FOLLOWS:

COMMENCING 50' NORTH AND 30' WEST OF THE INTERSECTION OF CYPRESS AND "I" STREETS:

THENCE WEST 200', NORTH 155', EAST 200', AND SOUTH 155' TO THE POINT OF BEGINNING.

PARCEL C-2:

THAT PORTION OF BLOCK 43, ORANGE LAND AND WATER COMPANY'S ADDITION TO THE CITY OF COLTON, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 11 OF MAPS, PAGE 9](#) AND THAT PORTION OF THE WEST 10 FEET OF CYPRESS AVENUE, VACATED BY ORDINANCE OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY ADJOINING SAID BLOCK 43 OF THE EAST, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS NORTHERLY 205 FEET MEASURED ALONG THE CENTERLINE OF CYPRESS AVENUE AS SHOWN ON SAID MAP; AND WESTERLY, 30 FEET ON A LINE PARALLEL WITH THE CENTERLINE OF "I" STREET, MEASURED FROM THE INTERSECTIONS OF SAID CENTERLINES; THENCE WESTERLY PARALLEL WITH SAID CENTERLINE OF "I" STREET ALONG THE SOUTHERLY LINE OF THAT

**EXHIBIT A**  
(Continued)

PARCEL DESCRIBED AS THE 1ST PARCEL UNDER ITEM NO. 7. IN THE DECREE OF DISTRIBUTION RECORDED [JULY 28, 1958, IN BOOK 4564, PAGE 67 OFFICIAL RECORDS](#) A DISTANCE OF 155 FEET TO THE SOUTHEAST CORNER OF THAT CERTAIN PROPERTY CONVEYED TO HERBERT E. ROWLEY, ET AL. DESCRIBED AS PARCEL NO. 1 IN THE DEED RECORDED [MARCH 20, 1978 IN BOOK 9392, PAGE 1284 OFFICIAL RECORD](#); THENCE NORTH ALONG THE EAST LINE OF SAID HERBERT E. ROWLEY PROPERTY, 74 FEET PARALLEL WITH THE CENTER LINE OF CYPRESS STREET, TO THE NORTHEAST CORNER THEREOF; THENCE EASTERLY PARALLEL WITH THE CENTERLINE OF "I" STREET, 155 FEET TO A POINT ON THE WEST LINE OF CYPRESS AVENUE, AS SAME NOW EXISTS; THENCE SOUTH ALONG THE WEST LINE OF CYPRESS AVENUE, 74 FEET TO THE POINT OF BEGINNING.

SAID LEGAL DESCRIPTION IS PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE NO. E0041-84 M.S. NO. LLA/E84F-0041 AS APPROVED BY THE ENVIRONMENTAL PUBLIC WORKS AGENCY, LAND MANAGEMENT DEPARTMENT OF THE COUNTY OF SAN BERNARDINO AS EVIDENCED BY DOCUMENT RECORDED [MARCH 9, 1984 AS INSTRUMENT NO. 84-055456 OFFICIAL RECORDS](#).

PARCEL C-3:

THAT PORTION OF BLOCK 43, ORANGE LAND AND WATER COMPANY'S ADDITION TO THE CITY OF COLTON, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT THEREOF, RECORDED IN [BOOK 11 OF MAPS, PAGE 9](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF THE WEST 10 FEET OF CYPRESS AVENUE, VACATED BY ORDER OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, ADJOINING SAID BLOCK 43 ON THE EAST DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT WHICH IS NORTHERLY 205 FEET, MEASURED ALONG THE CENTERLINE OF CYPRESS AVENUE AS SHOWN ON SAID MAP, AND WESTERLY 30 FEET ON A LINE PARALLEL WITH THE CENTERLINE OF "I" STREET, MEASURED FROM THE INTERSECTION OF SAID CENTERLINES; THENCE WESTERLY PARALLEL WITH SAID CENTERLINE OF "I" STREET, ALONG THE SOUTHERLY LINE OF THAT PARCEL DESCRIBED AS THE 1ST PARCEL UNDER ITEM NO. 7 IN THAT DECREE OF DISTRIBUTION RECORDED [JULY 28, 1958 IN BOOK 4564, PAGE 67 OFFICIAL RECORDS](#), A DISTANCE OF 155 FEET TO THE SOUTHEAST CORNER OF THAT CERTAIN PROPERTY CONVEYED TO HERBERT E. ROWLEY, ET AL., DESCRIBED AS PARCEL NO. 1 IN DEED RECORDED [MARCH 20, 1978 IN BOOK 9392 PAGE 1284 OFFICIAL RECORDS](#) OF SAID COUNTY SAID POINT BEING THE TRUE POINT OF BEGINNING OF THAT LEGAL TO BE DESCRIBED:

THENCE CONTINUING WEST (N 86° 03' 45" WEST) ALONG SAID PROLONGATION 45.00 FEET;

THENCE NORTH (N 04° 08' 00" EAST) 74.00 FEET MORE OR LESS;

THENCE EAST (N 86° 06' 40" WEST) 45.00 FEET;

THENCE SOUTH (N 04° 08' 00" EAST) 74.04 FEET MORE OR LESS TO THE TRUE POINT OF BEGINNING.

APN: 0274-182-34-0-000, 0274-182-43-0-000, 0274-182-46-0-000, (NEW APN: 0274-182-47-0-000)



EXHIBIT F

FORM OF REGULATORY AGREEMENT

## EXHIBIT "F"

### REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (Las Terrazas- HOME Loan)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is dated as of November 17, 2020, and is between the County of San Bernardino, a political subdivision of the State of California (the "County"), and AMCAL Las Terrazas Fund, L.P., a California limited partnership ("Borrower").

#### RECITALS

A. These Recitals refer to and utilize certain capitalized terms; defined terms used but not defined in these Recitals are as defined in Article 1 of this Agreement. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the HOME Investment Partnership Act Loan Agreement by and between the County and Borrower, dated as of November 17, 2020, as such may be amended from time to time (the "Loan Agreement").

B. The County owns fee title interest in certain real property in certain real property located on the corner of Valley Boulevard and North Cypress in an unincorporated area of the County, as more particularly described in Exhibit A (the "Property").

C. Borrower holds a leasehold interest in the Property and will develop one hundred and twelve (112) units of affordable housing (including one unrestricted manager's unit) and a community building and preschool or daycare facility on the Property in order to provide increased affordable housing opportunities (the "Improvements"). The Improvements and the Property are referred to as the "Development."

D. Pursuant the Loan Agreement, the County has made a loan of up to Eight Million Three Hundred Fifty-Eight Thousand Dollars (\$8,358,000) of HOME Investment Partnerships Act funds ("HOME Funds") to fund eligible activities for the Development as allowed under 24 C.F.R. 92.64 (the "Loan"). The County has the authority to loan the HOME Funds pursuant to 24 C.F.R. 92.205.

E. Through this Regulatory Agreement the County is imposing occupancy and affordability restrictions on the Development. The County has agreed to make the Loan on the condition that forty-eight (48) Units, including thirty-three (33) one-bedroom Units, eleven (11) two-bedroom Units, and four (4) three-bedroom Units, in the Development, (the "HOME-Assisted Units"), be designated as HOME-assisted units that are "fixed" Units as defined in 24 C.F.R. 92.252(j). The HOME-Assisted Units are required to be maintained and operated in accordance with the HOME Regulation for the entire HOME Term and thereafter for the remaining Term of this Agreement in accordance with the restrictions concerning affordability, operation, and maintenance that are set forth in this Agreement and in the related documents evidencing the Loan.

**REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**  
(Las Terrazas- HOME Loan)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is dated as of November 17, 2020, and is between the County of San Bernardino, a political subdivision of the State of California (the "County"), and AMCAL Las Terrazas Fund, L.P., a California limited partnership ("Borrower").

RECITALS

A. These Recitals refer to and utilize certain capitalized terms; defined terms used but not defined in these Recitals are as defined in Article 1 of this Agreement. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the HOME Investment Partnership Act Loan Agreement by and between the County and Borrower, dated as of November 17, 2020, as such may be amended from time to time (the "Loan Agreement").

B. The County owns fee title interest in certain real property in certain real property located on the corner of Valley Boulevard and North Cypress in an unincorporated area of the County, as more particularly described in Exhibit A (the "Property").

C. Borrower holds a leasehold interest in the Property and will develop one hundred and twelve (112) units of affordable housing (including one unrestricted manager's unit) and a community building and preschool or daycare facility on the Property in order to provide increased affordable housing opportunities (the "Improvements"). The Improvements and the Property are referred to as the "Development."

D. Pursuant the Loan Agreement, the County has made a loan of up to Eight Million Three Hundred Fifty-Eight Thousand Dollars (\$8,358,000) of HOME Investment Partnerships Act funds ("HOME Funds") to fund eligible activities for the Development as allowed under 24 C.F.R. 92.64 (the "Loan"). The County has the authority to loan the HOME Funds pursuant to 24 C.F.R. 92.205.

E. Through this Regulatory Agreement the County is imposing occupancy and affordability restrictions on the Development. The County has agreed to make the Loan on the condition that forty-eight (48) Units, including thirty-three (33) one-bedroom Units, eleven (11) two-bedroom Units, and four (4) three-bedroom Units, in the Development, (the "HOME-Assisted Units"), be designated as HOME-assisted units that are "fixed" Units as defined in 24 C.F.R. 92.252(j). The HOME-Assisted Units are required to be maintained and operated in accordance with the HOME Regulation for the entire HOME Term and thereafter for the remaining Term of this Agreement in accordance with the restrictions concerning affordability, operation, and maintenance that are set forth in this Agreement and in the related documents evidencing the Loan.



F. In consideration of receipt of the Loan, and to ensure that the entire Development will be used and operated in accordance with the conditions and restrictions in this Agreement, Borrower agrees to observe all the terms and conditions set forth below.

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

ARTICLE 1  
DEFINITIONS; EXHIBITS

1.1 Definitions.

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

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

(b) "Adjusted Annual Income" means the total anticipated annual income of all persons in the Tenant household as calculated pursuant to 24 C.F.R. 92.203(b)(1). Adjusted Annual Income includes income from all persons in the household, including nonrelated individuals.

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

(d) "AMCAL" shall mean AMCAL Multi-Housing, Inc., a California corporation.

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

(f) "Assumed Household Size" means the assumed household size "adjusted for family size appropriate to the unit" as such term is defined in California Health and Safety Code Section 50052.5(h). The definition is utilized to calculate affordable rent and is not intended to be a limit on the number of persons occupying a unit.

(g) "Borrower" has the meaning set forth in the opening paragraph of this Agreement, and its permitted successors and assigns.

(h) "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 County to certify completion of the construction of the Improvements; (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 C.F.R. 92.251; and (4) all project completion

information has been entered by the County into the Integrated Disbursement and Information System (IDIS).

(i) "Completion of Construction" means the date the construction of the Improvements is completed as evidenced by the issuance of a certificate of occupancy or equivalent document issued by the County, to certify completion of the construction of the Improvements.

(j) "County" has the meaning set forth in the opening paragraph of this Agreement.

(k) "Deed of Trust" means the Leasehold Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith by and among Borrower, as trustor, Commonwealth Land Title Company, as trustee, and the County, as beneficiary, that will encumber the Development to secure repayment of the Loan and Borrower's performance of the covenants set forth in the documents evidencing the Loan.

(l) "Development" has the meaning set forth in Paragraph D of the Recitals.

(m) "Extremely Low Income Household" means a household with an Adjusted Annual Income which does not exceed the qualifying limits for extremely low income families as established and amended from time to time by HUD and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations, as published by HUD.

(n) "Extremely Low Income Rent" means the rent permitted to be charged for an Extremely Low Income Unit pursuant to Section 2.2 below.

(o) "Extremely Low Income Units" means the HOME-Assisted Units, which, pursuant to Section 2.1, are required to be occupied by Extremely Low Income Households.

(p) "High HOME Rent" means a monthly Rent amount not exceeding the maximum rent published by HUD for a Low Income Household for the applicable bedroom size as set forth in 24 C.F.R. 92.252(a).

(q) "HOME" means Home Investment Partnerships Act Program funded pursuant to the Cranston-Gonzalez National Housing Act of 1990.

(r) "HOME Funds" has the meaning set forth in Paragraph E of the Recitals.

(s) "HOME Regulations" means the regulations set forth in 24 C.F.R. Part 92.

(t) "HOME Term" means the period beginning on the date of this Agreement and ending on the twentieth (20th) anniversary of the Completion Date. After the expiration of the HOME Term, for the purpose of the HOME Regulations, the Development will no longer be considered an existing HOME assisted rental project.

(u) "Housing Lease" means the long -term lease between the County, as landlord, and the Borrower, as lessee, under which the Borrower leased the Property from the County.

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

(w) "Improvements" has the meaning set forth in Paragraph D of the Recitals.

(x) "Investor Limited Partner" means the tax credit limited partner or partners, and their respective successors and assigns, admitted to the Borrower in connection with the allocation of low income housing tax credits to the Development, which admission will occur concurrent with closing of construction financing for development of the Development Improvements.

(y) "Loan" has the meaning set forth in Paragraph E of the Recitals.

(z) "Loan Agreement" has the meaning set forth in Paragraph A of the Recitals.

(aa) "Loan Documents" means the documents executed by Borrower evidencing the Loan, including this Agreement, the Note, Deed of Trust, and the Loan Agreement.

(bb) "Low HOME Rent" means a monthly Rent amount not exceeding the maximum rent published by HUD for a Low Income Household for the applicable bedroom size or as otherwise set forth in 24 C.F.R. 92.252(b).

(cc) "Low Income Household" means a Tenant household with an Adjusted Annual Income that does not exceed eighty percent (80%) of AMI, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than eighty percent (80%) of AMI on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes, as such definition may be amended pursuant to 24 C.F.R. 92.2. An individual who is a student that is ineligible to receive Section 8 assistance under 24 C.F.R. 5.612, and thus ineligible to receive any type of HOME assistance, shall not qualify as a Low Income Household.

(dd) "Low Income Units" means the HOME-Assisted Units which, pursuant to Section 2.1 below, are required to be occupied by Low Income Households.

(ee) "Management Agent" has the meaning set forth in Section 5.2.

(ff) "Note" means that certain Promissory Note, dated as of November 1, 2020, that evidences Borrower's obligation to repay the Loan, as such may be amended from time to time.



(gg) "Property" has the meaning set forth in Paragraph B of the Recitals.

