

**Contract Number**20-04-A1**SAP Number**  

## Community Development and Housing

**Department Contract Representative**Gary Hallen**Telephone Number**909-387-4411**Contractor**AMCAL Las Terrazas Fund L.P.**Contractor Representative**Alex Pratt, Vice President of  
Development**Telephone Number**(818) 760-0694 x117**Contract Term**11/17/2020 – 11/17/2105**Original Contract Amount**\$3,042,000**Amendment Amount**\$1,953,289**Total Contract Amount**\$4,995,289**Cost Center**6210002492 – 6210002494 –  
6210002498

This contract is a First Amendment to the Amended and Restated Land Disposition, Development and Loan Agreement No. 20-04 not to exceed \$1,953,289, for a combined total of \$4,995,289, to finance, in part, the Las Terrazas apartment community which will consist of 112 affordable units located at 1176 W. Valley Boulevard, in the unincorporated area near the City of Colton (Project). The Las Terrazas apartment community furthers the Board of Supervisor's (Board) objective of investing and revitalizing the County of San Bernardino (County) unincorporated communities and advances the in the goal of ending homelessness and providing housing for low-income households. The Project will include 12 permanent supportive housing (PSH) units for homeless, special needs clients with mental health conditions for whom the Department of Behavioral Health (DBH) will provide the supportive services.

**FOR COUNTY USE ONLY**

Approved as to Legal Form

  
Robert Messinger, Principal Assistant County Counsel

Reviewed for Contract Compliance



Reviewed/Approved by Department

  
Gary Hallen, DirectorDate 11/10/20

Date \_\_\_\_\_

Date 11/10/2020

FIRST AMENDMENT TO AMENDED AND RESTATED LAND DISPOSITION,  
DEVELOPMENT AND LOAN AGREEMENT  
(Las Terrazas)

This First Amendment to Amended and Restated Land Disposition, Development and Loan Agreement (the "First Amendment") is entered into as of November 17, 2020, by and among 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 (the "Developer"), with reference to the following facts:

RECITALS

A. The County and the Developer entered into that certain Amended and Restated Land Disposition, Development and Loan Agreement dated as of January 07, 2020 (the "Original Agreement"). These recitals refer to and utilize certain capitalized terms which are defined in Article 1 of the Original Agreement. Capitalized terms used in this First Amendment, but not defined, shall have the meaning set forth in the Original Agreement. In the event of any conflicts between the Recitals herein and the Recitals of the Original Agreement, the Recitals herein shall govern.

B. The County and the Developer entered into that certain Loan Agreement dated as of February 12, 2013 (the "Original NSP Loan Agreement"), Agreement No. 13-117, as amended by that certain First Amendment to Neighborhood Stabilization Program Loan Agreement and First Amendment to Predevelopment Loan Agreement dated as of July 28, 2015, recorded in the in the Official Records of the County of San Bernardino (the "Official Records") on September 17, 2015 as Instrument No. 2015-0406653 (the "First Amendment"), as further revised under that certain Second Amendment to Neighborhood Stabilization Program Loan Agreement for Multi-Family Housing and Second Amendment to Predevelopment Loan Agreement, recorded in the Official Records as Instrument No. 2017-0006364 (the "Second Amendment") on January 05, 2018, and as further revised under that certain unrecorded Third Amendment to Neighborhood Stabilization Program Loan Agreement for Multi-Family Housing and Third Amendment to Predevelopment Agreement dated as of January 7, 2020 (the "Third Amendment" and collectively with the Original NSP Loan Agreement, the First Amendment and the Second Amendment, hereinafter referred to as the "NSP Loan Agreement").

C. Under the NSP Loan Agreement, the County agreed to make a loan of up to Two Million Two Hundred Sixty-Six Thousand Dollars (\$2,266,000) (the "NSP Loan") of NSP Funds that the County received from HUD under the NSP3 Act to fund the acquisition and development of a ninety-nine (99) unit Affordable Housing Project. The NSP Loan was restructured and now the parties desire to have the NSP Loan documented through the Original Agreement, as revised by this First Amendment. Concurrently with the execution of this Agreement the County will execute documents releasing and terminating all previous documents executed by the County and the Developer related to the NSP Loan, including but not limited to the NSP Loan Agreement.

D. Under the Original Agreement, the County anticipated making a loan of approximately Three Million Forty-Two Thousand Dollars (\$3,042,000), consisting of Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000) representing the capitalized rent value of the Property (established by an appraisal) and Five Hundred Ninety-Two Thousand Dollars (\$592,000) of County Housing Monies (and subject to adjustments pursuant to Section 3.5(b) of the Original Agreement)(the "Original County Loan").

E. To further assist the construction of the Development, the County desires to increase the County assistance provided under the Original Agreement. Specifically, the "County Loan" will be increased to an amount not to exceed Four Million Nine Hundred Ninety-Five Thousand Two Hundred Eighty-Nine Dollars (\$4,995,289) consisting of: (1) Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000) representing the capitalized rent value of the Property (established by an appraisal); (2) Eight Hundred Fifty Thousand (\$850,000) in NSP funds that have been previously disbursed to the Developer pursuant to the terms of the NSP Loan Agreement; (3) accrued interest in the amount of Five Hundred Fourteen Thousand Nine Hundred Seventy-One Dollars and Seventy-Eight Cents (\$514,971.78); (4) Five Hundred Ninety-Two Thousand Dollars (\$592,000) of County Housing Monies; and (5) Five Hundred Eighty Eight Thousand Three Hundred Seventeen (\$588,317) of additional County Housing Monies to establish the Capitalized Operating Subsidy Reserve (as such terms are defined below).

F. The purpose of this First Amendment, authorized under Section 12.18 of the Original Agreement is to: (1) revise the amount of the County Loan; (2) terminate and release any encumbrances related to the NSP Loan Agreement, NSP Covenant, NSP Deed of Trust, and NSP Note and allow for the NSP funds to be governed pursuant to the terms of the Original Agreement as modified by this First Amendment; (3) make various amendments to the terms of specified sections of the Original Agreement; (4) update specified exhibits to the Original Agreement, and (5) make necessary conforming amendments.

NOW, THEREFORE, the County and the Developer agree as follows:

## ARTICLE I AMENDMENTS TO ORIGINAL AGREEMENT

**Section 1. Amendment to Section 1.1(e).** Section 1.1(e) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(e) "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 (which is included in the total County monitoring fee of Twenty-Two Thousand Five Hundred Dollars (\$22,500) payable under the HOME Loan Agreement.);

(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;

(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;

(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."

**Section 2. Amendment to Section 1.1(e).** Section 1.1(e) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(e) "Approved Financing" means the loans, grants, and other financing to be secured by the Developer, and approved by the County for the purpose of financing the costs of the Development which shall be consistent with the Approved Financing Plan, including:

(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 Loan");

(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 Nine Million One Hundred Seventy-Nine Thousand Five Hundred Fifty-Two Dollars (\$9,179,552) of HOME Investment Partnerships Act funds ("County HOME Loan")."

**Section 3. Amendment to Section 1.1(t).** Section 1.1(t) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(t) "Construction Component" means that portion of the County Loan, in the approximate amount of Five Hundred Ninety-Two Thousand Dollars (\$592,000) to be disbursed to the Developer, subject to the disbursement conditions set forth in Section 3.6 of this Agreement."

**Section 4. Amendment to Section 1.1(x).** Section 1.1(x) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(x) "County Documents" or "County Loan Documents" shall mean, collectively, the Original Agreement, as amended by that certain First Amendment to Amended and Restated Land Disposition, Development and Loan Agreement dated November 17, 2020, and as such may be further amended in accordance with the terms hereof, the Housing Lease, the Promissory Note, the Leasehold Deed of Trust, the Regulatory Agreement, and all other documents required to be executed by the Developer in connection with the Development."

**Section 5. Amendment to Section 1.1(bb).** Section 1.1(bb) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(bb) "County Loan" means a loan of up to Four Million Nine Hundred Ninety-Five Thousand Two Hundred Eighty-Nine Dollars (\$4,995,289) consisting of: (1) Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000) representing the capitalize rent value of the Property (established by an appraisal); (2) Eight Hundred Fifty Thousand (\$850,000) in NSP funds that have been previously disbursed to the Developer; (3) accrued interest in the amount of Five Hundred Fourteen Thousand Nine Hundred Seventy-One Dollars and Seventy-Eight Cents (\$514,971.78) deemed previously disbursed to Developer; (4) Five Hundred Ninety-Two Thousand Dollars (\$592,000) of County Housing Monies; and (5) Five Hundred Eighty Eight Thousand Three Hundred Seventeen (\$588,317) of other County funds to fund the County Reserve (as defined below)."

**Section 6. Amendment to Section 1.1(cc).** Section 1.1(cc) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(cc) "County's Prorata Share of Lender's Share of Residual Receipts" means, as determined at the Close of Escrow, the percentage resulting from dividing the County Loan funds disbursed to the Developer in accordance with the Agreement by the sum of such County Loan funds, the HOME Loan funds and any additional subordinate

lender loan funds disbursed to the Developer in accordance with the applicable agreements."

**Section 7. Amendment to Section 1.1(ggg).** Section 1.1(ggg) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(cc) "Promissory Note" shall mean the Amended and Restated Promissory Note that will evidence the Developer's obligation to repay the County Loan as set forth in this Agreement."

**Section 8. Amendment to Section 1.1(sss).** Section 1.1(sss) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(cc) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall continue until the eighty-fifth (85<sup>th</sup>) anniversary of the Effective Date; or that date of earlier termination pursuant to the terms of this Agreement."

**Section 9. Amendment to Section 1.1(ooo).** Section 1.1(ooo) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(cc) "Tax Credit Investor" or "Investor" means the entity or entities that, in consideration of an allocation of Tax Credits, acquires a limited partner interest in the Partnership."

**Section 10. Amendment to Section 1.1(ttt).** Section 1.1(ttt) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(ttt) "Title Company" means Commonwealth Land Title Company, located at 888 South Figueroa Street, Suite 2100, Los Angeles, CA 90017, unless modified pursuant to Section 5.2."

**Section 11. Amendment to Section 1.1.** Section 1.1 of the Original Agreement is amended to read as follows:

"(www) "CDBG Program" means the Community Development Block Grant Program.

(xxx) "CDBG Regulations" means Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), as amended (including those at 24 CFR part 570 subparts A, C, D, J, K, and O, as appropriate).

(yyy) "County Reserve" means the Five Hundred Eighty-Eight Thousand Three Hundred Seventeen Dollars (\$588,317) to be deposited in a special reserve account as specified in Section 7.19.

(zzz) "Day Care Improvements" means the portions of the Development exclusively used for a day care or preschool facility serving primarily low income households.

(aaaa) "NSP3 Act" means Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which amends Title III of Division B of the Housing and Economic Recovery Act of 2008.

(bbbb) "NSP3 Funds" means Neighborhood Stabilization Program 3 funds allocated to the County under the NSP3 Act.

(cccc) "NSP3 Regulations" means 75 F.R. 64322 (Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants).

(dddd) "NSP3 Requirements" means collectively the NSP3 Act and the NSP3 Regulations."

**Section 12. Amendment to Section 3.3(a).** Section 3.3(a) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(a) The Developer shall use the County Loan to fund predevelopment expenses, capitalized rent payments, construction and permanent financing of the Development consistent with the Approved Financing Plan."

**Section 13. Amendment to Section 3.5(a).** Section 3.5(a) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(a) Annual Payments. Commencing on the May 1 following the first full year after the issuance of a Certificate of Completion, and on each May 1 of each year thereafter through the fifty-seventh (57th) Term at which point the outstanding principal and interest shall become due and payable, the Developer shall make repayments of the County Loan in the amount of the County's Prorata Share of Lender's Residual Receipts. Payment of the County's Prorata Share of the Lender's Share of Residual Receipts shall be credited first against unpaid accrued interest generated pursuant to Section 3.2(b) above, and then against outstanding principal, and shall be accompanied by the Developer's report of Residual Receipts (including the independent auditor's report regarding the auditor's review of Annual Operating Expenses required by this Section). The Developer shall provide the County in the form attached hereto as Exhibit J, within ninety (90) days following the end of each calendar year, a report showing the actual income and expenditures with respect to the Development for the immediately preceding calendar year, the calculation of Annual Operating Expenses, Gross Revenue, and Residual Receipts and the status of all reserve funds, including without limitation, an annual audited financial statement for the Development prepared by a certified public accountant approved by the County."