(hh) "Rent" means the total monthly payments by the Tenant of a Unit (other than the manager's Unit) for the following: (1) use and occupancy of the Unit and land and associated facilities, including parking; (2) any reasonable and customary separately charged fees or service charges assessed by Borrower which are required of all Tenants which meet the requirements under 24 C.F.R. 92.214(b)(3), other than security deposits; (3) the County-approved utility allowance, calculated pursuant to 24 C.F.R. 92.252(d) or otherwise determined based upon the specific utilities used at the Development as allowed under 24 C.F.R. 92.252(d)(1), for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and (4) any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Borrower, and paid by the Tenant. In no event shall the Rent of a Unit exceed the amount permitted by the County pursuant to Section 2.2 hereof.

(ii) "Service Provider" has the meaning set forth in Section 5.6.

(jj) "Special Limited Partner" means the limited partner, and its respective successors and assigns, admitted to the Borrower which admission will occur concurrent with closing of construction financing for development of the Development Improvements.

(kk) "Tenant" means the tenant household that occupies a Unit in the Development.

(ll) "Tenant Services" has the meaning set forth in Section 5.6.

(mm) "Term" means the term of this Agreement which commences as of the date of this Agreement, and unless sooner terminated pursuant to the terms of this Agreement, expires on the date eighty-five (85) years from the Completion Date.

(nn) "Unit(s)" means one (1) or more of the units in the Development.

(oo) "Very Low Income Household" means a household with an Adjusted Annual Income that does not exceed fifty percent (50%) of AMI, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than fifty percent (50%) of AMI on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes, as set forth in 24 C.F.R. Section 92.2. An individual who is a student that is ineligible to receive Section 8 assistance under 24 C.F.R. 5.612, and thus ineligible to receive any type of HOME assistance, shall not qualify as a Very Low Income Household.

(pp) "Very Low Income Units" means the HOME-Assisted Units which, pursuant to Section 2.1 below, are required to be occupied by Very Low Income Households.

## 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: Schedule of HOME Rents
- Exhibit C: Certificate of Continuing Program Compliance
- Exhibit D: Form of Certification of Tenant Eligibility
- Exhibit E: Uniform Physical Conditions Standard

## ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

### 2.1 Occupancy Requirements.

The Borrower shall regulate the use and occupancy of the Units in the following manner:

- (a) Extremely Low Income Units. During the Term, six (6) one-bedroom Units, shall be rented to and occupied by or, if vacant, available for occupancy to, Extremely Low Income Households; these Units shall be considered HOME-Assisted Units.
- (b) Very Low Income Units. During the Term, twelve (12) one-bedroom Units, eleven (11) two-bedroom Units and four (4) three-bedroom Units, shall be rented to or occupied by, or if vacant, available for occupancy to, Very Low Income Households, these Units shall be considered HOME-Assisted Units.
- (c) Low Income Units. During the Term, fifteen (15) one-bedroom Units shall be rented to or occupied by, or if vacant, available for occupancy to, Low Income Households; these Units shall be considered HOME-Assisted Units.
- (d) Intermingling of Units. The HOME-Assisted Units are required to be intermingled throughout the Development and of comparable quality to all other Units. All Tenants must have equal access to and enjoyment of all common facilities in the Development.
- (e) Manager's Unit. One (1) two-bedroom Unit shall be available for designation as the manager's unit.
- (f) Foreclosure Occupancy Requirements. Notwithstanding anything to the contrary contained in this Agreement, in the event of a foreclosure (or deed in lieu of foreclosure) of an approved or permitted Senior Lien (as defined in the Loan Agreement) or in the event that any project-based rental assistance or operating subsidy to the Property is terminated, substantially reduced or not renewed, then the occupancy requirements set forth in Section 2.1(c) above with respects to Units required to be occupied or available to Low Income Households shall be of no further force and effect. Nothing in this subsection (f) shall be read to reduce or otherwise change the Borrower's obligations to continue to comply with the

requirements set forth in Section 2.1(a) and Section 2.1(b) above with regards to the provision of Extremely Low Income Units and Very Low Income Units for the entire Term hereof.

## 2.2 Allowable Rent.

(a) Extremely Low Income Rent. Subject to the provisions of Section 2.3 below, the Rent paid by Tenants of Extremely Low Income Units may not exceed the Low HOME Rent provided to the Borrower annually by the County, which shall be consistent with the HUD published HOME rents.

(b) Very Low Income Rent. Subject to the provisions of Section 2.3 below, the Rent paid by Tenants of Very Low Income Units may not exceed the Low HOME Rent provided to the Borrower annually by the County, which shall be consistent with the HUD published HOME rents.

(c) Low Income Rent. Subject to the provisions of Section 2.3 below, the Rent paid by Tenants of Low Income Units may not exceed the High HOME Rent provided to the Borrower annually by the County, which shall be consistent with the HUD published HOME rents.

(d) Assumed Household Size. In calculating the allowable Rent for the Units, the Assumed Household Size shall be determined pursuant to the terms of Health and Safety Code Section 50052.5(h), as shown below:

Number of Bedrooms	Assumed Household Size
One	2
Two	3
Three	5

(e) Approval of Rents. Initial Rents for all HOME-Assisted Units shall be approved by the County prior to occupancy. Subject to Section 2.2(h) below, all Rent increases for HOME-Assisted Units shall also be subject to approval by the County. No later than thirty (30) days after HUD publishes AMI for the County of San Bernardino for each calendar year, the County shall provide the Borrower with a schedule of permissible maximum Extremely Low Income Rents, Very Low Income Rents and Low Income Rents for the succeeding year (the "Rent Schedule"). The Rent Schedule for each calendar year shall reflect an increase or decrease in maximum permissible rents which corresponds directly to any increase or decrease in AMI for the County of San Bernardino from the AMI for the County of San Bernardino published for the previous calendar year. Under no circumstance may the Borrower raise rents for HOME-Assisted Units above the permissible maximum rents as allowed under the annual rent schedule provided by the County.

(f) No Additional Fees. Borrower may not charge any fee, other than Rent, to any Tenant of the HOME-Assisted Units for any housing or other services provided by Borrower (other than laundry and vending services) that are not customarily charged in rental housing. All



residents must have equal access to and enjoyment of the common facilities in the Development. Nothing herein shall prevent Borrower from establishing charges for tenant defaults and for other voluntary services, so long as such fees are not prohibited under 24 CFR 92.214.

(g) Occupancy. Borrower shall cause the Development to be operated at all times in compliance with all applicable provisions of: (1) the Unruh Act, including but not limited to California Civil Code Sections 51.2, 51.3 and 51.4 which relate to the requirements for lawful senior housing; (2) the California Fair Employment and Housing Act, Government Code Section 12900 et seq., which relates to lawful senior housing; (3) Section 504 of the Rehabilitation Act of 1973; (4) the United States Fair Housing Act, as amended, 42 U.S.C. Section 3607(b) and 24 CFR 100.304, which relate to lawful senior housing; (5) the Americans With Disabilities Act of 1990, which relate to disabled persons access; and (6) any other applicable law or regulation. Borrower shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the County) the County, and its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Borrower's failure to comply with applicable legal requirements related to housing for persons with disabilities. The indemnification provisions of this subsection will survive expiration of the Term or other termination of this Agreement and remain in full force and effect.

(h) Approved Rents. Notwithstanding anything to the contrary contained in this Agreement, the County may not unreasonably disapprove Initial Rents and annual Rent increases in subsequent years that are less than or equal to the maximum rents, for the applicable year, established by HUD for the HOME program and established by TCAC for Tenants in an income tier under 30%, 40%, 50%, 60%, or 80% of AMI ("Tax Credit Rents"), provided, however; County shall have no approval rights over Borrower's right to charge TCAC rents to the extent they are lower than HOME rents.

### 2.3 Rent Increases; Increased Income of Tenants.

(a) Rent Increases. The proposed initial Rents and subsequent Rents for all HOME-Assisted Units shall be provided to the Borrower by the County prior to initial or subsequent occupancy and prior to a rent increase, and shall be subject to the HOME Regulations. A schedule of current HOME rents is attached as Exhibit B. Subject to Sections 2.1(e) and 2.2(h), Borrower may not impose any Rent increases on HOME-Assisted Units, without prior submission to the County of any proposed Rent increases and without written approval from the County of the proposed Rent increases. The Rent for such HOME-Assisted Units may be increased, consistent with the HOME rents published by HUD, no more than once annually based upon the annual income certification described in Article 3 below and in no event shall any increase exceed the Tax Credit Rents. Tenants shall be given at least sixty (60) days written notice prior to any Rent increase. The County will provide Borrower with a schedule of maximum permissible Rents for the Units annually.

(b) Increased Income Over Extremely Low Income but below Very Low Income Limit. If, upon recertification of a Tenant's income, the Borrower determines that a former Extremely Low Income Household's Adjusted Income has increased and exceeds the qualifying income for an Extremely Low Income Household, but has an Adjusted Income not exceeding the qualifying income for a Very Low Income Household, then, such Tenant shall be

permitted to retain the Unit and shall continue to be charged Extremely Low Income Rent. Upon expiration of the Tenant's lease for such year and upon sixty (60) days' written notice, the Rent may be increased to the Very Low Income Rent, and such Tenant's Unit may be considered a Very Low Income Unit.

(c) Increased Income Over Very Low Income but Below Low Income Limit. If, upon recertification of a Tenant's income, the Borrower determines that a former Very Low Income Household's Adjusted Income has increased and exceeds the qualifying income for a Very Low Income Household, but has an Adjusted Income not exceeding the qualifying income for a Low Income Household, then, such Tenant shall be permitted to retain the Unit and shall continue to be charged Very Low Income Rent. Upon expiration of the Tenant's lease for such year and upon sixty (60) days' written notice, the Rent may be increased to the Low Income Rent, and such Tenant's Unit may be considered a Low Income Unit;

(d) Low Income Household. If, upon recertification of a Tenant's income the Borrower determines that a former Extremely Low Income Household, Very Low Income Household or Low Income Household's income has increased and exceeds the qualifying income for Low Income Households (above eighty percent (80%) of AMI), the Tenant may continue to occupy the Unit. Upon expiration of the Tenant's Lease for such year, the Borrower shall: (1) Subject to Section 6.18, with 60 days' advance written notice, increase such Tenant's Rent to the lesser of (i) one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of the actual Adjusted Income of the Tenant, and (ii) the fair market rent (subject to 24 C.F.R. 92.252(i)(2) regarding low income housing tax credit requirements); and (2) Rent the next available Unit to an Extremely Low Income Household or Very Low Income Household at Rent not exceeding the maximum Rent specified in Section 2.2, as applicable, to comply with the requirements of Section 2.1 above.

(e) Non-Qualifying Household. If, upon the annual certification of the income a Tenant of a HOME-Assisted Unit, Borrower determines that the income of an Extremely Low Income Household, a Very Low Income Household or a Low Income Household has increased above the qualifying limit for a Low Income Household, such Tenant shall be permitted to retain the Unit and upon expiration of the Tenant's lease and upon sixty (60) days written notice, the Rent must be increased to the lesser of one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of the actual Adjusted Annual Income of the Tenant, or fair market rent (subject to 24 C.F.R. 92.252(i)(2) regarding low income housing tax credit requirements), and Borrower shall rent the next available Unit to an Extremely Low Income Household, a Very Low Income Household or a Low Income Household as applicable to comply with the requirements of Section 2.1 above, at a Rent not exceeding the maximum Rent specified in Section 2.2, or re-designate another comparable Unit in the Development with an Extremely Low Income Household, Very Low Income Household or Low Income Household as applicable as a HOME-Assisted Unit, to meet the requirements of Section 2.1 above. Upon renting the next available Unit in accordance with Section 2.1 or re-designating another Unit in the Development as a HOME-Assisted Unit for Low Income, the Unit with the over-income Tenant will no longer be considered a HOME-Assisted Unit.

(f) Termination of Occupancy. Upon termination of occupancy of a HOME-Assisted Unit by a Tenant, such Unit will be deemed to be continuously occupied by a household



of the same income level as the initial income level of the vacating Tenant, until such Unit is reoccupied or another Unit is re-designated as a HOME-Assisted Unit, at which time categorization of the Unit will be established based on the occupancy requirements of Section 2.1.

2.4 Units Available to the Disabled. Borrower shall construct the Development in compliance with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act; Section 504 of the Rehabilitation Act of 1973; Title II and/or Title III of the Americans with Disabilities Act of 1973 (29 U.S.C. 794 et seq.); and Title 24 of the California Code of Regulations. In compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et. seq.), a minimum of six (6) Units, shall be constructed to be readily accessible and usable by households with a mobility impaired member and a minimum of three (3) Units shall be constructed to be readily accessible and usable by households with a hearing and/or visually impaired member. Not less than thirty (30) days from the Completion Date, the Borrower shall deliver to the County the certification required pursuant to Section 3.7 of the Loan Agreement.

2.5 Lease Provisions. The Borrower shall include in leases for all HOME-Assisted Units provisions which authorize the Borrower to immediately terminate the tenancy of any household one or more of whose members misrepresented any fact material to the household's qualification as an Extremely Low Income Households, Very Low Income Household or Low Income Household, as applicable. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 3.1 below, and that, if the household's income increases above the applicable limits for an Extremely Low Income Households Very Low Income Household or Low Income Household, as applicable, such household's Rent may be subject to increase pursuant to Section 2.3 above.

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

### ARTICLE 3 INCOME CERTIFICATION AND REPORTING

#### 3.1 Income Certification.

(a) Borrower shall obtain, complete, and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the HOME-Assisted Units (excluding the Manager's Unit). Borrower shall make a good faith effort to verify the accuracy of the income provided by all applicants or all members of the occupying household, as the case may be, in the income certification. To verify the information, Borrower shall take one or more of the following steps as part of the verification process: (1) obtain a minimum of the three most current pay stubs for all adults age eighteen (18) or older; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit agency or similar search; (4) obtain an income verification form from the applicant's current employer verifying employment for the last two months; (5) obtain the three (3) most current savings and checking account bank statements; (6) obtain an income verification form from the Social Security



Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies, verifying assistance for the last two months (as available from those agencies); or (7) if the applicant is unemployed and does not have a tax return, obtain another form of independent verification. Copies of Tenants' income certifications shall be available to the County upon reasonable written request.

(b) In addition, during the HOME Term, Borrower shall cause each Tenant in a HOME-Assisted Unit to execute a Certification of Tenant Eligibility in the form attached as Exhibit D, or some other alternative tenant certification reasonably approved in writing by the County. Borrower shall fill out the "Development Owner" portion of the Certification of Tenant Eligibility and provide it to the County along with supporting documentation collected by Borrower. Copies of the Certifications of Tenant Eligibility and accompanying documentation must be submitted to the County annually for each of the HOME-Assisted Units.