**Section 14. Amendment to Section 3.6.** Section 3.6 of the Original Agreement is hereby amended and restated in its entirety as follows:

"Section 3.6      Conditions Precedent to Disbursement of County Loan. The County shall not be obligated to make any disbursements of the County Loan proceeds for costs of the Development unless the following conditions precedent are satisfied prior to each such disbursement of the County Loan:

(a)      Disbursement of Capitalized Rent Component. The maximum amount of funds to be disbursed to the Developer pursuant to this Section as the Capitalized Rent Component shall not exceed Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000), unless otherwise approved by the County Executive Officer. The County shall not be obligated to make any disbursements of any portion of the Capitalized Rent Component unless the following conditions precedent are satisfied by the Developer as of the Close of Escrow:

(i)      There exists no Developer Event of Default nor any act, failure, omission or condition that would constitute a Developer Event of Default under Section 9.3 of this Agreement or any other project financing agreements or contracts;

(ii)      The conditions set forth in Section 5.3 have been and continue to be satisfied;

(iii)      The Developer has closed all construction financing for the Development and has provided evidence reasonably acceptable to the County that the Developer is prepared to commence construction of the Development no later than the date set forth in the Schedule of Performance; and

(iv)      The County has received a written draw request from the Developer, including certification that the condition set forth in Section 3.6(a)(i) continues to be satisfied, and setting forth the proposed uses of funds consistent with the 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.

(b)      Disbursement of Construction Component. The maximum amount of funds to be disbursed to the Developer pursuant to this Section as the Construction Component shall not exceed Five Hundred Thirty-Two Thousand Eight Hundred Dollars (\$532,800), unless otherwise approved by the County Executive Officer. The County shall not be obligated to make any disbursements of any portion of the Construction Component unless the following conditions precedent are satisfied by the Developer:

(i)      All requirements set forth in Section 3.6(a) have been and continue to be satisfied;

- (ii) The County has received a copy of the General Contractor's Construction Contract as required pursuant to Section 6.9 below;
- (iii) The County has received and approved the labor and material (payment) bonds as required pursuant to Section 6.2 below;
- (iv) The Developer's general partners have executed a partnership agreement approved by the County, with the Tax Credit Investor, in which the Tax Credit Investor is obligated to provide Developer the Tax Credit Investor Equity;
- (v) Developer has closed, or is concurrently closing, on the Construction Loan and is eligible to receive the proceeds of all construction loans and has received the amount of Tax Credit Investor Equity stated as the first installment in the partnership agreement;
- (vi) The undisbursed proceeds of the County Loan and the County HOME Loan, together with other funds or firm commitments for funds that the Developer has obtained in connection with the Development, are not less than the amount that the County reasonably determines is necessary to pay for construction of the Development and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement;
- (vii) Developer has obtained all permits and approvals necessary for the construction of the Development, as and when required by Section 4.4, provided however the Developer may satisfy this requirement with regards to the building permit, if the Developer provides the County with a permit ready letter from the City Building Department
- (viii) Developer has submitted a certification from the architect or Certified Access Specialist certifying that the plans and specifications and design documents for the Development ensure that the Units are in compliance with Section 6.20 of this Agreement;
- (ix) Developer has submitted the Vendor Direct Deposit Agreement, in the form attached hereto as Exhibit M, incorporated herein by this reference; and
- (x) The County has received a written draw request from the Developer, including certification that the condition set forth in Section 3.6(a)(i) continues to be satisfied, and setting forth the proposed uses of funds consistent with the 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) Disbursement of Completion Component. The maximum amount of funds to be disbursed to the Developer pursuant to this Section as the Completion Component shall not exceed Fifty-Nine Thousand Two Hundred Dollars (\$59,200), unless otherwise approved by the County Executive Officer. The County shall not be

obligated to make any disbursements of any portion of the Completion Component unless the following conditions precedent are satisfied by the Developer:

- (i) All requirements set forth in Section 3.6(a) and 3.6(b) have been and continue to be satisfied and there exists no Developer Event of Default nor any act, failure, omission or condition that would constitute a Developer Event of Default under this Agreement;
- (ii) The County has received a copy of the Certificate of Completion issued for the Development;
- (iii) The County has received satisfactory evidence that the Units are rented to or available to rent by eligible tenants at the required rents in compliance with the requirements of this Agreement and the Regulatory Agreement;
- (iv) The Developer has satisfied all conditions for the receipt of the installment of the Tax Credit Investor Equity attributable to conversion of the Construction Loan to permanent financing, consistent with Developer's partnership agreement;
- (v) The County has received from Developer current evidence of the insurance coverage meeting the requirements of Section 7.11 below;
- (vi) The County has received and approved a report setting forth: (1) the income, household size, race, and self-reported ethnicity of the tenants of the Units; (2) the unit size, rent amount and utility allowance for all Units; and (3) the number of accessible units in the Development pursuant to Section 6.20;
- (vii) The County has received a draft of the form 8609, final cost certification for the Development from Developer showing all uses and sources;
- (viii) The County has received from Developer and approved a form of tenant lease;
- (ix) The County has received from Developer and approved the Marketing Plan;
- (x) The County has received from Developer and approved a copy of the Services Plan, as described in Section 7.17, for the provision of service to tenants;
- (xi) Developer 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 6.20 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);

(xii) The County has received from Developer 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;

(xiii) If the Developer is required to pay prevailing wages, the Developer has submitted copies of all certified payrolls to the County, and any identified payment issues have been resolved, or Developer is working diligently to resolve any such issues; and

(xiv) The County has received a written draw request from the Developer, including certification that the condition set forth in Section 3.6(a)(i) continues to be satisfied, and setting forth the proposed uses of funds consistent with the 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.

(d) Predevelopment Component and Accrued Interest. A total of One Million Three Hundred Sixty Four Thousand Nine Hundred Seventy-One Dollars and Seventy-Eight Cents (\$1,364,971.78) of the County Loan is deemed disbursed as of the date of this First Amendment, consisting of Eight Hundred Fifty Thousand Dollars (\$850,000) in NSP funds that were previously disbursed pursuant to the terms of the NSP Loan Agreement and accrued interest in the amount of Five Hundred Fourteen Thousand Nine Hundred Seventy-One Dollars and Seventy-Eight Cents (\$514,971.78).

(e) County Reserve. A total of up to Five Hundred Eighty Eight Thousand Three Hundred Seventeen Dollars (\$588,317) of the County Loan shall be disbursed at Completion of Construction and be deposited into a segregated reserve account consistent with Section 7.19 of this Agreement."

"

**Section 15. Amendment to Section 3.8.** Section 3.8 of the Original Agreement is hereby amended and restated in its entirety as follows:

"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 approximately 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 Developer or AMCAL, or any affiliate of the Developer 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, is not to 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."

**Section 16. Amendment to Section 3.10.** The Original Agreement is hereby amended to add a new Section 3.10, to read as follows:

"(a) Subordination. The County shall not subordinate the Regulatory Agreement, without prior approval of the County Board of Supervisors. No encumbrances will be allowed to be recorded against the County's fee interest in the Property, with the sole exception of a lease rider, if required under the TCAC regulations, and any lease rider required by the California Department of Housing and Community Development associated with an approved or permitted Senior Lien.

(b) Subordination of DDLA and Leasehold Deed of Trust. The County agrees to subordinate this Agreement and the Leasehold Deed of Trust to other 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) (in each case, a "Senior Lien"), but only on condition that all of the following conditions are satisfied:

(ii) The proposed lender (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 the Developer, AMCAL or any AMCAL Affiliate, other than as a depositor or a lender.

(iii) The Developer must demonstrate to the County's reasonable satisfaction that subordination of the Leasehold Deed of Trust is necessary to secure adequate construction, rehabilitation and/or permanent financing to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by this Agreement, 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, the Developer must provide to the County, in addition to any other information reasonably required by the County, evidence demonstrating that the proposed amount of the loan or refinanced 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.

(iv) The subordination agreement(s) must be structured to minimize the risk that this Agreement and the Leasehold Deed of Trust would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement must provide the County with adequate rights to cure any defaults by the Developer, including: (1) 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 the Developer; and (2) providing the County with a cure period of at least sixty (60) days to cure any default.

(v) 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.

(vi) No subordination may limit the effect of the Leasehold Deed of Trust before a foreclosure, nor require consent of the holder of the Senior Loan to exercise any remedies by the County under the Loan Documents.

(vii) 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.

(c) 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 17. Amendment to Section 3.13.** The Original Agreement is hereby amended to add a new Section 3.13, to read as follows:

"Section 3.13     NSP and CDBG Requirements.

(a) Developer shall comply with all applicable laws and regulations governing the use of those portions of the County Loan funds as set forth in the NSP Regulations and the CDBG Regulations. In the event of any conflict between this Agreement and applicable laws and regulations governing the use of the County Loan funds, the applicable laws and regulations govern.

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

(i) Environmental and Historic Preservation. 24 C.F.R. Part 58, which prescribes 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.

(ii) 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.

(iii) 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.

(iv) 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 Rehabilitation 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.

(v) Equal Opportunity. The non-discrimination in employment and contracting opportunities laws, regulations and executive orders referenced in 24 C.F.R. 570.607, as revised by Executive Order 13279, and the applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act of 1974. Borrower may not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status, or status with regard to public assistance. Borrower shall take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Borrower shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(vi) Land Covenants. The requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 C.F.R. 570.601. In regard to the sale, lease, or other Transfer of land acquired, cleared or improved with assistance provided under this

Agreement, Borrower shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that County and the United States are beneficiaries of and entitled to enforce such covenants. Borrower, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

(vii) Lead-Based Paint. If applicable, 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.

(viii) 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. 92.353; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq.; and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Sections 6000 et seq.

(ix) 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.

(x) Uniform Administrative Requirements – CDBG and NSP. If applicable, the requirements of applicable sections of 24 C.F.R. Part 85, as amended from time to time, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" and 24 C.F.R. 570.502 regarding cost and auditing requirements.

(xi) 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"), 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 that 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:

(1) The work to be performed under this contract is subject to the requirements of Section 3. 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.

(2) 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.

(3) 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; will 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.

(4) 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.

(5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) 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.

(6) 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.

(7) 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) ("Section 7(b)") 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).

(xii) Labor Standards. The labor requirements set forth in 24 CFR Section 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.

(xiii) 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.

(xiv) 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.

(xv) Flood Disaster Protection. The requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of said 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 said Act. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement is to contain certain provisions. These provisions will apply if such land 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. These provisions obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under -Section 102(s) of the Flood Disaster Protection Act of 1973.

(xvi) Procurement. The requirements of 24 C.F.R. 84.40-48 and the procurement standards set forth in OMB Circular A-110, and the property standards, covering utilization and disposal of property, set forth in OMB Circular A-110.

(xvii) Hatch Act. The requirements of the Hatch Act, 5 U.S.C. 15, which provides that funds provided through this Agreement, and personnel employed using funds provided through this Agreement, may not be used to conduct political activities.

(xviii) Section 2304 Requirements. Section 2304 of the Act, which states that no NSP funds may be distributed to (a) an organization that has been indicted for a violation under federal law relating to an election for federal office or (b) an organization that employs Applicable Individuals. An "Applicable Individual" means an individual who has been indicted for a violation under federal law relating to an election for federal office and is (a) employed by the organization in a permanent or temporary capacity or is contracted or retained by the organization or (b) acting on behalf of, or with the express or apparent authority of the organization.

(xix) Religious Organization. The prohibitions against the use of Loan funds for religious activities, to promote religious interests, or for the benefit of a religious organization federal pursuant to 24 C.F.R 570.200(j).

(xx) HUD Regulations. Any other applicable HUD regulations in their current form or as may be amended, added, or waived in the future that are applicable to Borrower or the Loan."

**Section 18. Amendment to Section 3.14.** The Original Agreement is hereby amended to add a new Section 3.14, to read as follows:

"Section 3.14     Additional County Documents.

(a)         Pre-School Lease. Prior to the second installment of Investor Equity for the construction of the Development, the parties agree and acknowledge that the Developer and the County Preschool Services division shall have entered into a lease for the Day Care Improvements.

(b)         Memorandum of Understanding. The parties agree and acknowledge that through the adoption of Resolution No. 2019-180 the Board of Supervisors of the County agreed to participate as an applicant, as that term is defined in Section 101(c) of the No Place Like Home Program Guidelines, in the No Place Like Home Program ("NPLH"). Under Resolution No. 2019-180, the County committed to making available mental health supportive services to the Development for a period of at least twenty (20) years, consistent with the County's supportive services plan in accordance with Welfare and Institutions Code Section 5849.9(a). Not less than six (6) months prior to the expected date for the issuance of the certificate of occupancy, the County and the Developer shall enter execute a Memorandum of Understanding that will govern the case management and supportive services that the County Department of

Behavioral Health will provide to the residents of the twelve (12) units designated as NPLH units that will be restricted to low-income households experiencing homelessness while living with a mental disability."

**Section 19. Amendment to Section 4.8(b).** Section 4.8 of the Original Agreement is hereby amended and restated in its entirety as follows:

"The Developer has received an allocation of Tax Credits and intends to utilize Tax Credit Funds to partially finance the construction of the Development. On or before the Close of Escrow, the general partners of the Developer shall execute a partnership agreement with the Tax Credit Investor, in which Tax Credit Investor is obligated to provide Developer the Tax Credit Investor Equity."