### 3.2 Tenant Selection.

(a) Before leasing any Units in the Development, the Borrower must provide the County for its review and approval its plan for marketing the Development to income-eligible households as required pursuant to this Agreement, including information on affirmative marketing efforts and compliance with fair housing laws (the "Marketing Plan") that at a minimum meets the requirements for tenant selection set forth in 24 C.F.R. 92.253(d) and any modification thereto as required under Section 3.18 and Section 4.12 of the Loan Agreement.

(b) The Borrower shall not discriminate against any applicants for tenancy on the basis of source of income or rent payment (for example, without limitation, Temporary Assistance for Needy Families (TANF) or Section 8), and the Borrower shall consider a prospective Tenant's previous rent history of at least one (1) year, or such other time period the Borrower deems reasonable, as evidence of the prospective Tenant's ability to pay the applicable Rent. The ability to pay shall be demonstrated if the prospective Tenant can document that the prospective Tenant's gross income is at least two (2) times the prospective rent at the prospective Tenant's income level. The Borrower, in the reasonable exercise of its discretion, may waive the requirement that the prospective Tenant's gross income equal at least two (2) times the prospective rent at the prospective Tenant's income level, and admit prospective Tenants with lower gross incomes.

3.3 Reporting Requirements. Borrower shall submit to the County: (a) not later than the ninetieth (90<sup>th</sup>) day after the close of each calendar year, or such other later date as may be requested by the County, a signed copy of the Certification of Program Compliance in the form attached as Exhibit C; and (b) within fifteen (15) days after receipt of a written request, and any other information or completed forms requested by the County in order to comply with reporting requirements of HUD, the State of California, and the County.

3.4 Additional Information. Borrower shall provide any additional information reasonably requested by the County with regards to the Borrower or the Development. The County shall have the right to examine and make copies of all books, records or other documents of the Borrower which pertain to any Unit, upon reasonable prior notice to Borrower and subject to all applicable tenant privacy laws.

3.5 Records. Borrower shall maintain complete, accurate and current records pertaining to the Development, and shall permit any duly authorized representative of the County to inspect records, including records pertaining to income and household size of Tenants and Rent charged to such Tenants. All Tenant lists, applications and waiting lists relating to the Development are to be at all times: (a) separate and identifiable from any other business of Borrower; (b) maintained as required by the County, in a reasonable condition for proper audit; and (c) subject to examination during business hours by representatives of the County. Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

3.6 Record Requirements. All records maintained by Borrower pursuant to Sections 3.3 and 3.5 above are to be: (a) maintained in compliance with all applicable HUD records and accounting requirements; and (b) open to and available for inspection and copying by HUD and its authorized representatives at reasonable intervals during normal business hours; provided however, records pertaining to Tenant income verifications, Rents, and Development physical inspections must be kept for the most recent five (5) year period and are subject to HUD inspection for five (5) years after expiration of the HOME Term. Borrower is subject to the audit requirements set forth in 24 CFR 92.506 during the HOME Term.

3.7 Annual Budgets and Reports. The Borrower, at least thirty (30) days prior to the end of each of the Borrower's fiscal year, shall furnish the County an Annual Operating Budget for the upcoming calendar year. Borrower and Management Agent shall make available to the County for inspection all books and records with respect to the Development upon reasonable prior written notice from County. Within ninety (90) days following the end of each calendar year, the Borrower shall submit a report showing the actual income and expenditures with respect to the Development for the immediately preceding calendar year and the status of all reserve funds; and within one hundred twenty (120) days following the end of each calendar year, a copy of the Borrower's federal income tax filings for the calendar year, all in conformance with the requirements of Section 8.10(c) of the Housing Lease.

3.8 On-Site Inspection.

(a) The County may perform, or cause to be performed, during normal business hours, an on-site inspection of the Development (including HOME-Assisted Units, subject to the rights of Tenants) at least one (1) time per year upon no less than two (2) business days' prior written notice to Borrower to monitor compliance with this Agreement. Borrower shall cooperate in making the Development available for such inspection. Borrower agrees and acknowledges that during the HOME Term the County must conduct 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, at least once every three (3) years after the Completion of Construction of the Improvements or as otherwise required under 24 CFR 200.285. Such right to annually inspect the Development shall be in addition to the County's right to inspect the Development in accordance with the County's code as may be amended from time to time.

(b) After the completion of an inspection the County shall deliver a copy of the Uniform Physical Conditions Standards inspection report 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 (other than those identified in the preceding sentence), 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).

(c) Upon expiration of the HOME Term, the County may perform on-site inspections on the same terms as Section 3.8(a) above.

3.9 Use of Reserve Funds. The Borrower agrees to create and maintain the reserves required by the Approved Financing (as defined in the Loan Agreement) and the reserves in the amounts approved by the County as part of the Approved Financing Plan submitted by the Borrower pursuant to the terms of the Loan Agreement. The Borrower shall notify the County of any withdrawals from the reserve accounts.

3.10 Tenant Services Plan. For the entire Term of this Agreement, the Borrower shall provide social services programs in accordance with the Services Plan and Services Budget reasonably approved by the County pursuant to Section 3.19 of the Loan Agreement. The Annual Budget shall show required expenditures of Annual Operating Expenses to fund Tenant Services required under the Services Plan.

#### ARTICLE 4 OPERATION OF THE DEVELOPMENT

4.1 Residential Use. The Development shall be used and continuously operated and maintained as multi-family rental housing to be made available to and occupied by Extremely Low, Very Low and Low Income Households, as applicable, in conformity with this Regulatory Agreement. No part of the Development may be operated as an emergency shelter (including shelter for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories). Nothing herein shall prohibit the use of a portion of the Development for day care and/or pre-school uses and related services.

4.2 Compliance with Loan Documents and Program Requirements. Borrower's actions with respect to the Development shall at all times be in full conformity with: (a) all requirements imposed on projects assisted with HOME Funds as contained in 42 U.S.C. Section 12701, et seq., 24 C.F.R. Part 92, and other implementing rules and regulations, as such may be amended or supplemented from time to time; and (b) any other regulatory requirements imposed on Borrower.



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

4.4 Property Tax Exemption. Borrower shall be allowed to apply to the State Board of Equalization for or obtain a welfare exemption from property taxes under any provision of law, including California Revenue and Taxation Section 214(g).

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

4.6 Preference to County and Former Agency Displacees. Subject to all applicable laws, including but not limited to fair housing laws, and the rules and regulations imposed by TCAC on the low income housing tax credit program, the Borrower shall give a preference in the rental of any of the Units in the Development to eligible households displaced by activity of the County and the Former Agency. The preferences stated in this Section are required by law and shall apply to the rentals of Units in the Development throughout the Term of this Regulatory Agreement.

## ARTICLE 5

### PROPERTY MANAGEMENT, MAINTENANCE AND TENANT SERVICES

5.1 Management Responsibilities. Borrower is responsible for all management functions with respect to the Development, including without limitation the selection of Tenants for HOME-Assisted Units in accordance with the requirements of 24 C.F.R. 92.253(d), certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County has no responsibility for management of the Development. Borrower shall retain a professional property management company approved by the County in its reasonable discretion to perform Borrower's management duties hereunder. A resident manager shall also be required. Pursuant to Section 7.8 of the DDA, the Borrower shall submit to the County an initial proposed Management Plan pursuant to the Schedule of Performance. The County shall approve or disapprove the proposed management plan in writing within fifteen (15) business days following the County's receipt of the proposed management plan, which

approval shall not be unreasonably denied, conditioned or delayed. If the proposed management plan is disapproved by the County, the County shall deliver a written notice to the Borrower setting forth, in reasonable detail, the reasons for such disapproval. The Borrower shall have fifteen (15) business days following the receipt of such notice to submit a revised Management Plan modified any way necessary to ensure that such policies comply with the provisions of this Agreement. The County's approval of the amendments to the Management Plan shall not be unreasonably withheld, conditioned or delayed. The Management Plan approved pursuant to Section 7.8 or Section 7.10 of the DDA shall be deemed to comply with the requirements of this Section.

5.2 Management Agent. Borrower shall cause the Development to be managed by an experienced management agent reasonably acceptable to the County(as approved, the "Management Agent"), with a demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing. The County hereby approves of FPI Management, Inc., as the initial Management Agent for the Development. For any change in the Management Agent, the Borrower shall submit for the County's approval the identity of any proposed Management Agent. The Borrower shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the County to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the County shall approve the proposed Management Agent by notifying the Borrower in writing.

5.3 Periodic Performance Review. The County reserves the right to conduct a periodic review of the management practices and financial status of the Development within thirty (30) days after each anniversary of the Completion Date. The purpose of each periodic review will be to enable the County to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Borrower shall cooperate with the County in such reviews.

5.4 Replacement of Management Agent.

(a) If, as a result of a periodic review, the County determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the requirements and standards of this Agreement, the County shall first deliver notice to the Borrower of such operational issues which notice shall describe the County's findings with specificity and the County may, in the same notice, notify the Borrower its intention to cause replacement of the Management Agent, subject to the rights of partners of the Borrower. Within thirty (30) days of receipt by the Borrower of such written notice, the County staff and Borrower, and any partners of the Borrower, shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

(b) If, after such meeting, County staff recommends in writing the replacement of the Management Agent, with the reasonable concurrence of the partners of the



Borrower, Borrower will promptly dismiss the then-current Management Agent, and must appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in subsection (a) above and approved by the County pursuant to Section 5.2 above. The replacement Management Agent or on-site resident manager shall be approved the County pursuant to Section 5.2 above and shall be subject to the concurrent approval of the Investor Limited Partner and Senior Lenders.

(c) Any contract for the operation or management of the Development entered into by Borrower must provide that the Management Agent may be dismissed and the contract terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section constitutes a default under this Agreement, and the County may enforce this provision through legal proceedings as specified in Section 6.7 below.

5.5 Approval of Management Plan Modifications. Each year, within sixty (60) days of the end of the calendar year, the Borrower shall submit to the County any proposed changes to the Management Plan. The County shall approve or disapprove the proposed changes to the Management Plan in writing within fifteen (15) business days following the County's receipt of the request to amend the Management Plan, which approval shall not be unreasonably denied, conditioned or delayed. If the change to the Management Plan is disapproved by the County, the County shall deliver a written notice to the Borrower setting forth, in reasonable detail, the reasons for such disapproval. The Borrower shall have fifteen (15) business days following the receipt of such notice to submit a revised Management Plan modification in any way necessary to ensure that such policies comply with the provisions of this Agreement. The County's approval of the amendments to the Management Plan shall not be unreasonably withheld, conditioned or delayed.

5.6 Tenant Service Provider.

(a) The Borrower will be providing on-site services which Borrower will make available to all Tenants in the Development (the "Tenant Services"). The Borrower must submit to the County for approval the name and qualifications of any proposed service provider (the "Service Provider"). The County hereby approves Life Steps, Inc., as the initial Service Provider for the Development.

(b) The Service Provider must demonstrate the ability to provide Tenant Services in residential facilities like the Development in an effective manner. The Borrower must submit such additional information about the background, experience and financial condition of any proposed Service Provider as is reasonably necessary for the County to determine whether the proposed Service Provider meets the standards for a qualified Service Provider of developments of this type.

(c) If the proposed Service Provider meets the standard for a qualified Service Provider set forth above, the County shall approve the proposed Service Provider by notifying Borrower in writing. Unless the proposed Service Provider is disapproved in writing by the County within thirty (30) days, which disapproval is to state with reasonable specificity the basis for disapproval, it shall be deemed approved.



5.7 Property Maintenance.

(a) Borrower must maintain, for the entire Term of this Agreement, all interior and exterior Improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) consistent with similar quality affordable housing developments and in accordance with a Management Plan approved pursuant to Section 5.5 of this Agreement (including without limitation any landscape and signage plans), as the same may be amended from time to time, and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in a decent, safe, sanitary condition and in good repair pursuant to the Uniform Physical Conditions Standards established by HUD pursuant to 24 C.F.R. 5.703 and as required under 24 C.F.R. 92.251.

(b) The County places prime importance on quality maintenance to protect its investment and to ensure that all County funded affordable housing projects are not allowed to deteriorate due to deficient maintenance. In addition, the Borrower shall keep the Development free from all graffiti, and any accumulation of shopping carts, debris or waste material. Normal wear and tear of the Development will be acceptable to the County assuming Borrower agrees to provide all necessary improvements to assure the Development is maintained in good condition. Borrower shall promptly make all repairs and replacements necessary to keep the Improvements in good and sanitary condition and repair (and as to landscaping, in a healthy condition) consistent with similarly situated quality affordable housing developments and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable materials.

(c) In the event that Borrower breaches any of the covenants contained in this section and such default continues for a period of seven (7) days after written notice from the County with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the County with respect to landscaping and building improvements, then the County, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter the Development and perform or cause to be performed all such acts and work necessary to cure the default, or if a period longer than seven (7) and thirty (30) days is reasonably necessary to correct the deficiency, respectively, then the Borrower shall begin to correct the deficiency within seven (7) and thirty (30) days, respectively, and correct the deficiency as soon as reasonably possible. Pursuant to such right of entry, the County shall be permitted (but is not required) to enter the Development and perform all acts and work necessary to protect, maintain, and preserve the Improvements and landscaped areas on the Property, and to attach a lien on the Development, or to assess the Development, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the County and/or costs of such cure, including a ten percent (10%) administrative charge, which amount shall be promptly paid by the Borrower to the County upon demand.

(d) The conditions and obligations set forth in this Section shall run with the Property and shall apply for the entire Term of this Agreement.

## 5.8 Safety Conditions.

(a) The parties mutually acknowledge that each places a prime importance on the security of County assisted projects and the safety of the residents and surrounding community. The Borrower agrees to implement and maintain throughout the Term the following security measures in the Development:

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

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

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

5.9 Crime Prevention Program. During the Term of this Agreement Borrower agrees that Borrower shall cause the Management Agent to participate in the San Bernardino County Sheriff's Department's Crime Free Multi-Housing program or similar program administered by the County (the "Crime Prevention Program"), wherein specialized training and other resources are provided to multi-family property owners and managers to reduce the potential for onsite criminal activity. Information on the County's Crime Prevention Program is currently available at <http://wp.sbcounty.gov/sheriff/divisions/public-affairs/crime-free-multi-housing/>. Completion of the Department's four (4) training phases and a Final Certification (Phase V) shall be achieved and maintained by the Management Agent. The County's periodic review of the management of the Development pursuant to Section 5.3 will include confirmation of the Management Agent's participation in the Crime Prevention Program. No default under this Section 5.9 shall be declared if the Management Agent or any replacement Management Agent is pursuing completion of the Crime Prevention Program requirements or if the Crime Prevention Program training phases are not available to the Management Agent

5.10 Insurance. The Borrower shall maintain the insurance coverage required under Section 4.15 of the Loan Agreement throughout the Term.