**Section 20. Amendment to Section 5.4(a).** Section 5.4(a) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(a) Property. Upon the Close of Escrow, the Developer shall have insurable leasehold interest to the Property which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (i) applicable building and zoning laws and regulations;
- (ii) the provisions of the Housing Lease;
- (iii) the provisions of the Regulatory Agreement;
- (iv) the provisions of this Agreement;
- (v) the Leasehold Deed of Trust;
- (vi) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Memorandum of the Housing Lease;
- (vii) the liens of any loan approved by the County in the Financing Plan, in such priority as approved in writing by the County pursuant to Section 3.10 above; and
- (vii) exceptions 1-7, 10-12 as listed in the Preliminary Title Report dated as of July 24, 2020."

**Section 21. Amendment to Section 5.5(e).** Section 5.5(e) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(e) Scope of Release. The release set forth in this Section includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the



provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the County from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

**"A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."**

Developer's Initials: ."

**Section 22. Amendment to Section 6.7(a).** Section 6.7(a) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(a) As set forth in the Schedule of Performance, the Developer shall diligently prosecute to completion the construction of the Development no later than the date twenty-four (24) months after the commencement of construction, but in no event later than November 1, 2022, unless the County and the Developer agree to extend such date as a result of the meet and confer required under Section 4.8(b)."

**Section 23. Amendment to Section 6.9(a).** Section 6.9(a) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(a) No later than the date set forth in the Schedule of Performance, the Developer shall submit to the County for its limited approval the proposed construction contract for the Development. 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 construction contract is with a contractor approved by the County; (iii) the construction contract contains provisions consistent with Sections 6.10 through 6.11 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 Developer may release retention for the following trades prior to completion of the

Development: demolition, grading, foundations, site work, framing, underground utilities and joint trench.  
"

**Section 24. Amendment to Section 7.2).** Section 7.2 of the Original Agreement is hereby amended and restated in its entirety as follows:

"The Developer hereby agrees that, for the entire Term, the Development will be used and continuously operated and maintained as multi-family affordable rental housing to be made available to and occupied by extremely-low, very-low, and low- income households at affordable housing cost (and other related uses) in conformity with this Agreement and the Regulatory Agreement. In the event of a foreclosure of a Senior Lien (or deed in lieu of foreclosure), then the County and the entity acquiring the Development at foreclosure (or through a deed in lieu of foreclosure) shall apportion the affordability targeting in a manner to maximize the number of low- income households that may be assisted as prescribed in the Regulatory agreement, which as of the date of this Agreement have been approved by the Tax Credit Investor Limited Partner and Senior Lender. Notwithstanding anything to the contrary, nothing in this Section shall prohibit the use of the Day Care Improvements for day care or preschool related purposes."

**Section 25. Amendment to Section 7.17.** Section 7.17 of the Original Agreement is hereby amended and restated in its entirety as follows:

"(a) For the entire Term of this Agreement, the Developer shall contract with a service provider reasonably acceptable to provide social services to the children residing in the Development. To satisfy the requirements of this Section, the designated service provider shall be required to provide social services programs (the "Services Plan") that meet the rules and regulations imposed by TCAC and on the low income housing tax credit program.

(b) Annual Operating Expenses, as defined in Section 1.1 above, shall include a sum of One Thousand Five Hundred Fifty Dollars (\$1,550) per month (subject to an annual increase that is equal to three percent (3%), or such other sum equal to the cost of all social services to be provided and included in the approved Financing Plan."

**Section 26. Amendment to Section 7.19.** Section 7.19 is hereby added to the Original Agreement to read as follows:

"7.19 County Capitalized Reserve.

(a) A special "Capitalized Operating Subsidy Reserve" shall be created and maintained as a segregated interest-bearing account held by the Developer for the Term of this Agreement, subject to subsections (c) and (d) below. The Capitalized Operating Subsidy Reserve shall be capitalized in the amount of Five Hundred Eighty Eight Thousand Three Hundred Seventeen Dollars (\$588,317) at the conversion to permanent financing. Any interest earned on funds in the Capitalized Operating

Subsidy Reserve shall be added to and become part of the Capitalized Operating Subsidy Reserve.

(b) The Capitalized Operating Subsidy Reserve shall be used to pay monthly operating costs for up to three No Place Like Home funded units for the first twenty (20) years of the Term. The Developer shall be allowed to make monthly withdrawals in an amount not to exceed Two Thousand Four Hundred Fifty Two Dollars (\$2,452) or such other amount that may be approved by the County in writing.

(d) In no event shall any of the Capitalized Operating Subsidy Reserve funds be used to pay for any partnership fees or asset management fees of the Partnership.

(e) The Capitalized Operating Subsidy Reserve is intended to assure the long-term affordability of the Affordable Development and shall not be transferable and must remain with the Affordable Development for the Term of this Agreement. If the Partnership re-syndicates the tax credit financing any time during the Term of this Agreement, the Developer shall be required to either: (1) allow the Capitalized Operating Subsidy Reserve to remain with the Affordable Development; or (2) repay any amounts remaining in the Capitalized Operating Subsidy Reserve as of the date of the re-syndication to the County."

**Section 27. Amendment to Section 8.4.** Section 8.4 of the Original Agreement is hereby amended and restated in its entirety as follows:

"(a) Transfers of Property. Notwithstanding the provisions of Section 8.3, the following Transfers related to the Property shall be permitted and are hereby approved by the County, subject to the requirements of Section 8.5.

(i) Any Transfer creating a Security Financing Interest either: (A) permitted pursuant to the Approved Financing Plan; or (B) following 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);

(ii) 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 Article 11 for the Property;

(iii) The leasing of residential units within the Development in accordance with the Regulatory Agreement; and

(iv) The granting of easements or permits to facilitate the development of the Development.

(b) The Developer 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 Developer, provided that: (i) all documents associated with the admission of an Investor Limited Partner and Special Limited Partner to the Developer, 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.

(c) In the event the Developer 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 Developer as well as the taking of such interests by such financial institution and their admission as a partner in the Developer) 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 Developer may be transferred with prior written notice to the County.

(d) The removal, or withdrawal in lieu of removal, of Developer'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 Developer is removed by the limited partner of Developer, or withdraws in lieu of being removed, for cause following default under the Developer's Partnership Agreement, the County hereby approves the transfer of the general partner interest to an affiliate of the Investor Limited Partner of Developer (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.

(e) During the term of the Loan, except as set forth in clause (a)(i) above, Developer 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, Developer will make best efforts to provide written notification to the County at least one hundred twenty (120) days **prior to submittal** of applications, and in no event will provide written notification to the County no later than ninety (90) days **prior to the closing**, for refinancing, tax credits, lines of credit and any other application in which the property may be used as security."

**Section 28. Amendment to Section 9.3(n).** Section 8.4 of the Original Agreement is hereby amended and restated in its entirety as follows:

"(n) There shall be filed any claim of lien (other than liens approved in writing by the County or expressly permitted herein) against the Developer's leasehold interest in the Property or any part thereof, or any interest or right made appurtenant thereto, 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 therefore (including, without limitation, the posting of bonds) satisfactory to the County."

**Section 29. Amendment to Section 9.4(b) and (c).** Section 9.4(b) and (c) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(1) Developer Event of Default Prior to the Close of Escrow:

(i) Termination of this Agreement; provided, however, that the County's remedies pursuant to this Agreement, the indemnification provisions in this Agreement shall survive such termination.

(ii) Any of the remedies specified in Section 9.6

(2) After the Close of Escrow:

(i) Termination of this Agreement, by written notice to the applicable Developer; provided, however, that the County's remedies pursuant to this Article 9

or any other County Document and the indemnification provisions of in this Agreement shall survive such termination;

- (ii) Prosecuting an action for damages or specific performance;
- (iii) Any of the remedies specified in Sections 9.5 and 9.6; and
- (iv) Acceleration of the County Loan."

**Section 30. Amendment to Section 10.1.** Section 10.1 of the Original Agreement is hereby amended and restated in its entirety as follows:

"Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Developer's leasehold interest in the Property but only for the purpose of securing loans approved by the County pursuant to the approved Financing Plan for the Property, otherwise expressly permitted herein (including as set forth in Section 8.4(a) above) or otherwise approved in writing by the County for the Property. Mortgages, deeds of trust, or other reasonable security instruments securing loans approved by the County pursuant to the approved Financing Plan are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate construction, land development and ownership and operation. In no event shall a Security Financing Interest encumber the County's fee interest in the Property, unless approved by the County Board of Supervisors; with the exception of that certain Lease Rider Agreement required by TCAC to be recorded against the County's fee interest in the Property."

**Section 31. Amendment to Section 12.1.** Section 12.1 of the Original Agreement is amended to require the parties listed herein receive notice in the manner prescribed in Section 12.1 of the Original Agreement:

" 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"

**Section 32. Amendment to Section 12.3.** Section 12.3 of the Original Agreement is hereby amended and restated in its entirety as follows:

"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 Developer' 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 Developer'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 Developer. 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 12.15 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 33. Amendment to Exhibit B.** The Schedule of Performance attached as Exhibit B to the Original Agreement is hereby replaced by Exhibit B (Updated Schedule of Performance), as shown in Attachment B of this First Amendment.

**Section 34. Amendment to Exhibit C.** The Approved Financing Plan attached as Exhibit C to the Original Agreement is hereby replaced by Exhibit C (Updated Approved Financing Plan), as shown in Attachment C of this First Amendment.

**Section 35. Amendment to Exhibit D.** The form of Housing Lease attached as Exhibit D to the Original Agreement is hereby replaced by Exhibit D (Updated Form of Housing Lease), as shown in Attachment D of this First Amendment.

**Section 36. Amendment to Exhibit E.** The form of Regulatory Agreement attached as Exhibit E to the Original Agreement is hereby replaced by Exhibit E (Updated Form of Regulatory Agreement), as shown in Attachment E of this First Amendment.

**Section 37. Amendment to Exhibit F.** The form of Promissory Note attached as Exhibit F to the Original Agreement is hereby replaced by Exhibit F (Amended and Restated Promissory Note), as shown in Attachment F of this First Amendment.

**Section 38. Amendment to Exhibit G.** The Form of Leasehold Deed of Trust attached as Exhibit G to the Original Agreement is hereby replaced by Exhibit G (Updated Form of Leasehold Deed of Trust), as shown in Attachment G of this First Amendment.

**ARTICLE II**  
**MISCELLANEOUS**

**Section 39. No Other Changes to the Agreement.** Except as expressly modified by this First Amendment, all other provisions of the Original Agreement remain unmodified and continue in full force and effect.

**Section 40. Conflicts with the Agreement.** In the event of any conflict between this First Amendment and the Original Agreement, the provisions of this First Amendment shall prevail.

**Section 41. Effective Date.** This First Amendment shall be effective on the date first set forth above.

**Section 42. Successors and Assigns.** This First Amendment shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.

**Section 43. California Law.** This First Amendment shall be governed by and construed in accordance with the laws of the State of California.

**Section 44. Counterparts; Multiple Originals.** This First Amendment may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

**Section 45. Recordation.** This First Amendment shall be recorded against the Property, described in the attached Attachment A, at the Close of Escrow.

***[Signature Pages Follow]***




IN WITNESS WHEREOF, the County and the Developer have entered into this First Amendment as of the date first set forth above.

**DEVELOPER:**

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

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.