## ARTICLE 6 MISCELLANEOUS

6.1 Term. The provisions of this Agreement apply to the Development for the entire Term even if the Loan is paid in full prior to the end of the Term. This Agreement binds any successor, heir or assign of Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by County. County is making the Loan on the condition, and in consideration of, this provision, and would not do so

otherwise. For the purposes of the HOME Regulations, the Development shall only be considered a HOME assisted project for the duration of the HOME Term, and nothing in this Agreement may be read to imply otherwise.

## 6.2 Lease Provisions.

(a) In leasing the HOME-Assisted Units within the Development, Borrower shall use a form of written lease approved by the County. The form of lease must comply with all requirements of this Agreement, and must, among other matters:

(1) Provide for termination of the lease for failure to: (1) provide any information required under this Agreement or reasonably requested by Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Development in accordance with the standards set forth in this Agreement; or (2) qualify as an Extremely Low Income Household or a Very Low Income Household or Low Income Household, as applicable, as a result of any material misrepresentation made by such Tenant with respect to the income computation.

(2) Be for an initial term of not less than one (1) year, unless by mutual agreement between the Tenant and Borrower, and provide for no increase in Rent during such year. Borrower will provide each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant, and with such further notice as may be required by Section 2.3 above. After the initial year of tenancy, the lease may shift to be month-to-month by mutual agreement of Borrower and the Tenant. Notwithstanding the above, any rent increases are subject to the requirements of Section 2.3(a) above.

(3) Include a provision which requires a Tenant who is residing in a Unit required to be accessible pursuant to Section 2.4 and who is not in need of an accessible Unit to move to a non-accessible Unit when a non-accessible Unit becomes available and another Tenant or prospective Tenant is in need of an accessible Unit.

(b) The lease must not contain any provision which is prohibited by 24 C.F.R. Section 92.253(b) and any amendments thereto.

6.3 Lease Termination. Any termination of a lease or refusal to renew a lease for a HOME-Assisted Unit within the Development must be preceded by prior written notice (specifying the grounds for the action) from the Borrower to the Tenant and such notice must be given in conformance with California Civil Code Section 1946.1(b) and 24 C.F.R. 92.253(c) during the HOME Term. Any termination of a lease for a default of the Tenant shall be in accordance with all applicable laws.

6.4 Nondiscrimination. All of the Units must be available for occupancy on a continuous basis to members of the general public who are income eligible. Borrower may not give preference to any particular class or group of persons in renting the Units, except to the extent that the Units are required to be leased to income eligible households pursuant to this Agreement. There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, gender identity, gender



expression, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry, or disability, age, or military and veteran status, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor will 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, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit. Borrower shall, to the extent applicable, 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 County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

#### 6.5 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Borrower will provide by first-class mail, postage prepaid, a notice to all Tenants containing: (1) the anticipated date of the expiration of the Term; (2) any anticipated increase in Rent upon the expiration of the Term; (3) a statement that a copy of such notice will be sent to the County; and (4) a statement that a public hearing may be held by the County on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Borrower shall also file a copy of the above-described notice with the County Chief Executive Officer, Community Development and Housing Agency (CDHA) Administrator, or the Community Development and Housing Director.

(b) In addition to the notice required above, Borrower shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11, as such may be amended from time to time. Such notice requirements may include: (1) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a), which would include the County's Community Development and Housing Director), which would include the County's Community Development and Housing Director) prior to the expiration of the Term; (2) a six (6) month notice requirement to existing Tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (3) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; and (4) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

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

deed or other instrument, unless the County expressly releases such conveyed portion of the Property from the requirements of this Agreement.

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

(a) Calling the Loan. Subject to the terms of any subordination agreement, the County may declare a default under the Note, accelerate the indebtedness evidenced by the Note, and proceed with foreclosure under the Leasehold Deed of Trust.

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

(c) Cure by Investor Limited Partner. County hereby agrees to accept a cure of any default made or tendered hereunder by Investor Limited Partner or Special Limited Partner on the same terms and conditions as if such cure was made or tendered by Borrower.

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

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

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

6.11 Waiver of Requirements. Any of the requirements of this Agreement may be expressly waived by the County in writing, but no waiver by the County of any requirement of this Agreement extends to or affects any other provision of this Agreement, and may not be deemed to do so.

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

6.13 Notices.

(a) Formal notices, demands, and communications between the Parties delivered under this Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service

which furnishes signed receipts of delivery; or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

County:

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

with a copy to:

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

Borrower:

AMCAL Las Terrazas Fund, L.P.  
c/o AMCAL Multi-Housing Inc.  
30141 Agoura Rd., Suite 100  
Agoura Hills, CA 91301  
Attn: President

With a copy to:

Bocarsly Emden Cowan Esmail & Arndt, LLP  
633 West Fifth Street, 64<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attn: Kyle Arndt

with a copy to:

Las Palmas Foundation  
531 Encinitas Blvd., Suite 206  
Encinitas, CA 92024  
Attn: Joseph Michaels

with a copy to:

HHTCF XCVIII SLP LLC  
630 Fifth Avenue, 28th Floor  
New York, NY 10111  
Attention: Joseph A. Macari



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).

6.14 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement will not in any way be affected or impaired thereby.

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

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

6.17 Revival of Agreement after Foreclosure. In the event there is a foreclosure of the Property, this Agreement will revive according to its original terms if, during the Term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties (excluding any entity affiliated with the investor limited partner of Owner), obtains an ownership interest in the Improvements or Property.

6.18 Tax Credit Program. Notwithstanding anything contained herein to the contrary, for as long as the Property is subject to the requirements of the California and/or Federal Low-Income Housing Tax Credit Program under the provisions of Section 42 of the Code and Section 23610.5 of the California Revenue and Taxation Code, as applicable (collectively, the "Tax Credit Program") and there is a conflict between the requirements of the Tax Credit Program and the affordability provisions set forth in 2.3 above, inclusive, then the provisions of the Tax Credit Program shall prevail. That notwithstanding, the fact that this Agreement and the Tax Credit Program provide for greater, lesser or different obligations or requirements shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

6.19 Subordination. This Agreement shall not be subordinated.

6.20 Assignment by the County. The County may assign its rights and obligations under this Agreement to any instrumentality of the County or other public entity without the consent of the Borrower.

6.21 No Claims. Nothing contained in this Agreement shall create or justify any claim against the County by any person that the Borrower may have employed or with whom the 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 Property or the construction or operation of the Improvements.

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

6.23 No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

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

*[Remainder of Page Left Intentionally Blank]*

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

BORROWER:

AMCAL LAS TERRAZAS FUND, L.P., a California limited partnership

By: AMCAL FNMA LLC,  
a California limited liability company,  
its administrative general partner

By: AMCAL Multi-Housing Inc.,  
a California corporation,  
its manager

By: \_\_\_\_\_  
Arjun Nagarkatti, President

By: Brandon Affordable Housing, LLC,  
a California limited liability company,  
its managing general partner

By: Las Palmas Foundation,  
a California nonprofit public benefit corporation,  
its manager

By: \_\_\_\_\_  
Joseph M. Michaels, President

**(Signature Must be Notarized)**

***[Signature Page Continues]***



**COUNTY:**

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

By: \_\_\_\_\_  
Curt Hagman, Chair of Board of Supervisor

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

Lynna Monell  
Clerk of the Board of Supervisors  
of the County of San Bernardino

By: \_\_\_\_\_  
Deputy

APPROVED AS TO LEGAL FORM:  
MICHELLE BLAKEMORE  
County Counsel

By: \_\_\_\_\_  
Robert Messinger  
Principal Assistant County Counsel

**(Signatures Must be Notarized)**

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Name: \_\_\_\_\_  
Name: Notary Public

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

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Name: \_\_\_\_\_

Name: Notary Public



## **EXHIBIT A**

### **LEGAL DESCRIPTION**

The land is situated in the State of California, County of San Bernardino, and is described as follows:

PARCEL A: (APN: 0274-182-34-0-000)

THAT PORTION OF BLOCK 43, ORANGE LAND AND WATER COMPANY'S SUBDIVISION, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN [BOOK 11, PAGE 9, OF MAPS](#), AND THAT PORTION OF THE WEST 10 FEET OF CYPRESS AVENUE, VACATED BY ORDINANCE OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, ADJOINING SAID BLOCK 43 ON THE EAST, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF CYPRESS STREET AND "I" STREET AS SHOWN ON SAID MAP:

THENCE NORTH 279 FEET ALONG THE CENTER LINE OF CYPRESS AVENUE:

THENCE WEST 30 FEET PARALLEL WITH THE CENTER LINE OF "I" STREET TO THE TRUE POINT OF BEGINNING:

THENCE WEST 200 FEET PARALLEL WITH THE CENTER LINE OF "I" STREET:

THENCE NORTH 94 FEET PARALLEL WITH THE CENTER LINE OF CYPRESS AVENUE:

THENCE EAST 200 FEET PARALLEL WITH THE CENTER LINE OF "I" STREET TO A POINT IN THE WEST LINE OF CYPRESS AVENUE AS THE SAME NOW EXISTS:

THENCE SOUTH 94 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE WESTERLY 45 FEET.

PARCEL B: (APN: 0274-182-43-0-000)

PARCEL 2 OF PARCEL MAP 8726, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 89, PAGE\(S\) 23 OF PARCEL MAPS](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL C: (APN: 0274-182-46-0-000)

PARCEL C-1:

THAT PORTION OF LOT 43, ORANGE LAND AND WATER COMPANY'S ADDITION TO THE CITY OF COLTON, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA RECORDED IN [BOOK 11 OF MAPS, PAGE 9](#), DESCRIBED AS FOLLOWS:

COMMENCING 50' NORTH AND 30' WEST OF THE INTERSECTION OF CYPRESS AND "I" STREETS:

THENCE WEST 200', NORTH 155', EAST 200', AND SOUTH 155' TO THE POINT OF BEGINNING.

PARCEL C-2:

THAT PORTION OF BLOCK 43, ORANGE LAND AND WATER COMPANY'S ADDITION TO THE CITY OF COLTON, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 11 OF MAPS, PAGE 9](#) AND THAT PORTION OF THE WEST 10 FEET OF CYPRESS AVENUE, VACATED BY ORDINANCE OF THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY ADJOINING SAID BLOCK 43 OF THE EAST, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS NORTHERLY 205 FEET MEASURED ALONG THE CENTERLINE OF CYPRESS AVENUE AS SHOWN ON SAID MAP; AND WESTERLY, 30 FEET ON A LINE PARALLEL WITH THE CENTERLINE OF "I" STREET, MEASURED FROM THE INTERSECTIONS OF SAID CENTERLINES; THENCE WESTERLY PARALLEL WITH SAID CENTERLINE OF "I" STREET ALONG THE SOUTHERLY LINE OF THAT

## **EXHIBIT B**

### **HOME PROGRAM RENTS**

The attached HOME Rents reflect the current HOME rents as of the date of the Agreement. The initial Rents and subsequent Rents for all Units must be provided to the Borrower by the County prior to occupancy and are subject to the HOME Regulations. The County will provide Borrower with a schedule of maximum permissible Rents for the Units annually.

[Insert current HOME Rents]

**EXHIBIT C**

**INITIAL/ANNUAL CERTIFICATE OF  
PROGRAM COMPLIANCE**



## EXHIBIT D

### FORM OF CERTIFICATION OF TENANT ELIGIBILITY

Rental Unit \_\_\_\_\_  
Street Address \_\_\_\_\_  
Unit No. \_\_\_\_\_  
City \_\_\_\_\_  
Zip Code \_\_\_\_\_

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully and truthfully each of the following questions for all persons who are to occupy the Unit in the above Development for which application is made, all of whom are listed below:

1.	2.	3.	4.	5.
Name of Members in the Household	Relationship to Head of Household	Age	Ethnicity	Place of Employment

Ethnicity: ☐ White ☐ Black or African American ☐ Asian ☐ Asian & White  
☐ American Indian or Alaska Native  
☐ Native Hawaiian or Other Pacific Islander ☐ American Indian or Alaska Native & White  
☐ Black or African American & White  
☐ American Indian or Alaska Native & Black or African American  
☐ Other Multi Race ☐ Hispanic

Date of Occupancy of Rental Unit by Tenant: \_\_\_\_\_

Date of Lease Signed for Rental Unit by Tenant: \_\_\_\_\_

Amount of Rent Paid Per Month: \_\_\_\_\_

Certification Date (Earlier of Date of Occupancy or Date Lease signed): \_\_\_\_\_

6. **Anticipated Annual Income.** The anticipated total annual income from all sources of each person listed in Section 1 for the twelve (12) month period beginning on the Certification Date listed above, including income described in (a) below, but excluding all income described in (b) below, is \$ \_\_\_\_\_.

(a) The amount set forth above includes all of the following income (unless such income is described in (b) below): all wages and salaries, overtime pay, commissions, fees, tips

and bonuses before payroll deductions; net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets); interest and dividends (including income from assets as set forth in item 7(b) below); full amount of periodic payments received from Social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts; payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay; the maximum amount of public assistance available to the above persons; periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; and any earned income tax credit to the extent it exceeds income tax liability.

(b) The following income is excluded from the amount set forth above: casual, sporadic or irregular gifts; amounts that are specifically for or in reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payment (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to student or educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes; hazardous duty pay to a member of the household in the armed forces who is away from home and exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; income from employment of children (including foster children) under the age of eighteen (18) years; foster child care payments; the value of coupon allotments under the Food Stamp Act of 1977; payments to volunteers under the Domestic Volunteer Service Act of 1973; payments received under the Alaska Native Claims Settlement Act; income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes; payments on allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program; and payments received from the Workforce Innovation and Opportunity Act.

7. **Net Family Assets.** If any of the persons described in item 1 above (or any person whose income or contributions were included in item 6) has any savings, stocks, bonds, equity in real property or other form of capital investment (excluding interests in Indian trust lands), provide:

- (a) the total value of all such assets owned by all such persons: \$\_\_\_\_\_, and
- (b) the amount of income expected to be derived from such assets in the twelve (12) month period commencing this date: \$\_\_\_\_\_.

**8. Students**

(a) Will any of the persons listed in item 1 above be or have they been full-time students during five (5) calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes \_\_\_\_\_ No \_\_\_\_\_

(b) (Complete only if the answer to Question 8(a) is "Yes"). Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return, a veteran of the U.S. military?

Yes \_\_\_\_\_ No \_\_\_\_\_

The above information is full, true, and complete to the best of my knowledge. I have no objections to inquiries being made for the purpose of verifying the statements made herein.

Signature: \_\_\_\_\_ Date \_\_\_\_\_

**(Signature Must be Notarized)**



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

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Name: \_\_\_\_\_

Name: Notary Public

FOR COMPLETION BY DEVELOPMENT OWNER ONLY:

A. Calculation of eligible income:

- (1) Enter amount entered for entire household in 6 above: \$ \_\_\_\_\_
- (2) If the amount entered in 7(a) above is greater than \$5,000, enter \$ \_\_\_\_\_
- (i) the product of the amount entered in 7(a) above multiplied by the current passbook savings rate as determined by HUD: \$ \_\_\_\_\_
- (ii) the amount entered in 7(b) above: \$ \_\_\_\_\_
- (iii) enter the greater of line (i) or line (ii): \$ \_\_\_\_\_
- (3) TOTAL ELIGIBLE INCOME (Line A(1) plus line A(2)(iii)): \$ \_\_\_\_\_

B. Enter number of family members listed in item 1 above: \_\_\_\_\_

C. The amount entered in A(3) (Total Eligible Income) is: \$ \_\_\_\_\_

\_\_\_\_\_ Less than \$ \_\_\_\_\_ of AMI for the area in which the Development is located, which is the maximum income at which a household may be determined to be a qualifying tenant as that term is defined in the Agreement.

\_\_\_\_\_ More than the above-mentioned amount.

D. Number of Units assigned: \_\_\_\_\_

E. Monthly rent: \$ \_\_\_\_\_

F. This Unit (was/was not) last occupied for a period of thirty-one (31) consecutive days by a person or persons whose Adjusted Annual Income, as certified in the above manner, was equal to or less than the amount at which a person would have qualified as a qualifying tenant under the terms of the Agreement.

G. Applicant:

\_\_\_\_\_ **Qualifies as a qualifying tenant.**

\_\_\_\_\_ **Does not qualify as a qualifying tenant.**

EXHIBIT E

UNIFORM PHYSICAL CONDITION STANDARDS  
INSPECTION REPORT



EXHIBIT G

CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE



County of San Bernardino Project Compliance Report

Property Name: _____		Reporting Period _____		Date _____	
Onsite Manager Name _____		Phone Number _____		Property Owner Name _____	
E-mail address: _____		Phone Number: _____		E-mail address: _____	
Property Address: _____		Funding Source _____		Accessible Units as a Percentage _____	
Total Number of Units _____		Total Number of Restricted Units: _____		Accessible Units in Project _____	
Number of High HOME rent units _____		Number of Low HOME rent units _____		Number of vacant restricted units _____	
Number of Sensory Accessible Units _____					

Unit No.	# of Bdrms	Tenant Name	Low/High HOME Unit	Household Size	Head of Household (See Codes)	Hispanic Y or N	Female HOH Y or N	Race of HOH (see codes)	Monthly Gross Income	Tenant Portion (\$)	Utility Allowance (\$)	Gross Rent Amount (\$)	Section 8 Subsidy (\$)	% of Median Income	Move-In	Move-Out	Recent Date
1																	
2																	
3																	
4																	
5																	
6																	
7																	
8																	
9																	
10																	
11																	
12																	
13																	
14																	
15																	
16																	
17																	
18																	
19																	
20																	
21																	
22																	

EXHIBIT " G "

I certify that all information stated herein, as well as the information provided in any accompaniment herewithin, is true and accurate.

Name (Please Print): _____		Management Company Name _____		Position: _____	
Signature: _____		Date: _____		Phone Number: _____	
		E-mail address: _____			



County of San Bernardino Project Compliance Report

Unit No.	# of Bdrms	Tenant Name	Low/High HOME Unit	Household Size	Head of Household (See Codes)	Hispanic Y or N	Female HOH Y or N	Race of HOH (see codes)	Monthly Gross Income	Tenant Portion (\$)	Utility Allowance (\$)	Gross Rent Amount (\$)	Section 8 Subsidy (\$)	% of Median Income	Move-In	Move-Out	Recert. Date
23												\$ -					
24												\$ -					
25												\$ -					
26												\$ -					
27												\$ -					
28												\$ -					
29												\$ -					
30												\$ -					
31												\$ -					
32												\$ -					
33												\$ -					
34												\$ -					
35												\$ -					
36												\$ -					
37												\$ -					
38												\$ -					
39												\$ -					
40												\$ -					
41												\$ -					
42												\$ -					
43												\$ -					
44												\$ -					
45												\$ -					
46												\$ -					
47												\$ -					
48												\$ -					
49												\$ -					
50												\$ -					
51												\$ -					





County of San Bernardino Project Compliance Report

Unit No.	# of Bdrms	Tenant Name	Low/High HOME Unit	Household Size	Head of Household (See Codes)	Hispanic Y or N	Female HOH Y or N	Race of HOH (see codes)	Monthly Gross Income	Tenant Portion (\$)	Utility Allowance (\$)	Gross Rent Amount (\$)	Section 8 Subsidy (\$)	% of Median Income	Move-In	Move-Out	Recent Date
52												\$ -					
53												\$ -					
54												\$ -					
55												\$ -					
56												\$ -					
57												\$ -					
58												\$ -					
59												\$ -					
60												\$ -					
61												\$ -					
62												\$ -					
63												\$ -					
64												\$ -					
65												\$ -					
66												\$ -					
67												\$ -					
68												\$ -					
69												\$ -					
70												\$ -					
71												\$ -					
72												\$ -					
73												\$ -					
74												\$ -					
75												\$ -					

EXHIBIT H

SECTION 3 COMPLIANCE

## EXHIBIT "H"



**Economic Development Agency**  
Community Development and Housing

### **CONSTRUCTION CONTRACT LABOR COMPLIANCE PROVISIONS (Attachment D)**



## **NOTICE TO BIDDERS**

### **COUNTYWIDE VISION:**

The project(s) implemented with these funds assist in meeting an element of the Countywide Vision for sustainable infrastructures and housing as adopted by the County Board of Supervisors and SANBAG on June 30, 2011.

### **FUNDING OF PROJECTS AND FEDERAL AND STATE REQUIREMENTS**

Bidders are advised that federal funds are being used for this project and that as a result, certain requirements are to be imposed, depending upon the source of the federal funds. Sources may include: Community Development Block Grant funds (CDBG), Neighborhood Stabilization Program funds (NSP) or HOME Investment Partnerships Program funds (HOME). The use of any of these federal funds on a project will require the payment of federal prevailing wages under the Davis-Bacon and Related Acts ("DBRA") (40 USC §3142, 40 USC §§ 276a-276a-7, 29 CFR Part 5, which will be enforced when the contract amount for the Prime Contract exceeds \$2,000. The Prime Contractor is responsible for ensuring all Subcontractor(s) and lower-tier Subcontractor(s) compliance with the DBRA. The Federal Labor Standards Provisions (HUD 4010) apply to this project and are attached.

For HOME and NSP funded projects, the Prime Contractor, all Subcontractors and all lower-tier Subcontractors are required to pay their laborers and mechanics employed under the contract, a wage not less than the locally prevailing wages (including fringe benefits) listed in a David Bacon wage determination for a classification, as specified in the Federal Wage Determination. **If other funding is used on a project, California state prevailing wages (as specified in the State Wage Determination) may be triggered. If that occurs, then the higher of the two applicable wage classifications (federal or state) will be enforced for all work under the contract.** For CDBG-funded projects, the Prime Contractor, all Subcontractors and all lower-tier Subcontractors are required to pay their laborers and mechanics providing work under the contract, a wage not less than the locally prevailing wages (including fringe benefits), as specified in **both** the Federal and State Wage Determinations for the project.

**The higher of the two applicable wage classifications, either the Federal Prevailing Wage or, State Prevailing Wage will be enforced for all work under this Contract.**

**Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity** - The bidder's attention is called to the "Equal Opportunity Clause" and "Standard Federal Equal Employment Specifications" contained in the bid package. Goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, is 19% for minorities and 6.9% for women.

## **TABLE OF CONTENTS**

• CONSTRUCTION CONTRACT PROVISIONS - DEFINITIONS.....	1
• LABOR COMPLIANCE REQUIREMENTS .....	2
• REQUIRED DOCUMENTS.....	4
• FEDERAL LABOR STANDARDS PROVISIONS .....	5
• SECTION 3 CLAUSE .....	9
• AFFIRMATIVE ACTION COMPLIANCE GUIDELINES FOR CONSTRUCTION AND NON- CONSTRUCTION CONTRACTORS .....	10
• EQUAL OPPORTUNITY CLAUSES .....	14
• CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS .....	22
• DAVIS-BACON WAGE DETERMINATION.....	23
• SAMPLE DOCUMENTS .....	24

## CONSTRUCTION CONTRACT PROVISIONS - DEFINITIONS

The following are definitions of state and federal provisions/documents for federally-assisted projects. Please refer to the "Required Documents Checklist" for any documents to be completed and submitted for this project.

**Affirmative Action Compliance Guidelines for Construction or Non-Construction Contractors** – Generally, affirmative action requirements apply to contracts and subcontracts in excess of \$10,000. This document provides guidelines to help Contractors meet affirmative action and equal employment opportunity requirements set forth in federal regulations 41 CFR 60.

**Bid Bond** – A bid guarantee of at least 10% of the contract price is required from each bidder and must be submitted with the Bid.

**Certificate of Owner's Attorney** – This certificate is to be completed by the owner's attorney when applicable.

**Certification of Bidder Regarding Equal Employment Opportunity** – This certification is required by Federal law (41 CFR 60) and must be completed by the Prime Contractor.

**Certification of Compliance with Air and Water Acts** – The prime Contractor and all Subcontractors must comply with this certification when the contract exceeds \$100,000.

**Certification by Proposed Subcontractor Regarding Equal Employment Opportunity** – This certification must be completed by all Subcontractors and every lower-tier Subcontractor and submitted to the Prime Contractor.

**Contractor's Certification of Compliance with Davis-Bacon and Related Acts** – This certification is required by federal law (29 CFR 5) and must be completed by the Prime Contractor.

**Equal Employment Opportunity Clauses/Equal Employment Opportunity Construction Contract Provisions** – These provisions are to be inserted in all applicable federally-assisted contracts and subcontracts.

**Federal Labor Standards Provisions (HUD 4010 form)** – These provisions set forth the federal labor requirements for contractors working on federally-assisted construction projects in which the prime contract exceeds \$2,000. The Prime Contractor and all Subcontractors and every lower-tier subcontractor are required to pay their laborers and mechanics working onsite a wage as specified in the **FEDERALLY FUNDED PROJECTS** section of this provision. ***The Prime Contractor is responsible to include the Labor Compliance Contract Addendum in all executed Subcontractor contracts for this project.***

**Federal Prevailing Wage Decision** – The Federal Wage Decision contains the federal wage rates for construction projects within the County of San Bernardino. A copy of the Wage Decision is included in the bid package and can also be found at <https://www.sam.gov/portal/public/SAM/> or <http://www.wdol.gov/dba.aspx>. The wage decision that applies to the project is the one in effect ten days prior to the bid opening date.

**Labor and Materials Bond** – This payment bond guarantees that employees/Subcontractors, and suppliers are paid for services rendered and materials supplied. The Labor and Materials Bond must be at least 100% of the contract price and must be submitted to the CITY/COUNTY upon award of the contract.

**Performance Bond** – This bond guarantees the Contractor's performance under the terms of the construction contract and must be at least 100% of the contract price and submitted to the CITY/COUNTY following award of the contract.

**Section 3** – This law applies to construction contracts exceeding \$100,000 on projects funded by the U.S. Department of Housing and Urban Development (HUD). To the greatest extent feasible, Contractor(s) and Subcontractor(s) must attempt to become a Section 3 business. A Section 3 business is one owned by a low-income person, a business of which 30% of the workforce is comprised of low-income individuals, or a business that contracts 25% of its work to Section 3 businesses.



## LABOR COMPLIANCE REQUIREMENTS

### Davis-Bacon and Related Acts:

The Prime Contractor is responsible for ensuring all Subcontractor(s) and lower-tier Subcontractor(s) compliance with all requirements of Davis-Bacon and Related Acts (DBRA). The Federal Labor Standards Provisions (HUD 4010) apply to this project and are attached.

A copy of the Federal Prevailing Wage Decision, (and upon request the State Wage Decision) the date of which reflects the latest applicable modification at the time of this bid advertisement, is included in the Contract Documents and Specifications. Bidders shall be notified, via Addendum, of modifications, if any, which supersede that modification included herein, up until a minimum of ten days prior to the actual Bid Opening for this project.

A weekly Certified Payroll Report (CPR) is required during the term of construction on the project. Payment(s) of invoice(s) for this project may be delayed when CPRs are not submitted weekly. The CITY/COUNTY shall make progress payments on any properly completed payment request submitted by the Prime Contractor. The payment request shall not be approved unless all CPRs for the project submitted through LCPtracker have been approved and accepted for each week worked during the time period covered by said payment request.

### LCPtracker:

As permitted by the Department of Labor (DOL), The Department of Housing and Urban Development (HUD), and Title 8, section 16404 of the California Code of Regulations, the Prime Contractor and each Subcontractor and every lower-tier Subcontractor subject to DBRA are allowed to submit CPRs electronically via LCPtracker

LCPtracker is a web-based system.. The Prime Contractor and Subcontractors and lower-tier Subcontractors will receive an email from LCPtracker providing their log-on identification and temporary password. The Contractors will need to follow the instructions in the email to set-up their permanent password and activate their account. Once their account is setup, LCPtracker Inc. provides two convenient training options:

**Option 1: Computer-Based Training Courses:** Pre-recorded videos can be viewed at any time by logging into the LCPtracker website and following these simple steps:

- Enter user name/password
- Select the "eTraining" link located at the top of the page.
- Select "Contractor Training Videos"

**Option 2: Web-Based Training Sessions:** Online training sessions facilitated by members of LCPtracker's customer support team are available several times per week. All that is needed to participate is a computer with Internet access, an email address and access to a phone.

- Enter user name/password
- Select "Book Now" on the "Projects" tab and register for the Online training sessions.



### **eDocuments:**

In order to meet labor compliance requirements, all contractors will be required to complete eDocuments which are accessed, submitted and approved through LCPtracker. All eDocuments are required to be signed by an owner/officer or authorized signer. Prior to the contractor being allowed by the system to certify CPRs, all eDocuments must be submitted to, and approved by, the County.

### **Other Required Documentation:**

One of the documents that will be required to be uploaded in LCPtracker as part of the eDocuments, is a City business license or a letter stating the reasons why no business license is required. All contractors performing work on a project site located within an *incorporated* city must possess or obtain that city's business license. However, if the project is located in an *unincorporated* area of the County, and the contractor's business is located in an *incorporated* city, the contractor must possess or obtain a business license within the city where their business is located. Exception to business license requirement: A letter explaining the exception to the business license requirement will be required if the contractor's business and the project work site are both located in the *unincorporated* area of the County.