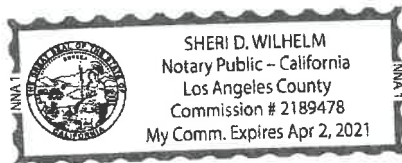
STATE OF CALIFORNIA )

COUNTY OF Los Angeles )

On 10/15/2020, before me, Sheri D. Wilhelm, Notary Public, personally appeared Arjun 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

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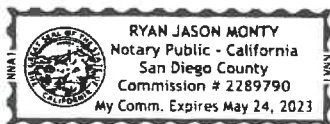
STATE OF CALIFORNIA )

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

**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

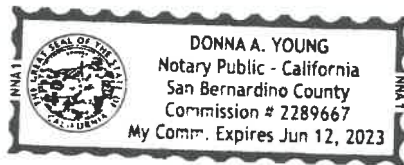
By:   
Robert Messinger  
Principal Assistant County Counsel

STATE OF CALIFORNIA )  
 )  
COUNTY OF San Bernardino )

On November 17, 2020, before me, Donna A. Young, Notary Public, personally appeared Curt Hagman, 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: Donna A. Young  
Name: Notary Public

ATTACHMENT A

LEGAL DESCRIPTION

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

ATTACHMENT B

EXHIBIT B

UPDATED SCHEDULE OF PERFORMANCE



ATTACHMENT C

EXHIBT C

UPDATED APPROVED FINANCING PLAN

# Exhibit C

Las Terrazas Proforma 11-4-20

PROFORMA - LIHTC										Updated:		11/4/2020		By: RK		Notes:	
Project name		Las Terrazas Apartments				Geographic		LIBOR		Cap. Rate		Equity from Fed. Tax Credits		15,165,138			
City / County		Unincorp San Bernardino				Housing Type		Inland Empire		5.0%		Permanent Loan		8,247,617			
Type of Credits		4%				Land Acrage		Family		16 months		DDF + Soft \$		-			
Set Aside		n/a				Project Type		New Constr.		5 months		Annual Fed. Tax Credits		1,703,948			
DDA or QCT		yes										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	1,060	-	0	-	1200	3,600	20%				
570	1bd/1ba	9	0	0	0	1,060	1,060	-	0	-	1200	10,800	20%				
570	1bd/1ba	12	694	706	706	0	0	8,328	12	8,472	1200	14,400	50%				
570	1bd/1ba	15	836	836	848	0	0	12,540	12	12,720	1200	18,000	60%				
570	1bd/1ba	0	0	0		0	0	-	0	-	1200	-					
570	1bd/1ba	0	0	0		0	0	-	0	-	1200	-					
835	2bd/1ba	0	0	0		0	0	-	13	-	1425	-					
835	2bd/1ba	0	0	0		0	0	-	13	-	1425	-					
835	2bd/1ba	11	834	847	847	0	0	9,174	13	9,317	1425	15,675	50%				
835	2bd/1ba	28	1119	1,132	1,132	0	0	31,332	13	31,696	1425	39,900	70%				
835	2bd/1ba	0	0	1,294	1,294	0	0	-	13	-	1425	-	80%				
1100	3bd/2ba	0	0	0		0	0	-	14	-	1675	-					
1100	3bd/2ba	4	965	979	979	0	0	3,860	14	3,916	1675	6,700	50%				
1100	3bd/2ba	29	1293	1,307	1,307	0	0	37,497	14	37,903	1675	48,575	70%				
1100	3bd/2ba	0	0	1,494	1,494	0	0	-	14	-	1675	-	80%				
1100	4bd/2ba	0	0	0		0	0	-	0	-	0	-					
1100	4bd/2ba	0	0	0		0	0	-	0	-	0	-					
1100	4bd/2ba	0	0	0		0	0	-	0	-	0	-					
1100	4bd/2ba	0	0	0		0	0	-	0	-	0	-					
Totals:								\$102,731		\$104,024		\$157,650					
Avg. Income:								58.38%									
Market Rate Units																	
100	1bd/1ba	0						-		-							
100	2bd/1ba	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		91,095		Total Units excluding Mgr :		111		Type		Residential Garage Parking:			
Sqft incl. Mgr. Units		92,195		net sf		91,095		Total Low-Income Units:		111		No. Stalls		Sqft per stall			
Sqft low-income Unit		20,238		18%		112,433		Unit fraction:		100.00%		Floor space fraction:		100.00%			
Efficiency loss		112,433		gross sf		112,433		Applicable Fraction:		100.00%		Garage sqft		0			
Total Bldg Sqft																	

THRESHOLD BASIS CALCULATIONS				
Unit size	Unit Basis Limit	# of units	Total	Unadjusted Threshold Basis Limit
1bd/1ba	\$ 256,658	39	10,009,662	Adjustments to Basis:
2bd/1ba	\$ 309,600	40	12,384,000	Prevailing Wage
3bd/2ba	\$ 396,288	33	13,077,504	New const. parking below
4bd/2ba	\$ 441,490	0	-	Day Care
				Elevator
				Energy Efficiency
				Local Impact Fees
				Opportunity Index
				36% AMI - 50% AMI
				35% AMI & under
Total		112	35,471,166	Adjusted Threshold Basis Limit
				Per unit
				605,821

## INCOME &amp; EXPENSE (AT STABILIZED OCCUPANCY)

	(1st Trust Deed)	(PBV Overhang)
	Annual	Annual
Income from Rents	1,232,772	114,480
Income from PBV Overhang		
Other Income:	13,440	
Capitalized Op Sub Res (COSR)		
Gross Income	1,246,212	114,480
Vacancy @ 5.00%	62,311	5,724
Adjusted Gross Inc.	1,183,901	108,756
Operating Expenses	680,081	
Replacement Reserves	56,000	
Supportive Services Coordinator	18,600	
SB County Compliance Fee	22,500	
Loss to lease (20% AMI units)	-	
Other		
Total Expenses	777,181	
Net Operating Income	406,720	108,756
Debt Service - Perm Loan	317,783	84,974
Debt Service - HCD Loan (must-pay)	10,882	
Total Debt Service	328,665	84,974
Cash Flow	78,055	23,782
Total Cash Flow	101,837	

10 /unit/mo. laundry

5%

5%

[5,700 TCAC Minimum]  
[250 TCAC Minimum]  
[10,000 Annual TCAC Minimum]

6,072 /unit/year

500 /unit/year

168 /unit/year

201 /unit/year

- /unit/year

6,941

1.28 DCR - Perm  
37.37 DCR - Soft Loan  
1.25 DCR - Combined  
0.42%

<b>COST BREAKDOWN</b>									
		111 Affordable Units		1 Mgr. Units		0 Market Rate Units			
		Project Cost	Basis	Non Basis	\$ Per D.U.	% Proj. Cost	\$ per gross sf		
<b>Acquisition</b>		2,450,000		2,450,000	21,875	5.01%	21.79		
Land Cost or Land Value		-		-	-	0.00%	0.00		
Land Lease Rent Prepayment		20,000		20,000	179	0.04%	0.18		
Land Closing Cost		1,399,262		1,399,262	12,493	2.86%	12.45		
Land Carrying Cost		-		-	-	0.00%	0.00		
Demolition & Remediation		-		-	-	0.00%	0.00		
Off Site Development		904,771		904,771	8,078	1.85%	8.05		
<b>New Construction</b>									
<b>Sitework</b>									
Onsites/Common Area		8,656,701		8,656,701	77,292	17.71%	76.99		
Underground Garage		-		-	-	0.00%	0.00		
<b>Structures</b>									
Direct Building Const.		16,660,906		16,660,906	148,758	34.09%	148.19		
GC Contingency		786,671		786,671	7,024	1.61%	7.00		
General Requirements		1,573,343		1,573,343	14,048	3.22%	13.99		
Contractor Overhead		857,472		857,472	7,656	1.75%	7.63		
Contractor Profit		1,429,119		1,429,119	12,760	2.92%	12.71		
Commercial (non-basis)		-		-	-	0.00%	0.00		
<b>Total:</b>		30,868,983							
<b>Architectural Fees</b>									
Design		993,000		993,000	8,866	2.03%	8.83		
Supervision		-		-	-	0.00%	0.00		
Survey & Engineering		872,215		872,215	7,788	1.78%	7.76		
Environmental Consultants		560,000		297,820	5,000	1.15%	4.98		
Misc Consultants		320,866		320,866	2,865	0.66%	2.85		
Soft Goods		-		-	-	0.00%	0.00		
<b>Construction Interest and Fees</b>									
Constr'n Loan Origination Fee		284,065		284,065	2,536	0.58%	2.53		
Constr'n Loan Interest Reserve		1,180,629		1,062,566	10,541	2.42%	10.50		
Payment & Performance Bond		308,691		308,691	2,756	0.63%	2.75		
Improvement Bond Premium		3,563		3,563	32	0.01%	0.03		
Closing Costs		31,000		31,000	277	0.06%	0.28		
Legal - Constr. Lender		70,000		70,000					
Property Taxes		99,065		99,065	885	0.20%	0.88		
Insurance		541,620		541,620	4,836	1.11%	4.82		
Title and Recording		25,000		25,000	223	0.05%	0.22		
<b>Permanent Financing</b>									
Loan Origination Fee		-		-	-	0.00%	0.00		



SOURCES & USES OF FUNDS

SOURCES	CONSTRUCTION PERIOD		Per Project
Tax-Exempt Bond	74% LTV	51% LTC	24,037,673
Taxable Tail - Construction Loan	18% LTV	12% LTC	5,863,869
Deferred Developer Fee			1,814,250
County DDA Loan			4,347,172
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

USES

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

USES

Total Project Costs	48,874,248
---------------------	------------

48,874,248
------------

Gap (deficit) or surplus:

0

TAX CREDIT CALCULATIONS - Federal

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

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: 8,504,241
Blended Tax Credit Price	7,228,605

\$0.85 price  
n/a

PERMANENT LOAN CALCULATIONS

First Trust Deed Loan	
A.	
Amort. (yrs)	35
DCR	1.20
int. rate	3.39%
Loan:	\$ 6,717,801
PMT:	328,051
LTV:	83%
B.	
CAP	5.0%
LTV	80.00%
Loan:	\$ 6,507,521
PMT:	317,783
DCR:	128%
Lesser of A & B:	
	\$ 6,507,521
Additional Loan Amount From Project-Based Voucher Overhang	
A.	
Amort. (yrs)	35
DCR	1.20
int. rate	3.39%
Loan:	\$ 1,855,913
PMT:	90,630
LTV:	85%
B.	
CAP	5.0%
LTV	80.00%
Loan:	\$ 1,740,096
PMT:	84,974
DCR:	128%
Lesser of A & B:	
	\$ 1,740,096
TOTAL LOAN AMOUNT:	
	\$ 8,247,617

EXHIBIT C

PRELIMINARY TITLE REPORT





## EXHIBT "D"

### GROUND LEASE

By and Between

THE COUNTY OF SAN BERNARDINO

and

AMCAL LAS TERRAZAS FUND, L.P.

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## GROUND LEASE

THIS GROUND LEASE (the "Lease") is dated as of November 17, 2020 by and 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 (the "Lessee"), with reference to the following facts, purposes, and understandings.

### RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Lease. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The County owns approximately 5.92 acres of real property on the corner of Valley Boulevard and North Cypress, in unincorporated San Bernardino County, as more particularly described in the attached Exhibit A and incorporated herein (the "Property").

C. The Lessee and the County entered into that certain First Amended and Restated Land Disposition, Development and Loan Agreement dated as of January 7, 2020, as amended by that certain First Amendment to First Amended and Restated Land Disposition, Development and Loan Agreement dated as of November 17, 2020, as such may be further amended from time to time (the "Disposition Agreement"), pursuant to which County agreed to lease the Property to Lessee and the Lessee agreed to develop the Property.

D. In accordance with the Disposition Agreement and this Lease, the Lessee shall develop and operate on the Property a one hundred twelve (112) unit, including one (1) manager's unit, multifamily rental housing development affordable to Extremely Low Income Households, Very Low Income Households and Low Income Households. In addition, the Developer will develop the Day Care Improvements. This Lease shall not govern or affect the leasing of the Day Care Improvements.

E. The County desires to lease the Property to the Lessee, and the Lessee desires to lease the Property from the County, for a term specified in this Lease.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the County and the Lessee (collectively the "Parties") agree as follows:

### ARTICLE 1. DEFINITIONS AND EXHIBITS

#### Section 1.1 Definitions.

The following terms shall have the following meanings in this Lease:

(a) "Additional Rent" means any payments due pursuant to Section 4.5 or Section 5.5.

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

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

(d) "Approved Lenders" means all of the lenders providing the Approved Loans to the Lessee and their designees, nominees, successors and assigns.

(e) "Approved Loan Documents" means all documents executed by the Lessee evidencing or securing the Approved Loans.

(f) "Approved Loans" means the loans contained in the Financing Plan submitted to the County by the Lessee as required by the Disposition Agreement and approved by the County, obtained by the Lessee in connection with and secured by the Development and approved in writing by the County.

(g) "Authorized Officers" means, in the case of the County, its Executive Officer, and in the case of the Lessee, the president of AMCAL, the general partner of the Lessee, or such other individual as may be designated in writing by Lessee with proper authority to bind the Lessee. As of the date of this Lease, the President of AMCAL is Arjun Nagarkatti.

(h) "Close of Escrow" means the date of recording of the Memorandum of DDA, Memorandum of Lease, Leasehold Deed of Trust against the Developer's leasehold interest in the Property.

(i) "Commencement Date" means the date of the Close of Escrow.

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

(k) "County Loan" means the loan in the amount of Four Million Nine Hundred Ninety-Five Thousand Two Hundred Eighty-Nine (\$4,995,289) made from the County to the Lessee pursuant to the Disposition Agreement.

(l) "Day Care Improvement" means the interior portion of the building in the Development designated for use as a day care facility.

(m) "Development" means the Improvements and the Lessee's leasehold interest in the Property.

(n) "Development Documents" means all construction documentation prepared by the Lessee or on the Lessee's behalf and approved by the County pursuant to the Disposition Agreement.

(o) "Disposition Agreement" shall have the meaning given in Recital C.

(p) "Event of Default" shall have the meaning specified in Section 10.1.