### **Electronic Submission of Certified Payrolls:**

Use of LCPtracker may require data entry in order to certify weekly payroll(s). Data entry includes information regarding employee identification, labor classification, total hours worked on the project, wage and benefit rates paid etc. Contractors currently using a payroll software system may be capable of interfacing with LCPtracker. Submission of electronic CPRs will be required by every lower-tier Subcontractor .

**The Prime Contractor and each Subcontractor and every lower-tier Subcontractor and any Vendors subject to this provision shall comply with Title 8, Section 16404 of the California Code of Regulations.**

# **REQUIRED DOCUMENTS**

## ***REQUIRED PRIOR TO CONTRACT AWARD***

1. Bid Package signed by Contractor or letter stating that the project specifications document is part of the contract
2. Signed Partnership Agreement (if applicable)

## ***REQUIRED PRIOR TO PRECONSTRUCTION CONFERENCE***

3. Executed Contract/Purchase Order NOTE: The Labor Compliance Contract Addendum (LCCA) which includes the HUD Form 4010 and the Federal prevailing wage determination for the project must be attached to contract
4. Prime Contractor Information Form
5. Bonds (performance/payment or labor and material bonds)

## ***REQUIRED PRIOR TO CONSTRUCTION***

6. Contractor's Certification of Compliance with Davis-Bacon and Related Act Requirements (Exhibit A1)\*
7. Sub-Contractor's Certification of Compliance with Davis-Bacon and Related Act Requirements (Exhibit A-1)\*
8. Certification of Bidder Regarding Equal Employment Opportunity(Exhibit B)\*
9. Certification by Proposed Sub-Contractor Regarding Equal Employment Opportunity (Exhibit C)\*
10. Affirmative Action Compliance Form for Construction Contracts Over \$10,000 (Exhibit D)\*
11. A Copy of all executed Sub-Contractor contracts NOTE: The Labor Compliance Contract Addendum (LCCA) which includes the HUD Form 4010 and the prevailing wage determination for the project must be attached to contract
12. City Business License/Exception Letter
13. Certificate of Understanding and Authorization Form (Exhibit E)\*
14. Fringe Benefit Statement Form (Exhibit F)\*
15. Authorization for Payroll Deduction (Exhibit G)\*
16. DOL Registered Apprentice Program\*
17. DOL Apprenticeship Certification\*
18. Apprenticeship Program Appendix A\*
19. Project Wage Rate Sheet\*

## ***REQUIRED DURING CONSTRUCTION***

20. Weekly Certified Payrolls (see "Electronic Submission of Certified Payrolls" section)

\*Note: These forms are located on the LCPtracker online database discussed in "Electronic Submission of Certified Payrolls" section and will be discussed by County CDH staff at the preconstruction conference.



## Federal Labor Standards Provisions

### 1. Applicability

The project or program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where

appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1) (ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part



of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or Subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number. The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own

records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i) and that such information is correct and complete;

**(2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

**(d)** The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

**(iii)** The Contractor or Subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees**

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work



actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate, who is not registered and participating in a training plan approved by the Employment and Training Administration, shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

**6. Subcontracts.** The Contractor or Subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the Subcontractors to include *these* clauses in *any* lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration Transactions", provides in part: "Whoever, for the purpose of influencing in any way the action of such Administration makes, utters or publishes any statement knowing the same to be false shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any Subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

---

**(1) Overtime requirements.** No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contract, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each Subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

## SECTION 3 CLAUSE

(Information for the Section 3 Report will be input on LCPtracker)

- 3-2.2 Employment opportunities for business and lower income persons in connection with assisted projects. This clause applies to construction contracts of \$100,000 or more, on projects funded with \$200,000 or more in federal funds from the U.S. Department of Housing and Urban Development.

Assurance of compliance with regulations.

- (A) Every contract or agreement for a grant, loan, subsidy or other direct financial assistance in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities and new community facilities and new community development, entered into by the Department of Housing and Urban Development with respect to a Section 3 covered project shall contain provisions requiring the applicant or recipient to carry out the provisions of Section 3, the regulations set forth in this part, and any applicable rules and orders of the Department issued thereunder prior to approval of its application for assistance for a Section 3 covered project.
- (B) Every applicant, recipient, contracting party, Contractor and Subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the following clause (referred to as Section 3 clause):
- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development as is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns, which are located or owned in substantial part by persons residing in the area of the project.
  - b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth to 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.
  - c. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organizations or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
  - d. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development 24 CFR 135. The Contractor will not subcontract unless the Subcontractor has first provided him with a preliminary statement of ability to comply with the requirements of these regulations.
  - e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Contractors and Subcontractors, its successors and assigns, to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135

# **AFFIRMATIVE ACTION COMPLIANCE GUIDELINES FOR CONSTRUCTION AND NON-CONSTRUCTION CONTRACTORS**



## AFFIRMATIVE ACTION COMPLIANCE GUIDELINES FOR CONSTRUCTION AND NON-CONSTRUCTION CONTRACTORS

These Affirmative Action Compliance Guidelines have been designed to provide Contractors with information necessary to comply with Federal regulations found under Title 41, Part 60 of the Code of Federal Regulations. It is the intent of these guidelines to insure that equal opportunity for employment is practiced by the Contractor without regard to race, color, sex, religion, national origin, disability, and veteran's status. These guidelines provide the minimum information necessary to comply with EEO and affirmative action requirements, including the preparation of an Affirmative Action Plan that complies with federal regulations regarding Affirmative Action for federally-assisted projects. Contractors are urged to contact the implementing entity or the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) officer for any necessary technical assistance in meeting Affirmative Action requirements if they are considering bidding under this contract.

### I. AFFIRMATIVE ACTION COMPLIANCE PROGRAM

A. The Affirmative Action program embodies the following principals:

1. Discrimination because of race, color, age, sex, religion, national origin, marital status, disability, or veteran's status is inconsistent with the constitution, laws, and policies of the United States, State of California and County of San Bernardino.
2. The implementing entity is committed to insuring that there be no discrimination by vendors, Contractors (including professional services and consultants), lessors, or lessees doing business with the implementing entity.
3. Contractors and Subcontractors agree to take affirmative personnel actions to hire and promote workers who traditionally have been discriminated against in the job market, including women, minorities, members of certain ethnic and religious groups, individuals with disabilities, and veterans.

B. Affirmative Action Step Requirements for CONSTRUCTION Contractors and Subcontractors:

1. Personnel affirmative action in recruitment, hiring, and promotion is required by Contractor and Subcontractors who have entered into a federally-assisted construction or non-construction contract that exceed \$10,000 or \$10,000 in the aggregate over a 12-month period.
2. Contractors and Subcontractors who enter into a CONSTRUCTION CONTRACT in excess of \$10,000 must take 16 specific affirmative action steps to ensure equal employment opportunity. These steps are included in 41 CFR 60-4.3 (a) (7) and are also included under "Standard Federal Equal Employment Opportunity Construction Contract Specifications" of Attachment "D" of the bid package.

C. Affirmative Action Plan requirements for NON-CONSTRUCTION Contractors:

1. All Contractors who have entered into a NON-CONSTRUCTION CONTRACT and who: 1) do business in the amount of \$50,000 or more with the implementing entity in any one fiscal year and, 2) employ 50 or more employees, must develop a written Affirmative Action Program within 120 days after the contract award date.
2. All Subcontractors rendering services or supplies to a Contractor in the amount of \$50,000 or more and employ 50 or more employees, must develop a written Affirmative Action Program within 120 days after the contract award date.

D. Exemptions under 41 CFR 60:

The following persons/contracts shall be exempt from this program:

1. A contract or contracts by a Contractor that do not exceed \$10,000 in the aggregate over a 12-month period.
2. Contracts for Work outside the United States
3. State and Local Governments
4. Contracts with certain educational institutions
5. Work on or near Indian Reservations
6. Specific contracts and facilities found exempt by
7. Deputy Assistant Secretary
8. National security contracts

Any Contractor who feels qualified for an exemption should contact the local Contract Compliance Officer or the U.S. Department of Labor's OFCCP Officer for further information.

### II. SATISFYING AFFIRMATIVE ACTION PLAN

A. Affirmative Action Plan requirements for NON-CONSTRUCTION Contractors can be met through the following:

1. Completing a Contract Compliance Qualifying Report for Non-construction Contractors and Vendors, (refer to the form found in the "Additional Required Documents/Sample Documents" section of Attachment "D" of the bid package).
2. Completing a Contractor's Affirmative Action Policy, including methods of recruiting minorities and women. If the Contractor does not have its own Affirmative Action Policy, it may adopt the County's model Affirmative Action Policy ((refer to the form found in the "Additional Required Documents/Sample Documents" section of Attachment "D" of the bid package).
3. Following Federal Affirmative Action Plan guidelines which comply with the requirements of 41 CFR 60.2.10.

## DEFINITIONS

Unless a provision of a contract otherwise requires, certain words and phrases shall be defined as follows:

- A. "Affirmative Action" is a commitment to increase the number of minorities and women in the work force by setting employment goals and timetables, including action to achieve objectives. Affirmative Action seeks to ensure that discrimination is eliminated in dealings with employees or applicants for employment whether the discrimination is intentional or unintentional. In addition, Affirmative Action seeks to improve job standards and productivity through the removal of artificial and unnecessary barriers to employment and promotion and ensure that all job actions are related to job performance measures.
- B. "Affirmative Action Plan" is a written affirmative plan required of Contractors and Subcontractors who have 50 or more employees and have entered into a contract with the implementing entity that exceeds \$50,000, or \$50,000 in contracts over a 12-month period.
- C. "Contract" means a federally-assisted purchase order, offer and acceptance, lease, agreement or other arrangement creating an obligation to which the implementing entity is a party, which would make one of the parties within the definition a Contractor.
- D. "Construction" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility services.
- E. "Contractor" means a prime Contractor or Subcontractor.
- F. "Covered Area" means the geographical area described in the solicitation from which the contract resulted;
- G. "Director" means Director, OFCCP, U.S. Dept. of Labor, or any person to whom the Director delegates authority to;
- H. "Employee" means one who performs work for compensation, or a person who is permanently or regularly employed by the Contractor or Subcontractor.
- I. "Employer Identification Number" means the Federal Social Security Number;
- J. "Handicapped Status" means any person who:
  - 1. Has a physical or mental impairment, which substantially limits one or more of such person's major life activities.
  - 2. Has a record or such impairment or,
  - 3. Is generally regarded as having such an impairment.
- K. "Employer Identification Number" means the Federal Social Security Number;
- L. "Handicapped Status" means any person who:
  - 1. Has a physical or mental impairment, which substantially limits one or more of such person's major life activities.
  - 2. Has a record or such impairment, or
  - 3. Is generally regarded as having such an impairment.
- M. "Implementing Entity" means public jurisdiction who is administering the contract.
- N. "Minority" includes:
  - 1. Black (all persons having origins in any Black African racial groups not of Hispanic origin);
  - 2. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - 3. Asian or Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands);
  - 4. American Indian or Alaskan native (all persons having origins in any of the native peoples of North America and maintaining identifiable tribal affiliations through membership and participation in community identification).
- O. "Non-construction Contract" means any contract that does not fall within the definition of "Construction Contract".
- P. "Officer" means the Contract Compliance Officer of the implementing entity or U.S. Department of Labor Office of Federal Contract Compliance Program (OFCCP) Officer.
- Q. "Persons" means any individual, firm, co-partnership, public service, joint venture, association, social club, fraternal organization, corporation, estate, trust receiver, syndicate CITY, county, municipal corporation, district or other political subdivision, or any other group or combination acting as a unit.
- R. "Underutilization" means having fewer minorities or women in a particular job classification than would reasonably be expected by their availability.
- S. "Vietnam-Era Veteran" means a person who:
  - 1. Served on actual duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or
  - 2. Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.



T. Violation and Appeal Procedure:

1. A Contractor found in violation of equal opportunity/affirmative action laws will be referred to the U.S. Department of Labor's OFCCP Division, and the Solicitor for Labor, Associate Solicitor of Labor Relations and Civil Rights Regional Solicitors and Regional Attorney are authorized to institute enforcement proceedings by filing a complaint and serving that complaint to the Contractor (defendant), in accordance with procedures set forth in 41 CFR 60-30.5. The complaint shall contain information on the alleged violation, a prayer regarding the relief being sought, and the name and address of the attorney representing the Government. Within 20 days after receiving the complaint, the defendant shall file an answer with the Chief Administrative Law Judge, if the case has not been assigned to an Administrative Law judge.
2. The answer shall contain a statement of the facts which constitute the ground of defense, and shall:
  - 1) specifically admit, explain, or deny each of the allegations of the complaint unless the defendant is without knowledge, or
  - 2) state that the defendant admits all the allegations contained in the complaint. The answer may contain a waiver for a hearing and if not, a separate paragraph in the answer shall request a hearing. The answer shall contain the name and address of the defendant, or of the attorney representing the defendant. Failure to file an answer or plead specifically to an allegation of the complaint shall constitute an admission of such allegation.
3. Contractor agrees to fully comply with the laws and programs (including regulations issued pursuant thereto) identified herein. Such compliance is required to the extent such laws, programs and their regulations are, by their own terms, applicable to this contract. Contractor warrants that he will make himself thoroughly familiar with the applicable provisions of said laws, programs, and regulations prior to commencing performance of the contract. Copies of said laws, programs, and regulations are available upon request from the implementing entity's Contract Compliance Officer, or from the U.S. Department of Labor's OFCCP Officer to the extent applicable the provisions of said laws programs and regulations are deemed to be a part of this contract as if fully set forth herein.
4. Vietnam Era Veterans' Readjustment Assistance Acts of 1972 and 1974, as amended. Pub. L. 92-540, Title V, Sec 503(a), Pub. L 93-508. Title IV, Sec. 402. (38 USCA 2011-2013).
5. Rehabilitation act of 1973, as amended (Handicapped) Pub. L 93-112 as amended. (29 USCA 701-794).
6. California Fair Employment Practice Act. Labor Code Sec. 1410 *et seq.*
7. Civil Rights Act of 1964, as amended (42 USCA 2000a to 2000H-6) and Executive Order No. 11246, September 24, 1965, as amended.



## EQUAL OPPORTUNITY CLAUSES

**The Contractor and Subcontractors not found exempt under 41 CFR 60-1.5, are required to comply with the following equal opportunity clauses as a condition of being awarded a federally-assisted contract. Each nonexempt prime Contractor shall include equal employment opportunity clauses in each of its nonexempt Subcontractors.**

### EQUAL OPPORTUNITY CLAUSE FOR FEDERALLY-ASSISTED CONSTRUCTION CONTRACTS

This clause is inserted pursuant to Executive Order 11246 of September 24, 1965, as amended, and Title VII of the Civil Rights Act of 1964, and is applicable pursuant to 41 CFR Sec. 60-1.4. The following requirements apply to Contractors and Subcontractors

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24,

1965, and by rules, regulations and orders of the Secretary of Labor, pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders

- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.



The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 1124 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and Subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee), refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurances of future compliance has been received from such applicant, and refer the case to the Department of Justice for appropriate legal proceedings.

In addition to the above, Contractor will agree to furnish all information and reports, including Standard form EEO-1, if applicable, to the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor's OFCCP, as required by Executive Order No. 11246 of September 24, 1965.

#### **EQUAL OPPORTUNITY CLAUSE FOR SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA**

This clause is inserted pursuant to Executive Order 11701 of January 24, 1973 and the Vietnam Era Veterans Readjustment Assistance Acts of 1972 and 1974 (P.L. 92-540, 93-508), and is applicable pursuant to 41 CFR Sec. 60-250.

- (1) The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam Era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam Era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (2) The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed but excluding those of

independently operated corporate affiliates, shall be listed at an appropriate local office of the State Employment Service System wherein the opening occurs. The ConWytractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

- (3) Listings of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.
- (4) The reports required by paragraph (2) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State, with the central office of that State Employment Service. Such reports shall indicate for each hiring location, (a) the number of individuals hired during the reporting period, (b) the number of non-disabled veterans of the Vietnam Era hired, (c) the number of disabled veterans of the Vietnam Era hired, and (d) the total number of disabled veterans hired. The reports shall include covered veterans hired for on-the-job training under 38 USC Sec. 1787. The Contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The Contractor shall maintain at each hiring location, copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.
- (5) Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.
- (6) This clause does not apply to the listing of employment openings, which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

(7) The provisions of paragraphs (2), (3), (4) and (5) of this clause do not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer - union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer - union arrangement for that opening.

(8) As used in this clause:

- a. "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and non-production; plant and office; laborers and mechanics; supervisory and non-supervisory; technical; and executive, administrative and professional openings as are compensated on a salary basis of less than \$25,000 per year. The term includes full-time employment, temporary employment of more than three days duration, and part-time employment. It does not include openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer - union hiring arrangement or openings in an educational institution which are restricted to students of that institution. Under most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.
- b. "Appropriate office of the State Employment Service System" means the local office of the federal - state national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Colombia, Guam, Puerto Rico and the Virgin Islands.
- c. "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" lists.
- d. "Openings which the Contractor proposes to fill pursuant to a customary and traditional employer - union hiring arrangement" means employment openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the

Contractor and representatives of his employees.

- (9) The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (10) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (11) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era for employment, and the rights of applicants and employees.
- (12) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.
- (13) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.
- (14) Collective bargaining agreement or other contract understanding that the Contractor is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.
- (15) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.



## **EQUAL OPPORTUNITY CLAUSE FOR WORKERS WITH DISABILITIES**

This clause is inserted pursuant to the Rehabilitation Act of 1973 (P.L. 93-112) and 41 CFR Sec. 60-741-4.

- (1) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (3) In the event of the Contractor's non-compliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer.
- (5) Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- (6) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- (7) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500.00 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

**STANDARD FEDERAL EQUAL  
EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT PROVISIONS  
(EXECUTIVE ORDER 11246, PURSUANT TO  
41 CFR 60-4.3 (a))**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarter Federal Tax Return. U.S. Treasury Department form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with the plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which the contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance programs Office or from federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period and the Contractor must have made commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and

shall implement affirmative action steps at least as extensive as the follow 16 steps:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's

employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the item and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment source, the Contractor shall send written



notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors; adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a – p). The efforts of a Contractor association, joint Contractor-union, Contractor-

community or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation, which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

- 9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the executive order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- 11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- 12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- 13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum

results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the director shall proceed in accordance with 41 CRF 60-4.6.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer) dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws

which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

- a) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid conditions for Federal and federally Assisted Construction published at 41 CFR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR Part 60-4 become effective.

### **Minority Goals**

The goal for the utilization of women employees on federally-assisted construction contracts is set at 6.9%.

The goal for utilization of minorities, based on the Standard metropolitan Statistical Area (SMSA) for Riverside/San Bernardino County is 19%.

For additional information on these goals, please contact the OFCCP-Pacific Region at (415) 848-6969.

## CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(Applicable to federally assisted construction contracts  
and related subcontracts exceeding \$100,000)

During the performance of this Contract, the Contractor and all Subcontractors shall comply with the requirements of the Clean Air act, as amended, 42 U.S.C. 1857 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 CFR Part 15, as amended.

In addition to the forgoing requirements, all nonexempt Contractors and Subcontractors shall furnish to the owner, the following:

- (1) A stipulation by the Contractor or Subcontractors, that any facility to be utilized in the performance of any nonexempt Contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- (2) Agreement by the Contractor to comply with all requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) A stipulation that as a condition for the award of the Contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Contract, is under consideration to be listed on the EPA List of Violating Facilities.
- (4) Agreement by the Contractor to include, or cause to be included, the criteria and requirements in paragraph (1) through (3) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.



**- Insert -**

**DAVIS-BACON WAGE DETERMINATION**

## **SAMPLE DOCUMENTS**

(Including Exhibits A through G)



**Economic Development Agency**  
Community Development and Housing

**CONTRACTOR'S CERTIFICATION OF COMPLIANCE WITH  
DAVIS-BACON AND RELATED ACTS REQUIREMENTS**

**PRIME CONTRACTOR**

<b>PROJECT NAME:</b>	<b>PROJECT CODE:</b>
<b>PROJECT ADDRESS:</b>	
<b>PRIME CONTRACTOR NAME:</b>	

As the Prime Contractor for the above referenced project, I hereby make the following certification and acknowledgment with respect to the applicability of **"DAVIS-BACON AND RELATED ACTS"** requirements:

1. By entering into this contract I certify and acknowledge that the above referenced project is federally funded and, as the Prime Contractor, I am solely responsible for complying with the **"DAVIS-BACON AND RELATED ACTS"** requirements; and
2. The Prime Contractor and all Subcontractors are required to pay their laborers and mechanics employed a wage not less than the highest wage applicable to their work classifications. If no federal work classification appears to apply, the Prime Contractor shall make a written request to the County of San Bernardino to obtain the applicable work classification and wage rate prior to the start of construction. The Prime Contractor is solely responsible for ensuring that all Subcontractors are in compliance with the **"DAVIS-BACON AND RELATED ACTS"** requirements.

_____ PRIME CONTRACTOR	_____ DATE
_____ PRIME CONTRACTOR SIGNATURE	_____ TITLE

**IF PRIME CONTRACTOR IS A CORPORATION OR PARTNERSHIP  
LIST THE LEGAL NAMES AND TITLES OF ALL PARTNERS OR CORPORATE OFFICERS.**

_____ NAME	_____ TITLE
_____ NAME	_____ TITLE
_____ NAME	_____ TITLE
_____ NAME	_____ TITLE
_____ NAME	_____ TITLE

**EXHIBIT: A**

Created on 8/23/2012





**Economic Development Agency**  
Community Development and Housing

## SUBCONTRACTOR'S CERTIFICATION OF COMPLIANCE WITH DAVIS-BACON AND RELATED ACTS REQUIREMENTS

SUBCONTRACTOR	
PROJECT NAME:	PROJECT CODE:
PROJECT ADDRESS:	
PRIME CONTRACTOR NAME:	
SUBCONTRACTOR NAME:	
<p>As the undersigned Subcontractor, having executed a contract with the above named contractor on the above referenced project, hereby make the following certification and acknowledgment with respect to the applicability of <b><u>"DAVIS-BACON AND RELATED ACTS"</u></b> requirements:</p> <p>1. By executing a contract with the above named contractor, I/we certify and acknowledge that the above referenced project is federally funded and will comply with the <b><u>"DAVIS-BACON AND RELATED ACTS"</u></b> requirements.</p> <p>2. I/we have read the <b><u>"LABOR COMPLIANCE CONTRACT ADDENDUM"</u></b> including the wage determination for the above referenced project. I/we acknowledge the receipt and adherence to following provisions set forth in the <b><u>"FEDERAL LABOR STANDARDS PROVISIONS"</u></b> before participation on this project.</p> <p>3. I/we will include the <b><u>"LABOR COMPLIANCE CONTRACT ADDENDUM"</u></b> including the wage determination for the above referenced project in any lower tier subcontracts/purchase orders executed. I/we will forward to Prime Contractor a copy of all executed subcontracts/purchase orders to any lower tier subcontractors within seven (7) days of the execution date.</p>	
SUBCONTRACTOR	DATE
SUBCONTRACTOR SIGNATURE	TITLE
<p>IF SUBCONTRACTOR IS A CORPORATION OR PARTNERSHIP LIST THE LEGAL NAMES AND TITLES OF ALL PARTNERS OR CORPORATE OFFICERS.</p>	
NAME	TITLE
NAME	TITLE
NAME	TITLE
NAME	TITLE
NAME	TITLE

EXHIBIT: A-1

Created on 8/21/2012



**Economic Development Agency**  
Community Development and Housing

## **CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

<b>PRIME CONTRACTOR</b>	
<b>PROJECT NAME:</b>	<b>PROJECT CODE:</b>
<b>PROJECT ADDRESS:</b>	
<b>INSTRUCTIONS</b>	
<p>This certification is required pursuant to <u>Executive Order 11246 (30 F.R. 12319-25)</u>. The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed Subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the <b>Equal Opportunity Clause</b>; and, if so, whether it has filed all compliance reports due under applicable instructions.</p> <p>Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven (7) calendar days after bid opening. No contract shall be awarded unless such report is submitted.</p>	
<b>BIDDER'S CERTIFICATION</b>	
<b>BIDDER'S NAME:</b>	
<b>ADDRESS:</b>	
<p><b>1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.</b></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No (IF YES, identify the most recent contract.) _____</p> <p>(IF NO, contractor may be required to submit an EEO-1 survey or other reports to the Equal Employment Opportunity Commission, EEOC at 800-669-4000 or online at <a href="http://www.eeoc.gov/eeo1survey/index.html">http://www.eeoc.gov/eeo1survey/index.html</a>.</p>	
<p><b>2. Compliance reports were filed in connection with such contract or subcontractor with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission.</b></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> None Required</p>	
<p><b>3. Has Bidder ever been or is bidder being considered for sanction due to violation of <u>EXECUTIVE ORDER 11246</u>, as amended. <a href="http://www.dol.gov/compliance/laws/comp-eeo.htm">http://www.dol.gov/compliance/laws/comp-eeo.htm</a></b></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p><b>Certification:</b> The information above is true and complete to the best of my knowledge and belief.</p>	
<b>PRIME CONTRACTOR (Print Name)</b>	<b>TITLE</b>
<b>CONTRACTOR SIGNATURE</b>	<b>DATE</b>

**EXHIBIT: B**

Created on 8/24/2012





Economic Development Agency  
Community Development and Housing

## CERTIFICATION BY PROPOSED SUBCONTRACTOR REGARDING EQUAL EMPLOYMENT OPPORTUNITY

SUBCONTRACTOR	
PROJECT NAME:	PROJECT CODE:
PROJECT ADDRESS:	
<b>INSTRUCTIONS</b> <p>This certification is required pursuant to <u>Executive Order 11246 (30 F.R. 12319-25)</u>. The implementing rules and regulations provide that any bidder or prospective Contractor, or any of their proposed Subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the <b>Equal Opportunity Clause</b>; and, if so, whether it has filed all compliance reports due under applicable instructions.</p> <p>Where the certification indicates that the Subcontractor has not filed a compliance report due under applicable instructions, such Subcontractor shall be required to submit a compliance report before the Prime Contractor approves the subcontract or permits work to begin under the subcontract. No contract shall be awarded unless such report is submitted.</p>	
<b>SUBCONTRACTOR'S CERTIFICATION</b>	
SUBCONTRACTOR'S NAME:	
ADDRESS:	
<p>1. Subcontractor has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No (IF YES, identify the most recent contract.) _____</p> <p>(IF NO, contractor may be required to submit an EEO-1 survey or other reports to the Equal Employment Opportunity Commission, EEOC at 800-669-4000 or online at <a href="http://www.eeoc.gov/eo1survey/index.html">http://www.eeoc.gov/eo1survey/index.html</a>.</p> <p>2. Compliance reports were filed in connection with such contract or subcontractor with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> None Required</p> <p>3. Subcontractor has ever been or is being considered for sanction due to violation of <u>EXECUTIVE ORDER 11246</u>, as amended. <a href="http://www.dol.gov/compliance/laws/comp-eeo.htm">http://www.dol.gov/compliance/laws/comp-eeo.htm</a></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<b>Certification:</b> The information above is true and complete to the best of my knowledge and belief.	
SUBCONTRACTOR (Print Name)	TITLE
SUBCONTRACTOR SIGNATURE	DATE

EXHIBIT: C

Created on 8/24/2012





**Economic Development Agency**  
Community Development and Housing

**AFFIRMATIVE ACTION COMPLIANCE FORM  
FOR CONSTRUCTION CONTRACTS OVER \$10,000**

PRIME CONTRACTOR		SUBCONTRACTOR	
PROJECT NAME:		PROJECT CODE:	
COMPANY – CONTRACTOR NAME:			
<p>Please check the box that applies to your company to affirm an understanding and implementation of <b>AFFIRMATIVE ACTION COMPLIANCE</b> requirements and that you have read and completed the requirements for the project as noted below:</p>			
<p>I / We have reviewed and understand the <b>“CONSTRUCTION CONTRACT LABOR COMPLIANCE PROVISIONS (ATTACHMENT D)”</b> of the bid package and/or <b>“LABOR COMPLIANCE CONTRACT ADDENDUM”</b>.</p> <p><b>** MANDATORY REQUIREMENT **</b></p>			
<p><input type="checkbox"/> I / We <b>DO</b> currently maintain an effective Affirmative Action Program. The Affirmative Action Program complies with the <b>Standard Federal Equal Employment Opportunity Construction Contract Provisions Executive Order 11246, pursuant to 41 CFR 60-4.3 (a)</b> and will furnish a copy upon request.</p>			
<p><input type="checkbox"/> I / We <b>DO NOT</b> currently maintain an Affirmative Action Program. I / We agree to the <b>Equal Opportunity Clause for Federally-Assisted Construction Contracts (Executive Order 11246)</b>, as amended, and Title VII of the Civil Rights Act of 1964, and is applicable pursuant to 41 CFR 60-1.4) of <b>“CONSTRUCTION CONTRACT LABOR COMPLIANCE PROVISIONS (ATTACHMENT D)”</b> of the bid package and/or <b>“LABOR COMPLIANCE CONTRACT ADDENDUM”</b>.</p> <p>Personnel affirmative action in recruitment, hiring and promotion is required by Contractors and Subcontractors who have entered into a federally-assisted construction contract that exceeds \$10,000 or \$10,000 in the aggregate over a 12-month period. Contractors or Subcontractor who enter into a “Construction Contract” in excess of \$10,000 must take 16 specific affirmative action steps to ensure equal employment opportunity. These steps are included in <b>41 CFR 60-4.3 (a) (7)</b> and are also included under “Standard Federal Equal Employment Opportunity Construction Contract Specifications” of <b>“CONSTRUCTION CONTRACT LABOR COMPLIANCE PROVISIONS (ATTACHMENT D)”</b> of the bid package and/or <b>“LABOR COMPLIANCE CONTRACT ADDENDUM”</b>.</p>			
<p><b>I certify the information above is true and complete to the best of my knowledge and belief.</b></p>			
_____ CONTRACTOR (Print Name)		_____ TITLE	
_____ CONTRACTOR SIGNATURE		_____ DATE	