(q) "Extremely Low Income Household" means a household with an Adjusted Income that does not exceed the qualifying limits for extremely low income households, adjusted for Actual Household Size, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by HUD.

(r) "Financing Plan" means the Financing Plan approved by the County pursuant to the provisions of the Disposition Agreement.

(s) "Foreclosure Transferee" means a transferee who acquires the Lessee's interest in this Lease and the Development through the exercise of remedies (such as foreclosure or a deed in lieu of foreclosure) pursuant to Approved Loan Documents.

(t) "Hazardous Materials" means any substance, material, or waste which is: (1) defined as a "hazardous waste", "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant" or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) mold; (7) MTBE; or (8) determined by California, federal or local government authority to be capable of posing a risk of injury to health, safety or property. Without limiting the foregoing, Hazardous Materials means and includes any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any Hazardous Materials Laws including any federal, state or local environmental statute, regulation or ordinance presently in effect that may be promulgated in the future, as such as statutes, regulations and ordinances may be amended from time to time.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or typically used in household activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health & Safety Coded Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Improvements, including, but not limited to, alcoholic beverages, aspirin, tobacco products, Nutrasweet and saccharine, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws.

(u) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Development or any portion thereof.

(v) "Improvements" means the one hundred twelve (112) housing units and appurtenant improvements to be constructed on the Property by the Lessee, but excluding the Day Care Improvements.

(w) "Investor" means Hudson Las Terrazas LP and HHTCF XCVIII SLP LLC, or such other Investor as reasonably approved by the County.

(x) "Lease" means this Ground Lease.

(y) "Lease Term" means the term of this Lease, which shall commence on the Commencement Date (expected to be no later than November 30, 2020) and shall terminate eighty-five (85) years after the Commencement Date, but in no event later than November 31, 2105.

(z) "Lease Year" means a period of twelve (12) full calendar months. The first Lease Year shall begin on the Commencement Date. Each succeeding Lease Year shall commence on the anniversary of the Commencement Date.

(aa) "Lessee" means AMCAL Las Terrazas Fund, L.P., a California limited partnership, and its permitted successors and assigns.

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

(cc) "Management Plan" shall have the meaning specified in Section 4.14 of this Lease and Section 7.8 of the Disposition Agreement.

(dd) "Median Income" means the median gross yearly income, adjusted for actual household size as specified herein, in the County of San Bernardino, California as determined by the California Department of Housing and Community Development.

(ee) "Memorandum of Lease" means the memorandum of ground lease substantially in the form attached to the Disposition Agreement as Exhibit I.

(ff) "Official Records" means the Official Records of San Bernardino County, California.

(gg) "Other Households" means a household earning not greater than ninety percent (90%) of Median Income.

(hh) "Parties" means the County and the Lessee.

(ii) "Party" means any one of the County or Lessee.

(jj) "Preliminary Title Report" means that certain title report dated July 24, 2020 issued by Fidelity Title Company a copy of which is attached as Exhibit C.

(kk) "Property" means the property more particularly described in the attached Exhibit A.



(ll) "Regulatory Agreement" means that Regulatory Agreement and Declaration of Restrictive Covenants to be entered into by the County and the Lessee substantially in the form attached to the Disposition Agreement as Exhibit D.

(mm) "Rent" means the capitalized rent payment made to the County by the Lessee in the amount set forth in Section 2.5.

(nn) "Resident Services Budget" shall have the meaning specified in Section 4.15 of this Lease and Section 7.17 of the Disposition Agreement.

(oo) "Resident Services Plan" shall have the meaning specified in Section 4.15 of this Lease and Section 7.17 of the Disposition Agreement.

(pp) "Transfer" is defined in Section 8.1 of this Lease.

(qq) "Very Low Income Households" means a household whose income does not exceed the qualifying limits for a very low income household as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, adjusted for assumed household size.

#### Section 1.2 Exhibits.

The following exhibits are attached to and made part of this Lease:

Exhibit A	Legal Description of the Property
Exhibit B	Insurance Requirements
Exhibit C	Preliminary Title Report

### ARTICLE 2. LEASE OF THE PROPERTY; PAYMENT OF RENT; OWNERSHIP OF IMPROVEMENTS

#### Section 2.1 Lease of the Property.

The County hereby leases the Property to the Lessee, and the Lessee hereby leases the Property from the County, pursuant to the terms of this Lease.

(a) The Parties shall cause the Memorandum of Lease to be recorded against the Property in the Official Records substantially in the form attached to the Disposition Agreement as Exhibit I.

(b) The closing costs associated with execution of this Lease and recordation of the Memorandum of Lease including, but not limited to recording charges, county documentary transfer tax, and conveyance taxes (if any) and the cost of the Lessee's title insurance policy shall be borne by the Lessee. Each Party shall bear its own attorneys' fees and costs.

Section 2.2    Use.

Subject to the provisions of this Lease, the Lessee shall use the Property for the redevelopment thereof and for the construction, development, maintenance, and operation of the Improvements and the Day Care Improvements on the Property, and all activities related thereto in accordance with the restrictions and requirements set forth in Article 4 hereof.

Section 2.3    Possession.

The County agrees to and shall provide possession of the Property to the Lessee immediately following the Commencement Date. To the best of the County's knowledge, the Property is subject only to the encumbrances listed in the Preliminary Title Report and such encumbrances approved by the Parties and recorded concurrently with the Memorandum of Lease. The County shall convey the Property to the Lessee in the physical condition set forth in the Disposition Agreement.

Section 2.4    Lease Term.

Unless earlier terminated pursuant to the provisions of this Lease, the Lease Term shall be for the period commencing on the Commencement Date and terminating at midnight (12:00 a.m.) on the day immediately preceding the eighty-fifth (85<sup>th</sup>) anniversary of the Commencement Date.

Section 2.5    Payment of Rent.

(a)    The ground rent ("Rent") due and owing from the Lessee to the County for the initial fifty-seven (57) years of the Term of this Lease is Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000), which has been pre-paid in full concurrently with the execution of this Lease.

(b)    In addition to the base Rent paid under subsection 2.5(a), for the entire Term of this Lease the Lessee shall pay "Added Rent" in an amount of Fifty Thousand Dollars (\$50,000) per year, increasing by three percent (3%) per year. The Added Rent shall accrue for the initial fifty-seven (57) years of the Term of this Lease, subject to an interest rate of 3.275% compounding annually, with the first payment of Added Rent due on April 1 on the fifty-eight (58<sup>th</sup>) year of the Term, or April 1, 2078 and annually thereafter through to the end of the Term.

(c)    Additional Rent due pursuant to Section 4.5 or 5.5 shall be due as provided therein.

Section 2.6    Leasing of Day Care Improvements.

(a)    The Lessee agrees and acknowledges that it shall lease the Day Care Improvements to County of San Bernardino Preschool Services, or a public agency that provides preschool services identified by the County, for an initial term of 20 years commencing upon the completion thereof. The County and Lessee will enter into a lease in a form mutually agreeable to the parties. Notwithstanding anything to the contrary, the leasing of the Day Care Improvements to any other party shall be subject to the requirements of Section 8.5 hereof.

(b) The rent due (which may include common area charges) from the leasing of the Day Care Improvements shall be determined under the lease for the Day Care Improvements.

(c) Lessee agrees and acknowledges that all rent generated from the Day Care Improvements will be considered operating income of the Development and shall be included in calculation of the repayment of the County Loan under Section 3.5 of the Disposition Agreement.

Section 2.7 Title to Improvements; Surrender Upon Termination.

The County hereby grants to the Lessee, without warranty (express or implied), any right, title, or interest that the County may have in the improvements located on the Property from time to time prior to the termination of this Lease. The Improvements and Day Care Improvements constructed on the Property during the Lease Term shall be and remain the property of the Lessee; however, the Lessee shall have no right to destroy, demolish or remove the Improvements or the Day Care Improvements except as specifically provided for in this Lease or as otherwise approved in writing by the County. When the Lease Term expires, or when the Lease is otherwise terminated under the terms of this Lease the Lessee shall surrender the Property and deliver to the County the Property (including all improvements thereon) and title to the Improvements and Day Care Improvements shall revert to and vest in the County without cost to the County in their then-existing condition. It is the intent of the Parties that this Lease shall create a constructive notice of severance of the Improvements and Day Care Improvements from the Property without the necessity of a deed from the County to the Lessee after the Improvements and Day Care Improvements have been constructed. The Improvements and Day Care Improvements, when built, shall be and remain real property and shall be owned in fee by the Lessee for the Lease Term. If requested by the County, the Lessee shall execute, at the end of the Lease Term, within ten (10) days of receipt of the County's written request, a confirmatory quitclaim deed of the Improvements and Day Care Improvements to be recorded at the County's option and expense, and any other documents that may be reasonably required by the County or the County's title company to provide the County title to the Property and the Improvements and Day Care Improvements free and clear of all monetary liens and monetary encumbrances not caused or agreed to by the County, but otherwise in their "as-is" condition.

Section 2.8 Assignment of Lessee's Leasehold Interest; Transfer of the Development.

Subject the provisions of Article 8, the Lessee may not assign its interest in this Lease and sell or transfer the Development without the prior written consent of the County.

Section 2.9 Triple-Net Lease.

(a) This Lease is a triple-net lease, and Rent and Added Rent and other payments payable to or on behalf of the County shall: (a) be paid without notice or demand and without offset, counterclaim, abatement, suspension, deferment, deduction or defense; and (b) be an absolute net return to the County, free and clear of any expenses, charges or offsets whatsoever.

(b) The lease for the Day Care Improvements shall be a triple-net lease, and rent and other payments payable to or on behalf of the Lessee shall: (a) be paid without notice or demand and without offset, counterclaim, abatement, suspension, deferment, deduction or defense; and (b) be an absolute net return to the Lessee, free and clear of any expenses, charges or offsets whatsoever.

### ARTICLE 3. DEVELOPMENT OF IMPROVEMENTS

#### Section 3.1 Commencement of Construction.

The Lessee shall commence construction of the Improvements no later than the time specified in the Disposition Agreement (subject to extension as provided for therein).

#### Section 3.2 Completion of Construction.

The Lessee shall prosecute diligently to completion the construction of the Improvements, and shall complete construction by the time specified in the Disposition Agreement (subject to extension as provided for therein).

#### Section 3.3 Construction Pursuant to Permits and Disposition Agreement.

The Improvements shall be constructed in accordance with the Development Documents and the terms and conditions of the applicable land use permits and approvals and building permits.

#### Section 3.4 Equal Opportunity.

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

#### Section 3.5 Discharge of Liens.

Except as expressly permitted herein or in the Disposition Agreement, the Lessee shall not create or permit or suffer to be created or to remain, and will discharge, any lien (including, but not limited to, the liens of mechanics, laborers, materialmen, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Property and the Improvements thereon), encumbrances or other charge upon the Property and the Improvements thereon, or any part thereof, or upon the Lessee's leasehold interest therein. The Lessee shall have the right to contest in good faith and by appropriate legal proceedings the validity or amount of any mechanics', laborers', materialmen's, suppliers' or vendors' lien or claimed lien; provided that the Lessee shall utilize all reasonable means (including the posting of a surety bond in an amount 1 and 1/2 times the amount of such claim item) to protect the Property and any part thereof or the Improvements thereon against foreclosure, and shall indemnify and hold harmless the County from any adverse effects resulting from such lien.

### Section 3.6    Protection of the County.

Nothing in this Lease shall be construed as constituting the consent of the County, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Property or the Improvements thereon, or any part thereof, by any contractor, subcontractor, laborer or materialman, nor as giving the Lessee or any other person any right, power or authority to act as agent of, or to contract for, or permit the rendering of any services or the furnishing of any materials in such manner as would give rise to the filing of mechanics' liens or other claims against the fee interest of the Property or the Improvements thereon. The County shall have the right at all reasonable times to post and keep posted on the Property any notices which the County may deem necessary for the protection of the County and of the Property and the Improvements thereon from mechanics' liens or other claims. In addition, subject to Lessee's right to contest set forth in Section 3.5 above, the Lessee shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to the Lessee, or any of its respective contractors or subcontractors in connection with the Property and the Improvements thereon.

### Section 3.7    Permits, Licenses and Easements.

Within ten (10) days after receipt of written request from the Lessee, the County shall (at no expense to the County) join in any and all applications (consistent with the Disposition Agreement) for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work that the Lessee may do pursuant to this Lease or the operation of the Development, and shall also join in any grants of easements for public utilities useful or necessary to the proper construction of the Improvements or the operation of the Development.

### Section 3.8    Compliance with Applicable Law.

The Lessee shall cause all work performed in connection with construction of the Development to be performed in compliance with (a) 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, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental County now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental County having jurisdiction, and the Lessee shall be responsible to the County for the procurement and maintenance thereof, as may be required of the Lessee and all entities engaged in work on the Property.