**EXHIBIT: D**

Created on 3/12/2014



**Economic Development Agency**  
Community Development and Housing

**CERTIFICATE OF UNDERSTANDING  
AND AUTHORIZATION FORM**

PRIME CONTRACTOR		SUBCONTRACTOR	
<b>** Complete If Owner/Officer Is <u>NOT</u> Signing <i>Statement of Compliance</i> **</b>			
PROJECT NAME:		PROJECT CODE:	
COMPANY – CONTRACTOR NAME:			
<p>The undersigned certifies that the company <u>principal(s)</u>, and the <u>authorized payroll officer</u> have read the most current <b><u>“DAVIS-BACON LABOR STANDARDS”</u></b> (A Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects) and understand the labor standards clauses pertaining to this project including the pre-construction conference discussions and all related documents required for this project by the implementing agency in the pre-construction checklist package.</p>			
<p>THE FOLLOWING PERSON(S) IS DESIGNATED AS THE PAYROLL OFFICER FOR THE UNDERSIGNED COMPANY – CONTRACTOR AND IS AUTHORIZED TO SIGN THE STATEMENT OF COMPLIANCE WHICH WILL ACCOMPANY EACH WEEKLY CERTIFIED PAYROLL REPORT FOR THIS PROJECT.</p>			
_____ PAYROLL AGENT (PRINT NAME)		_____ PAYROLL AGENT (SIGNATURE)	
_____ OWNER/OFFICER (PRINT NAME)		_____ OWNER/OFFICER (SIGNATURE)	
_____ TITLE (PARTNER/CORPORATE OFFICER OR OWNER)		_____ DATE	
<p>*** A PAYROLL OFFICER MAY SELF-CERTIFY AUTHORIZATION TO SIGN PAYROLL REPORTS ONLY IF A SOLE-PROPRIETOR. ALL OTHERS MUST HAVE AUTHORIZATION FROM A SECOND CORPORATE OFFICER / PARTNER OR OWNER. ***</p>			

**EXHIBIT: E**





**Economic Development Agency**  
Community Development and Housing

## FRINGE BENEFIT STATEMENT FORM

PRIME CONTRACTOR		SUBCONTRACTOR	
PROJECT NAME:		PROJECT CODE:	
COMPANY – CONTRACTOR NAME:			
<p>Use this form to identify those bona fide Fringe Benefit Plan(s) in which your employees are participating. List all third party plans, funds or trustees to which your firm makes fringe benefit payments in the interest of your employees. Provide an hourly equivalent of each fringe type (in dollars) below. Payrolls will be monitored to ensure the proper Fringe Benefit rates are being paid. Additional documentation may be required.</p>			
CLASSIFICATION:		EFFECTIVE DATE:	SUBSISTENCE OR TRAVEL PAY \$:
FRINGE BENEFIT HOURLY AMOUNT:	NAME, ADDRESS AND CONTACT INFORMATION OF PLAN, FUND OR PROGRAM		
VACATION/HOLIDAY \$:	NAME: ADDRESS: CONTACT INFORMATION:		
HEALTH & WELFARE \$:	NAME: ADDRESS: CONTACT INFORMATION:		
PENSION \$:	NAME: ADDRESS: CONTACT INFORMATION:		
APPRENTICE/TRAINING \$:	NAME: ADDRESS: CONTACT INFORMATION:		
OTHER \$:	NAME: ADDRESS: CONTACT INFORMATION:		
CLASSIFICATION:		EFFECTIVE DATE:	SUBSISTENCE OR TRAVEL PAY \$:
FRINGE BENEFIT HOURLY AMOUNT:	NAME, ADDRESS AND CONTACT INFORMATION OF PLAN, FUND OR PROGRAM		
VACATION/HOLIDAY \$:	NAME: ADDRESS: CONTACT INFORMATION:		
HEALTH & WELFARE \$:	NAME: ADDRESS: CONTACT INFORMATION:		
PENSION \$:	NAME: ADDRESS: CONTACT INFORMATION:		
APPRENTICE/TRAINING \$:	NAME: ADDRESS: CONTACT INFORMATION:		
OTHER \$:	NAME: ADDRESS: CONTACT INFORMATION:		
<p>I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds or programs as listed above:</p>			
CONTRACTOR (PRINT NAME)		TITLE	
CONTRACTOR SIGNATURE		DATE	

EXHIBIT: F



## FRINGE BENEFIT FORM INSTRUCTIONS

**Supplemental statements MUST be submitted during the progress of work should a change in rate of any of the classifications be made.**

**NOTE:** To receive credit for employer paid benefit contributions, plans must be bona fide and contributions must be documented. On the Fringe Benefit Statement, indicate the name, address and phone number of the administrator of the Plan, Fund or Program.

**VACATION PLAN/PAID HOLIDAY DOCUMENTATION:** Please submit copies of your company's policy for employer paid vacation and holidays. For vacation, please explain how you track the vacation hours for each employee. Additionally, please submit copies of monthly reports or statements from the bank/fund depository showing that the plan and vacation amounts are available for the workers.

**HEALTH AND WELFARE DOCUMENTATION:** For your Health & Welfare Plan, please submit copies of the plan documentation indicating monthly or quarterly billings for the covered benefits (and delineating all benefits per worker), as well as statements and copies of checks transmitted by your company to the trust fund or plan for these benefits.

**PENSION PLAN DOCUMENTATION:** Please submit copies of the plan documentation from the Plan Administrator including the plan summary, account balances, monthly or quarterly transmittals into the account and copies of checks transmitted by your company as payments into the accounts.

**APPRENTICE/TRAINING DOCUMENTATION:** Please submit copies of the Apprentice/Training Certification Letter from your Federally Registered Program Sponsors. The apprenticeship program must be registered with the Department of Labor (DOL), Office of Apprenticeship. Include level, step or period of the apprentice; apprentice's wage scale and ratio information. A training or apprentice wage can be paid only if the trainee is registered in a DOL approved apprenticeship or training program or with a State Apprenticeship Agency recognized by DOL. Otherwise, the individual is to be paid the Davis-Bacon and Related Acts (DBRA) prevailing wage rate for the classification of work that they are performing regardless of their skill level. (Federal regulations DO NOT REQUIRE the employment of apprentices on federally funded projects)

**OTHER DOCUMENTATION:** Please submit copies of explanation, monthly reports or statements and plan documentation from the Plan Administrator for all "OTHER" company paid plan(s). The implementing agency will verify plan(s) for employer to receive credit.

**FRINGES PAID IN CASH:** Indicate if some or all fringes will be added to the employee's basic hourly rate.

If your company does not operate under a collective bargaining agreement or contribute based on an hourly amount; you may use the following formulas to compute hourly benefits. Please be advised that examples are provided only to demonstrate how the formulas are used.

**Annual Calculation:** The annual calculation is based on 2080 hours per year (40hrs x 52 weeks per year)

Formula: Employee's Basic Hourly Rate x Number of Benefit Hours (8 Hrs a Day x Number of Days) divided by 2080 Annual Hours.

Example: At \$20/Hr, with 80 vacation hours a year, the hourly rate would calculate as follows:

$\$20 \times 80 \text{ Hrs} = \$1,600$  divided by 2,080 hours per year = \$.77

Fringe Benefit Hourly Amount: \$.77

**Monthly Calculation:** The monthly calculation factor 173.33 is based on 2080 hours per year divided by 12 months.

Formula: Monthly Benefit Plan Contribution divided by 173.33

Example: If employer pays \$200/month for a medical benefit, the monthly hourly rate calculates as follows:

A monthly plan contribution of \$200 divided by 173.33 = \$1.15

Fringe Benefit hourly amount: \$1.15



**Economic Development Agency**  
Community Development and Housing

## AUTHORIZATION FOR PAYROLL DEDUCTION(S)

PRIME CONTRACTOR		SUBCONTRACTOR
PROJECT NAME:		PROJECT CODE:
COMPANY – CONTRACTOR NAME:		
EMPLOYEE NAME:		EMPLOYEE #:
<p><b><u>MUST</u></b> be completed and signed by the employee who has "OTHER/GARNISH" deduction(s) subtracted from his/her payroll. Deduction types include: <u>Alimony</u>, <u>Child Support</u>, other <u>Court-Ordered Deductions</u> or <u>Garnishments</u>, <u>Uniforms</u>, <u>401K</u>, <u>Loans</u>, <u>Advance Paybacks</u>, or <u>Insurance</u>, etc. This form is to be submitted before the first Certified Payroll reflecting the deduction(s). <b><u>ALL</u></b> "Other/Garnish" deductions must be accompanied by <b><u>supporting documentation</u></b>.</p>		
DEDUCTION TYPE:	EXPLANATION FOR DEDUCTION(S):	WEEKLY AMOUNT:
<p>I, _____, HEREBY AUTHORIZE _____  <small>(PRINT EMPLOYEE NAME)</small> <span style="margin-left: 100px;"><small>(COMPANY - CONTRACTOR NAME)</small></span>            TO MAKE THE ABOVE LISTED DEDUCTION(S) FROM MY PAYROLL CHECK. IT IS UNDERSTOOD THAT THESE DEDUCTIONS ARE IN THE INTEREST OF THE EMPLOYEE AND NOT A CONDITION OF EMPLOYMENT, OR A DIRECT OR INDIRECT FINANCIAL BENEFIT ACCRUING TO THE EMPLOYER, AND NOT OTHERWISE FORBIDDEN BY LAW.</p>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>_____ EMPLOYEE SIGNATURE</p> <p>_____ CONTRACTOR SIGNATURE</p> </div> <div style="width: 45%;"> <p>_____ DATE</p> <p>_____ DATE</p> </div> </div>		

EXHIBIT: G

EXHIBIT I

STATEMENT OF RESIDUAL RECEIPTS



**EXHIBIT I**

**FORM OF RESIDUAL RECEIPTS REPORT**

**County of San Bernardino  
Department of Community Development and Housing**

**Residual Receipts Report for the Year Ending \_\_\_\_\_**

**Date Prepared \_\_\_\_\_**

Please complete the following information and execute the certification at the bottom of this form.

**Annual Project Revenue**

Please report Annual Project Revenue for the year ending \_\_\_\_\_ on the following lines:

Rent Payments received (including Section 8 tenant assistance Payments, if any) (1) \$ \_\_\_\_\_

Interest Income (do **not** include interest income from replacement and operating reserves nor interest income on tenant security deposits) (2) \$ \_\_\_\_\_

Additional Income Related to the Project Operations (for example, vending machine income, tenant forfeited deposits, laundry income not paid to the resident's association) (3) \$ \_\_\_\_\_

**Total Annual Project Revenue (Add lines 1, 2, and 3)** (4) \$ \_\_\_\_\_

**Operating Expenses**

Please report Operating Expenses incurred in relation to the operations of the Project for the year ending \_\_\_\_\_, on the following lines:

Operating and Maintenance Expenses (5) \$ \_\_\_\_\_

Utilities (6) \$ \_\_\_\_\_

Property Management Expenses and on-site Staff Payroll (7) \$ \_\_\_\_\_

Administrative Expenses incurred by project (8) \$ \_\_\_\_\_

Property/Possessory Interest Taxes (9) \$ \_\_\_\_\_

Insurance (10) \$ \_\_\_\_\_

Other expenses related to operations of the project (11) \$ \_\_\_\_\_

Please list these expenses: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Total Annual Operating Expenses** (12) \$ \_\_\_\_\_  
(Add lines 5, 6, 7, 8, 9, 10, 11)

**Net Operating Income (Subtract Line 12 from Line 4)** (13) \$ \_\_\_\_\_

Do not include expense unrelated to the Project's operations, such as depreciation, amortization, accrued principal and interest expense on deferred payment debt, or capital expenditures paid from withdrawals from the Capital Replacement Reserve.

**Additional Cash Flow Payments**

Obligated Debt Service Payments (as approved by Authority and Other parties that may have such approval rights) (14) \$ \_\_\_\_\_

Scheduled Deposits to Capital and Operating Reserves (as approved by Authority) (15) \$ \_\_\_\_\_

Additional Payment Obligations (such as Partnership Related Fees, Deferred Developer Fee, repayments on loans by partners, or unpaid Tax Credit amounts, as approved by Authority to have priority over Residual Receipt Payment to Authority) (16) \$ \_\_\_\_\_

**Total Additional Cash Flow Payments (add lines 14, 15, and 16)** (17) \$ \_\_\_\_\_

**Residual Receipts for Year Ending** \_\_\_\_\_ (18) \$ \_\_\_\_\_  
**Subtract Line 17 from Line 13**

**Percentage of Residual Receipts to be** (19) \_\_\_\_\_ %  
**Paid to Authority (as rent pursuant to that certain ground Lease by and between Authority and Borrower dated**

\_\_\_\_\_

**Amount payable to Authority (Multiply Line 18 by Line 19)** (20) \$ \_\_\_\_\_

**The amount payable to the Authority listed on Line 20 is subject to payment according to the terms of the Ground Lease by and between Authority and Borrower dated \_\_\_\_\_.**  
**If line 20 is \$0.00 or negative, you owe nothing to Authority this year. If line 20 is a positive number, remit check payable to \_\_\_\_\_ and attach to this report.**



**Computation of Residual Receipts**  
**For the Year Ending \_\_\_\_\_**

The following certification should be executed by the Executive Director or Chief Financial Officer of the Borrower, or the Managing General Partner of the Borrower.

I certify that the information provided in this form is true, accurate, and correct in all respects.

\_\_\_\_\_

\_\_\_\_\_

Date

By: \_\_\_\_\_

(Print Name)

Its: \_\_\_\_\_

(Title)