### Section 3.9    Construction Pursuant to Plans and Laws.

(a) To the extent required by law, in the construction of the Development, the Lessee shall pay and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Development as those wages are determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices as required by California Labor Code Sections

1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). In addition, to the extent required by applicable law, the Lessee shall cause its respective contractors and subcontractors to do all the following: (i) all calls for bids, bidding materials and the construction contract documents for the Development must specify that (1) 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 (2) the Development is subject to compliance monitoring and enforcement by the DIR; (ii) the Lessee 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 2 days of the award of the contract (<https://www.dir.ca.gov/pwc100ext/>); (iii) the Lessee shall cause its respective contractors to post job site notices, as prescribed by regulation by the DIR; (iv) the Lessee 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. Lessee shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County 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 Lessee, its contractor and subcontractors) to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Development or any other work undertaken or in connection with the Property.

(b) The prime contractor shall be responsible for ensuring a weekly certified payroll submitted through LCP Tracker (as defined in the Disposition Agreement as 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.

(c) The Lessee shall indemnify, protect, hold harmless and defend (with counsel reasonably selected by the County) the County, its governing board members, officers, representatives, agents, assigns 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 the Lessee, or its contractor or subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR or comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the DIR in connection with the initial construction of the Development or any other work undertaken or in connection with Development and the Property.

(d) For purposes of this Section, the "initial construction" of the Development shall mean the work required in order to construct such improvements and obtain the Certificate of Completion for the Development.

(e) The requirements in this Section survive the repayment of the County Loan, and the reconveyance of the Leasehold Deed of Trust and termination of this Lease.

### Section 3.10 The Lessee to Furnish and Equip the Improvements.

(a) Upon completion of construction of the Improvements, the Lessee covenants and agrees to furnish and equip the Improvements with all fixtures, furnishings, equipment and other personal property (collectively, the "Personal Property") of a quantity as necessary to operate a first class affordable housing development in accordance with the standards set forth in this Lease and the Regulatory Agreement. The Lessee further agrees to take good care of such Personal Property, to keep the same in good order and condition ordinary wear and tear excepted, and promptly, at the Lessee's own cost and expense, to make all necessary repairs, replacements and renewals thereof. As used in this Lease, the term "Personal Property" includes all such replacements and renewals, and all fixtures, furnishings, equipment and other personal property of the Lessee located in, on or about the Property and the Improvements thereon. Any and all fixtures, furnishings, equipment and other personal property placed in, on or about the Property shall be the Personal Property of the Lessee during the Lease Term. Nothing in this Section 3.10 shall be read to require the Lessee to furnish individual units.

(b) Nothing in this Lease shall require the Lessee to furnish or equip the Day Care Improvements. The furnishing and equipping of the Day Care Improvements shall be the sole responsibility of the sublessee of the Day Care Improvements.

## ARTICLE 4.

### USE AND MAINTENANCE OF THE IMPROVEMENTS

#### Section 4.1 Use of Development.

(a) During the Lease Term, the Lessee shall at all times use and operate the Development in accordance with this Lease and the Regulatory Agreement. Any use of the Property for any other purpose or any proposed "Major Additional Improvements" to the Property shall be subject to the County's prior written approval, which may be granted or denied in the County's sole discretion. For the purposes of this Section 4.1 the term "Major Additional Improvements" means any of the following, which shall occur post completion of the initial construction of the Improvements and Day Care Improvements: (1) any new buildings, structures or outdoor facilities other than the Improvements and the Day Care Improvements to be located on the Property, (2) any substantial alterations, remodeling or rehabilitation of the Improvements, (3) construction of additional spaces or facilities, or (4) any other alteration, construction, remodeling or reconstruction on the Property with a cost in excess of One Hundred Thousand Dollars (\$100,000).

(b) During the Lease Term, the Lessee shall comply with all applicable and lawful statutes, rules, orders, ordinances, requirements, and regulations of the United States, the State of California, and any other governmental authority having jurisdiction over the Development; however, the Lessee may, in good faith and on reasonable grounds, dispute the applicability or the validity of any charge, complaint, or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement, or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. The Lessee agrees that any such contest shall be prosecuted to a final conclusion as promptly as reasonably possible.

(c) The Lessee shall:

(1) use the Development only to provide proper housing facilities and ancillary uses to tenants, and to maintain the character of the Development as required by this Lease and the Regulatory Agreement for so long as such agreements remain in effect, and shall not use the Development for any disorderly or unlawful purpose;

(2) use reasonable efforts to prevent any residential tenant from committing or maintaining any nuisance or unlawful conduct on or about the Development;

(3) use reasonable efforts to prevent any residential tenant from violating any of the covenants and conditions of this Lease with respect to the Development;

(4) use reasonable efforts to abate any violation of this Lease by any residential tenant upon notice from the County;

(5) subject to any applicable laws of the State of California and the rights of residential tenants in the Development, permit the County and its agents to inspect the Development at any reasonable time upon reasonable prior notice during the Lease Term; and

(6) not commit or suffer to be committed any waste in, on or about the Property.

(d) Notwithstanding anything to the contrary herein, the Lessee shall have the right use the Day Care Improvements for day care related activities.

#### Section 4.2 Compliance with the Regulatory Agreement.

The Lessee hereby agrees that, for the term of the Lease and Regulatory Agreement, the Development will be used only for residential uses consistent with this Lease and the Regulatory Agreement and the Day Care Improvements shall be used solely for day care related activities in compliance with the Day Care Improvements lessee entered into pursuant to Section 2.6 above.

#### Section 4.3 Maintenance of the Development.

(a) The Lessee agrees, for the entire Term of this Lease, to maintain all interior and exterior improvements, including landscaping, of the Development in first-class condition, repair and sanitary condition (and, as to landscaping, in a healthy condition) and in accordance with a Management Plan approved pursuant to Section 2.8 of the Disposition Agreement (including without limitation any landscape and signage plans), as the same may be amended from time to time, and all applicable laws, rules, ordinances, orders, and regulations of all federal, state, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

(b) The Lessee acknowledges the great emphasis the County places on quality maintenance to protect its investment and to provide quality low-income housing for area residents and to ensure that County-assisted affordable housing projects are not allowed to deteriorate due to deficient maintenance. In addition, the Lessee shall keep the Development



free from all graffiti, and any accumulation of shopping carts, debris or waste material. The Lessee shall promptly make all repairs and replacements necessary to keep the Development in first-class condition and repair and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials.

(c) In the event that the Lessee breaches any of the covenants contained in this Section 4.3 and such default continues for a period of ten (10) days after written notice from the County, with respect to graffiti, shopping carts, debris, waste material, and general maintenance, or thirty (30) days after written notice from the County, with respect to landscaping and building improvements, (and subject to any stricter requirements included in any applicable County ordinance) then the County, in addition to whatever other remedy it may have under this Lease, at law or in equity, shall have the right to enter upon the Development and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the County shall be permitted (but is not required) to enter upon the Development and perform all acts and work necessary to protect, maintain and preserve the improvements and landscaped areas of the Property, and to attach a lien on the Lessee's interest in the Property, or to assess the Lessee's interest in the Property, 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. The Lessee shall promptly pay to the County, as applicable, the amount of the expenditure arising from such acts and work of protection, maintenance, and preservation by the County and/or costs of such cure, including a fifteen percent (15%) administrative charge.

(d) Landscaping. The Lessee agrees to have common area landscape maintenance performed regularly, including replacement of dead or diseased plants with comparable plants. Lessee agrees to adequately water the landscaping on the Property. No improperly maintained common area landscaping on the Property shall be visible from public streets and/or rights of way.

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

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

(B) shopping carts, packing boxes, lumber trash, dirt and other debris in areas visible from public property or neighboring properties; and

(C) vehicles parked or stored in other than approved parking areas.

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

(A) violations of state law, uniform codes, or County ordinances;

(B) conditions that constitute an unsightly appearance that detracts from the aesthetics or value of the Property or constitutes a private or public nuisance;

- (C) broken windows;
  - (D) graffiti (must be removed within forty-eight (48) hours);
- and
- (E) conditions constituting hazards and/or inviting trespassers,
- or malicious mischief.

(3) Sidewalks. The Lessee shall maintain, repair, and replace as necessary all public sidewalks adjacent to the Development.

#### Section 4.4 Utilities.

The Lessee shall be responsible for the cost of all utilities, including water, heat, gas, electricity, waste removal, sewers, and other utilities or services supplied to the Development (other than those payable directly by tenants of the Development), and the Lessee shall pay or cause said utility costs to be paid currently and as due.

#### Section 4.5 Taxes and Assessments.

(a) Payment of Taxes and Assessments. The Lessee shall, during the entire Lease Term, at its own cost and expense, pay the public officers charged with their collection, as the same become due and before any fine, penalty, interest, or other charge may be added to them for nonpayment, all real estate taxes, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature, made, assessed, levied, or imposed upon, or due and payable in connection with, or which become a lien upon, the Property, the Improvements, or any part of the Property or Improvements, or upon the Lessee's leasehold interest in the Property pursuant to this Lease, as well as assessments for sidewalks, streets, sewers, water, or any other public improvements and any other improvements or benefits which shall, during the Lease Term, be made, assessed, levied, or imposed upon or become due and payable in connection with, or a lien upon, the Property, the Improvements, or any part of the Property or Improvements, or upon the Lessee's leasehold interest in the Property pursuant to this Lease. The Lessee acknowledges that, pursuant to Revenue and Taxation Code Section 107.6, the Lessee's leasehold interest in the Property created pursuant to this Lease may be subject to the payment of property taxes levied against the Lessee's leasehold interest and the Lessee shall be responsible for the payment of all such property taxes, if applicable. In the event the Improvements or any possessory interest with respect thereto, should at any time be subject to ad valorem taxes or privilege taxes levied, assessed or imposed on such property, the Lessee shall pay taxes upon the assessed value of the entire Property and the Improvements thereon and not merely upon the assessed value of its leasehold interest, as provided in California Health and Safety Code Section 33673.

(b) Payment of Fees. During the entire Lease Term, the Lessee shall pay, at its own cost and expense, before any fine, penalty, interest, or other charge may be added for nonpayment, all license and permit fees, charges for public utilities, and governmental charges relating to the use or occupancy of the Improvements.

(c) Copies of Notices to Lessee. The County shall promptly send to the Lessee copies of any and all notices received by it in respect to any taxes, assessments, charges, or fees for which the Lessee is liable pursuant to this Section 4.5.

(d) The County's Right to Cure. If the Lessee, in violation of the provisions of this Lease, shall fail to pay and to discharge any taxes, or any other fee, the County may (but shall not be obligated to) pay or discharge such taxes, and the amount paid by the County and the amount of all costs, expenses, interest and penalties connected therewith, including reasonable attorneys' fees, together with interest at the rate set forth in Section 2.6(c) shall be deemed to be and shall, upon demand of the County, be payable by the Lessee as repayment of such advance by the County.

#### Section 4.6 Assistance in Making Payments.

The parties acknowledge that Lessee is responsible under this Lease for making various payments to third parties, such as tax and utility payments in accordance with the provisions of this Article 4. In case any person or entity to whom any sum is directly payable by the Lessee under any of the provisions of this Lease (e.g., a tax collector or utility company) shall refuse to accept payment of such sum from the Lessee (due to the fact that the Lessee is not the fee owner of the Property or for any other reason), the Lessee shall thereupon give written notice of such fact to the County and shall pay such sum directly to County at the address specified in Section 11.2 hereof, and County shall thereupon pay such sum to such person or entity.

#### Section 4.7 Hazardous Materials.

(a) Covenants and Agreements. The Lessee hereby covenants and agrees that:

(1) The Lessee shall not knowingly permit the Development or the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Property or the Development in violation of any applicable law;

(2) The Lessee shall keep and maintain the Property and the Development and each portion thereof in compliance with, and shall not cause or permit the Property and the Development or any portion thereof to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same the Lessee shall immediately advise the County in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Lessee or the Development pursuant to any applicable Hazardous Materials Laws; (ii) any and all claims made or threatened by any third party against the Lessee or the Development relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (i) and this clause (ii) are hereinafter referred to as "Hazardous Materials Claims"); (iii) the presence of any Hazardous Materials in, on or under the Property or the Development in such quantities which require reporting to a government County;

or (iv) the Lessee's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Development classified as "borderzone property" under the provisions 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 Development under any Hazardous Materials Laws. If the County reasonably determines that the Lessee is not adequately responding to a Hazardous Materials Claim, the County 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 such Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by the Lessee.

(4) Without the County's prior written consent, which shall not be unreasonably withheld or delayed, the Lessee shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Development (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 Materials Claims.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 6.4, the Lessee hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the County) the County, its board members and councilmember's, officers, 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, attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of:

(1) the failure of the Lessee or any other person or entity, during the Lease Term, 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;

(2) the presence in, on or under the Property or the Development of any Hazardous Materials or any releases or discharges during the Lease Term of any Hazardous Materials into, on, under or from the Property or the Development; or

(3) any activity carried on or undertaken on or off the Property or the Development, during the Lease Term, and whether by the Lessee or any employees, agents, contractors or subcontractors of the Lessee, or any third persons occupying or present on the Property or the Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials located or present on or under the Development (collectively "Indemnification Claims").

The foregoing indemnity shall further apply to any residual contamination on or under the Property or the Development, or affecting any natural resources, and to any contamination of any property or natural resources, in each case, arising in connection with the Indemnification Claims and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws; provided, however, the foregoing

indemnity shall not apply to any Indemnification Claims arising directly or indirectly, in whole or in part, from the County's gross negligence or willful misconduct. This obligation to indemnify, set forth in this Section 4.7(b) shall survive termination of this Lease.

(c) No Limitation. The Lessee hereby acknowledges and agrees that the Lessee's duties, obligations and liabilities under this Lease, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information the County may have concerning the Development and/or the presence within the Development of any Hazardous Materials, whether the County obtained such information from the Lessee or from its own investigations.

(d) Environmental Work. The Lessee shall be responsible for performing the work of any investigation and remediation that may be required by applicable law on the Property in order to develop the Development. The determination as to whether any such remediation is needed, and as to the scope and methodology thereof, shall be made by mutual agreement of the governmental County with responsibility for monitoring such remediation and the County and the Lessee. The Lessee shall notify the County promptly upon discovery of any actionable levels of Hazardous Materials, and upon any release thereof, and shall consult with the County in order to establish the extent of remediation to be undertaken and the procedures by which remediation thereof shall take place. The Lessee shall comply with, and shall cause its agents and contractors to comply with, all laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Substances. The investigation and remediation work shall be carried out in accordance with all applicable laws (including Hazardous Materials Laws) and such other procedures and processes as may be described in this Lease.

#### Section 4.8 Nondiscrimination.

The Lessee shall not, in the selection or approval of tenants or provision of services or in any other matter relating to the development and operation of the Development, discriminate against any person or group of persons on the grounds of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, age, source of income, or disability.

#### Section 4.9 Management Responsibilities.

The Lessee is responsible for all management functions with respect to the Development, including without limitation the selection of residents, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County shall have no responsibility over management of the Development. The Lessee shall retain a professional property management company, approved by the County in its reasonable discretion, to perform its management duties hereunder. A resident manager shall also be required. At least six (6) months prior to completion of construction of the Development, and annually thereafter, Lessee shall submit a proposed Management Plan to the County for approval by the County. The County shall approve or disapprove (with written explanation for disapproval) of the proposed management plan by notifying the Lessee in writing within fifteen (15) business days of the date of submission to the County.

#### Section 4.10 Management Agent; Periodic Reports.

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

#### Section 4.11 Performance Review.

The County reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by the County) review of the management practices and financial status of the Development. 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 Lease. The Lessee shall cooperate with the County in such reviews.

#### Section 4.12 Books, Records and Reports.

For purposes of such periodic reviews, the Lessee and the Management Agent shall make available to the County for inspection all books and records with respect to the Development. In addition, the Lessee shall provide the County with: (1) by not later than thirty (30) days prior to commencement of each Fiscal Year, the annual budget for the upcoming calendar; (2) within ninety (90) days following the end of each Fiscal Year, 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 (3) within one hundred twenty (120) days following the end of each Fiscal Year, a copy of the Lessee's federal income tax filings for the calendar year.

#### Section 4.13 Replacement of Management Agent or On-Site Resident Manager.

(a) If, as a result of a periodic review, the County determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the requirements and standards of this Agreement or the Regulatory Agreement, the County shall deliver notice to the Developer of such operational issues which notice shall describe the management deficiencies with specificity along with the actions the County deems necessary to cure said deficiencies along with a period in which the deficiencies shall be cured. Within thirty

(30) days of receipt by the Lessee of such written notice, County staff and the Lessee 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 Lessee and any Approved Lender, the Lessee shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 4.10 above and reasonably approved by the County pursuant to Section 4.10 above.

(c) Any contract for the operation or management of the Development entered into by the Lessee shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a Lessee Event of Default under this Agreement, and the County may enforce this provision through legal proceedings as specified in Section 10.1(b) below.

#### Section 4.14 Approval of Management Plan.

The Lessee shall submit to the County an initial proposed Management Plan no later than six (6) months after the commencement of construction of the Development pursuant to the Schedule of Performance as set forth in Section 4.3 of the Disposition Agreement. Each year, within sixty (60) days of the end of the Lessee's Fiscal Year, the Lessee 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) calendar days following the County's receipt of the request to amend Management Plan, which approval shall not be unreasonably denied. If the proposed change to the Management Plan is disapproved by the County, the County shall deliver a written notice to the Lessee setting forth, in reasonable detail, the reasons for such disapproval. The Lessee shall have fifteen (15) calendar 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 Lease. The County's approval of the amendments to the Management Plan shall not be unreasonably withheld.

#### Section 4.15 Resident Services Plan and Resident Services Budget.

Lessee hereby agrees to hire and employ a resident services coordinator at least one (1) month prior to completion of the Improvements pursuant to Section 4.4 of the Disposition Agreement. The Lessee shall submit to the County an initial proposed Resident Services Plan and Resident Services Budget no later than six (6) months after the commencement of construction of the Development pursuant to the Schedule of Performance as set forth in Section 4.3 of the Disposition Agreement. Each year, within sixty (60) days of the end of the Lessee's Fiscal Year, the Lessee shall furnish to the County a draft Resident Services Plan and Resident Services Budget. Upon receipt by the County of the proposed Resident Services Plan and Resident Services Budget, the County shall promptly review same and approve or disapprove the Resident Services Plan and the Resident Services Budget within ten (10) working days. If the Resident Services Plan or Resident Services Budget are not approved by the County, the County

shall set forth in writing and notify the Lessee of the County's reasons for withholding such approval, which may include a request by the County for a change in the nature or scope of resident services or a change in service provider. The Lessee shall thereafter submit a revised Resident Services Plan and Resident Services Budget for County approval, which approval shall be granted or denied within five (5) working days in accordance with the procedures set forth above.

#### Section 4.16 Public Safety.

(a) The Lessee acknowledges that the County places a prime importance on the security of County assisted projects and the safety of the residents and surrounding community. The Lessee 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) use its best efforts to work with the County Sherriff Department to implement and operate an effective neighborhood watch program; and

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

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

### ARTICLE 5. APPROVED LOANS

#### Section 5.1 Loan Obligations.

Nothing contained in this Lease shall relieve the Lessee of its obligations and responsibilities under any Approved Loans to operate the Development as set forth in the applicable Approved Loan Documents.

#### Section 5.2 Liens and Encumbrances Against Lessee's Interest in the Leasehold Estate.

(a) Lessee shall have the right to encumber the leasehold estate created by this Lease and the Improvements with: (1) the lien or liens securing one or more Approved Loans, subject to the County's review and prior approval of the Approved Loan Documents which approval shall not be unreasonably withheld or conditioned, it being expressly understood that as of the Commencement Date, the County has approved the recordation of the liens securing the



Approved Loans; and (2) after receipt of a certificate of occupancy, the lien or liens securing any lender that refinances any Approved Loan, so long as such refinancing does not exceed the then outstanding principal balance of the replaced Approved Loan, 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). Within fifteen (15) days following receipt of the proposed Approved Loan Documents along with Lessee's written notice requesting approval of such documents, the County shall review and either approve or disapprove the Approved Loan Documents.

(b) The Lessee shall not have the right to encumber the County's fee interest in the Property and the reversionary interest in the Improvements with a lien of an Approved Loan or any Loan.

(c) For as long as there is any lien securing any Approved Loans :

(1) The County shall not agree to any mutual termination or cancellation or accept any surrender of this Lease (including, without limitation, in connection with any casualty or condemnation of the Premises), nor shall the County consent to any amendment or modification of this Lease, without prior written consent of all Approved Lenders that have an outstanding Approved Loan and any such termination, cancellation, surrender, amendment or modification of this Lease without all such consents shall not be valid or effective.

(2) Notwithstanding any default by the Lessee under this Lease, the County shall have no right to terminate this Lease unless the County has given all Approved Lenders which have an outstanding Approved Loan and the Investor written notice of such default pursuant to the requirement of Sections 5.2(c)(vii) and 11.2 and the Investor and/or such Approved Lenders have failed to remedy such default or acquire the Lessee's leasehold estate created by this Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by this subsection 5.2(c), as applicable. If the County receives competing or conflicting offers to cure any default, then the County shall accept the offers to cure in the following order: first, the Lessee, then each Approved Lender in the relative priority of their respective deeds of trust, and then the Investor. Notwithstanding the foregoing, an Approved Lender shall not be required to obtain possession or commence or continue foreclosure proceedings as a prerequisite to curing a default by the Lessee.

(3) Any Approved Lender which has an outstanding Approved Loan or the Investor shall have the right, but not the obligation, at any time to pay any or all of the Rent or Added Rent due pursuant to the terms of this Lease, and do any other act or thing required of the Lessee by the terms of this Lease, to prevent termination of this Lease. Each Approved Lender and the Investor shall have sixty (60) days after receipt of notice from the County (describing the default and Lessee's failure to cure the same within any applicable notice and cure periods) to cure monetary defaults and ninety (90) days after receipt of notice from the County (describing the default and Lessee's failure to cure the same within any applicable notice and cure periods) to cure nonmonetary defaults (the "Lender Cure Period"). All payments so made and all things so done shall be as effective to prevent a termination of this Lease as the same would have been if made and performed by the Lessee instead of by the Approved

Lender(s) or the Investor and the costs thereof may be added to the security interest and the lien securing the Approved Loans(s) thereof.

(4) In addition to the cure period provided in paragraph (ii) above, if the default is such that possession of the Development may be reasonably necessary to remedy the default, any Approved Lender which has an outstanding Approved Loan shall have a reasonable time after the expiration of the Lender Cure Period within which to remedy such default, provided that:

(A) such Approved Lender has fully cured any default in the payment of any monetary obligations of the Lessee under this Lease within the Lender Cure Period and shall continue to pay currently such monetary obligations when the same are due;

(B) such Approved Lender has acquired the Lessee's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same; and

(C) after gaining possession of the Development, the Approved Lender promptly commences cure, and thereafter diligently prosecutes the same, of all non-monetary defaults capable of cure by the Approved Lender and otherwise performs all obligations of the Lessee capable of performance by the Approved Lender when the obligations are due.

(5) Any default under this Lease which by its nature cannot be remedied by any Approved Lender shall be deemed to be remedied if:

(A) within ninety (90) days after receiving written notice from the County (describing the default and the Lessee's failure to cure the same within any applicable notice and cure periods), or prior thereto, any Approved Lender has acquired the Lessee's leasehold estate or commenced foreclosure or other appropriate proceedings;

(B) the Approved Lender diligently prosecutes any such proceedings to completion;

(C) the Approved Lender has fully cured any default in the payment of any monetary obligations of Lessee hereunder which does not require possession of the Development; and

(D) after gaining possession of the Development, the Approved Lender performs all other obligations of Lessee hereunder capable of performance by the Approved Lender when the obligations are due.

(6) If Approved Lenders are prohibited, stayed, or enjoined by any bankruptcy, insolvency, or other judicial proceedings involving the Lessee from commencing or prosecuting foreclosure or other appropriate proceedings, then the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, so long as the Approved Lender claiming the extension has fully cured any default in the payment of any monetary obligations of Lessee under this Lease,

continues to pay currently such monetary obligations when the same fall due, and does not interfere with the County's efforts to seek compliance by the Lessee with any non-monetary obligation under this Lease.

(7) The County shall mail or deliver to any Approved Lenders which have any outstanding Approved Loan and the Investor a duplicate copy of all notices which the County may from time to time give to the Lessee pursuant to this Lease. All notices delivered by the County to any Approved Lenders or the Investor shall also comply with the notice provisions of Section 11.2. County agrees to accept the performance of the Investor.

(8) The conveyance of the Lessee's interest in the Development to a Foreclosure Transferee by means of a foreclosure or a deed in lieu of foreclosure shall not be subject to the County's prior consent. In the event Foreclosure Transferee becomes the Lessee under this Lease by means of foreclosure or deed in lieu of foreclosure or pursuant to any new lease obtained under subsections (10) and (11) below, the County shall recognize the Foreclosure Transferee and the Foreclosure Transferee shall be personally liable under this Lease or such new lease only for the period of time that the Foreclosure Transferee remains the lessee. Nothing in this section obligates any Foreclosure Transferee to remedy any default of the Lessee, and any failure of any Approved Lender to complete any such cure after commencing the same shall not give rise to any liability of the Approved Lender to the County.

(9) If any Foreclosure Transferee shall acquire the Lessee's interest in the Development, such Foreclosure Transferee shall thereafter have the right to assign or transfer such interest in the Development to an assignee, subject to the consent provisions of Article 8 below. The Foreclosure Transferee shall be released and relieved of any liability under this Lease for acts occurring after the assignment and under any other document entered into in connection herewith upon assignment of all of the Foreclosure Transferee's interest in the Development.

(10) If a Foreclosure Transferee becomes the legal owner of the leasehold estate, and upon written request by the Foreclosure Transferee or its permitted transferee within sixty (60) days after such termination or becoming the legal owner of the leasehold estate, the County shall enter into a new lease of the Property with the Foreclosure Transferee or its permitted transferee for the remainder of the Lease Term with the same agreements, covenants, reversionary interests, and conditions (except for any requirements which have been fulfilled by the Lessee prior to termination) as are contained in this Lease and with priority equal to this Lease, so long as the Foreclosure Transferee or its permitted transferee promptly cures any existing defaults by the Lessee susceptible to cure by the Foreclosure Transferee or its permitted transferee.

(11) If this Lease is terminated for any reason (including, without limitation, a termination or rejection through or by a bankruptcy proceeding, foreclosure, or by other operation of law), then the County shall, upon request by an Approved Lender or its permitted transferee, execute a new lease of the Property to the Approved Lender or other transferee, as the case may be, on the same terms and conditions as this Lease, except that the term will commence on the date of the new lease and will continue for the remaining unexpired term of this Lease. If the County receives conflicting requests for a new lease of the Property,

then the County shall execute a new lease of the Property with the requesting Approved Lender having the most senior deed of trust.

(12) After any termination and cancellation of the Lease set forth in clause (10) or clause (11) above, and prior to the expiration of any period within which an Approved Lender may elect to obtain a new lease from County, County shall refrain from terminating any existing sublease or otherwise encumbering the Property, the Improvements and the Day Care Improvements without the prior written consent of all Approved Lenders that have an outstanding Approved Loan. Any new lease granted an Approved Lender or Foreclosure Transferee shall be in the form substantially similar to this Lease and shall enjoy the same priority in time and in right as this Lease over any lien, encumbrance or other interest created by County before or after the date of such new lease and shall vest in such Approved Lender or Foreclosure Transferee all right, title, interest, power and privileges of Lessee hereunder in and to the Property, the Improvements and the Day Care Improvements, including, without limitation, the assignment of Lessee's interest in and to all then existing subleases and sublease rentals and the automatic vesting of title to all Improvements and Day Care Improvements, fixtures and personal property of Lessee in such Approved Lender or Foreclosure Transferee. Such new lease shall provide, with respect to each and every permitted sublease which immediately prior to the termination of this Lease was superior to the lien of such Approved Lender or Foreclosure Transferee shall be deemed to have recognized the sublessee under the sublease, pursuant to the terms of the sublease as though the sublease had never terminated but had continued in full force and effect after the termination of this Lease, and to have assumed all the obligations of the sublessor under the sublease accruing from and after the termination of the Lease, except that the obligation of the new lessee, as sublessor, under any covenant of quiet enjoyment, expressed or implied, contained in any such sublease shall be limited to the acts of such new lessee and those claiming by, under or through such new lessee. If more than one entity claims to be the lender that is entitled to a new lease pursuant to this subsection, County shall enter into such new lease with the lender whose mortgage or deed of trust is prior in lien. County without liability to Lessee or any lender with an adverse claim, may rely upon a lender title insurance policy issued by a responsible title insurance company doing business in the state where the Property is located as the basis for determining the appropriate lender who is entitled to such new lease and the lender which executes the new lease shall indemnify and hold County harmless against any claims by Lessee or any other lender with respect to such determination.

(13) The County shall cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any proposed leasehold mortgagee for the purpose of allowing such leasehold mortgagee reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security. The County shall execute and deliver (and acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment, so long as such amendment does not in any way affect the Lease Term or Rent or Added Rent under this Lease or otherwise in any material respect adversely affect any rights of the County under this Lease.

#### Section 5.3 Cost of Approved Loans to be Paid by Lessee.

The Lessee shall bear all of the costs and expenses in connection with (a) the preparation and securing of the Approved Loans, (b) the delivery of any instruments and documents and their

filing and recording, if required, and (c) all taxes and charges payable in connection with the Approved Loans.

#### Section 5.4 Proceeds of Approved Loans.

All Approved Loan proceeds shall be paid to and become the property of the Lessee, and the County shall have no right to receive any such Approved Loan proceeds.

#### Section 5.5 Notice and Right to Cure Defaults Under Approved Loans.

Lessee shall include in all Approved Loan Documents (which may be in a subordination or intercreditor agreement) that, in the event of default by the Lessee under an Approved Loan, notice shall be given to the County at the same time given to the Lessee, and the County shall have the right, but not the obligation, to cure the default with a cure period which extends not less than ninety (90) days beyond the cure period provided to the Lessee under the applicable Approved Loan Document. Notwithstanding the foregoing, in no event shall County have the right to terminate this Lease as a result of Lessee's failure to cure an event of default under any Approved Loan, including the County Loan, or the failure of Lessee to repay County for any amounts paid by County to cure an event of default under any Approved Loan, including the County Loan, and no Approved Lender shall be obligated to cure any such default. Nothing contained in Section 5.5 or elsewhere within this Lease shall require the consent of the County to exercise any remedies by such Approved Lender under its Approved Loan Documents.

#### Section 5.6 Modifications.

If an Approved Lender should, as a condition of providing financing for development of all or a portion of the Development, request any modification of this Lease in order to protect its interests in the Development or this Lease, the County shall consider such request in good faith consistent with the purpose and intent of this Lease and the rights and obligations of the Parties under this Lease.

#### Section 5.7 Estoppel Certificates.

The County and the Lessee agree that at any time and from time to time upon not less than twenty (20) days prior written notice by the other party, or upon request from the Investor or any Approved Lender or a permitted assignee or other interested party, the County or the Lessee will execute, acknowledge and deliver to the other party or to such other parties a statement in writing in form and content reasonably acceptable to the County, substantially in the form provided to such Approved Lender on or about the date of this Lease, certifying: (a) that this Lease is unmodified and in full force and effect; (b) the date through which the Rent and Added Rent has been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against the County or the Lessee, as applicable, other than those, if any, so specified under the provisions of this Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of the County, the Lessee or any Approved Lender or the Investor, as the case may be, in this Lease or by any assignee of any Approved Lender.

## ARTICLE 6. INSURANCE

### Section 6.1 Required Insurance Coverage.

The Lessee shall furnish to the County the type and amounts of insurance specified in Exhibit B. The County shall be named as an additional insured on the policies specified in Exhibit B. The Lessee shall insure that all workers' compensation insurance policies carried by the general contractor and subcontractors working on the Development include a waiver of subrogation in favor of the County. Any Approved Lender may be named as an additional insured or loss payee under any insurance coverages maintained by Lessee and may participate in the settlement of any proceeds therefrom (as further discussed below).

### Section 6.2 Insurance Policies and Premiums.

All liability policies required by this Lease or any Approved Loan Document shall comply with the requirements set forth in Exhibit B.

(a) Insurance shall be placed with insurers with a current Best Rating of no less than A:VII. Any deductible or self-insured retention shall be disclosed to and approved by the County.

(b) The Lessee shall furnish the County with certificates and original endorsements effecting the required coverage promptly upon request. The endorsements shall be signed by persons authorized by the insurer to bind coverage on its behalf. The endorsements shall be on forms provided by the County or as approved by the County. If the Lessee does not keep all required insurance policies in full force and effect, then the County may, in addition to other remedies under this Lease, and upon not less than fifteen (15) days prior written notice and the failure of the Lessee to obtain such insurance within such fifteen (15) day period, take out the necessary insurance, and the Lessee shall pay the cost of such insurance.

(c) Promptly upon the County's request from time to time during the Lease Term, the Lessee shall increase the amount of the insurance policies, or otherwise modify such policies set forth in Exhibit B, so long as sufficient funds are reasonably available to pay for such increases.

### Section 6.3 Proceeds of Insurance.

For so long as any Approved Loan on the Development is outstanding or as required under Section 7.2 below, the disposition of all commercial property insurance (including builder's risk) proceeds shall be governed by the Approved Loan Documents. If the Improvements are not repaired or rebuilt, all such proceeds shall be applied in a manner consistent with the terms of the Approved Loans, with any conflicts resolved in accordance with the relative priority of their respective deeds of trust.

If the Lessee fails to agree in writing within thirty (30) days after payment of the proceeds of insurance that such repair or rebuilding is economically feasible and the Improvements as so restored will be economically viable, then within an additional sixty (60)

days, Lessee shall commence to demolish and clear the Property of the Improvements, unless otherwise directed by the County, and this Lease shall terminate at the option of the County upon the completion of the clearance of the Property by the Lessee.

Section 6.4    Indemnification.

The Lessee agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the County) the County, its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Lessee's performance or non-performance under this Lease, or any other agreement executed pursuant to this Lease, or arising out of acts or omissions of any of Lessee's contractors, subcontractors, or persons claiming under any of the aforesaid, except as directly caused by the County's willful misconduct or gross negligence. The provisions of this section shall survive expiration of the Lease Term or other termination of this Lease, and shall remain in full force and effect.

ARTICLE 7.

CONDEMNATION, DAMAGE OR DESTRUCTION OF THE IMPROVEMENTS

Section 7.1    Condemnation.

If the Improvements or the Property or any part thereof is taken or condemned, for any public or quasi-public purpose or use by any competent entity in appropriate proceedings, or by any right of eminent domain, then the County and Lessee shall request that awards and other payments on account of a taking of the Improvements and the Property (less costs, fees and expenses incurred by the County and Lessee in connection with the collection thereof) be divided by the presiding court between loss of value of the County's reversionary fee interest in the Property and reversionary interests in the Improvements and loss of value of the Lessee's leasehold estate in the Property and fee interest in the Improvements. In any case, subject to the rights of Approved Lenders under the Approved Loan Documents (with any conflicts resolved in accordance with the relative priority of their respective deeds of trust), such awards and payments shall be applied as follows:

(a)    Net awards and payments received on account of a partial taking of the Improvements, other than a taking for a temporary use not exceeding one (1) year, shall be allocated and paid in the following order of priority:

(1)    If the Lessee reasonably believes restoration is economically feasible, and unless the Approved Lenders under the Approved Loan Documents require that the proceeds be applied to the outstanding indebtedness under the Approved Loans, first, to pay the cost of restoration of the Improvements, provided that the extent of the Lessee's obligations to restore the Improvements shall be limited to the amount of the net award and payment received by and available to Lessee on account of the taking. In such event, the condemnation proceeds shall be paid into the Construction Fund described in Section 7.2 below, subject to the rights of Approved Lenders to collect and disburse such funds.

(2) Second (or first if (i) the Lessee does not believe that restoration is economically feasible or viable as described above, or (ii) the Approved Lender(s) under the Approved Loan Documents require(s) that such proceeds be applied to the outstanding indebtedness under the Approved Loan(s)) to any Approved Lenders (in the order of their respective lien priority, if there is more than one Approved Lender) in an amount necessary to reduce the outstanding indebtedness under the approved Loan(s) to the extent required by the Approved Lender(s).

(3) The balance, if any, shall be divided between the County and the Lessee in the manner specified in subparagraph (e) below.

(b) Net awards and payments received on account of a partial or total taking of only the County's fee interest in the Property or the reversionary interest in the Improvements (that is, a taking of the County's fee interest in the Property or the County's reversionary interest in the Improvements that has no effect on the value of the Lessee's leasehold interest in the Property or the Lessee's fee interest in the Improvements), including severance damages, shall be paid to the County which amount shall be free and clear of any claims of the Lessee, or any other persons claiming rights to the Property through or under the Lessee.

(c) Net awards and payments received on account of a taking for temporary use not exceeding one (1) year and relating to a period during the Lease Term shall be paid to the Lessee; however, if such taking for temporary use has resulted in any damage to or destruction of the Development, then such net awards and payments shall be first applied to pay the cost of restoration if the Lessee determines that restoration is economically feasible. Net awards and payments received on account of a taking for temporary use not exceeding one (1) year and relating to a period beyond the Lease Term shall be paid to the County.

(d) Net awards and payments received on account of a total taking of the Development shall be allocated and paid in the following order of priority:

(1) First, to any Approved Lenders with then-outstanding Approved Loans secured by the Development (in the order of their respective lien priority, if there is more than one Approved Lender), an amount equal to the unpaid balance secured by their respective Approved Loans up to the total amount of such awards and payments;

(2) The balance, if any, shall be divided between the County and the Lessee in the manner specified in subparagraph (e) below.

(e) For purposes of subsections (a)(iii) and (d)(ii) above, proceeds shall be paid in the following manner: first, the Lessee shall receive reimbursement for any funds it has reasonably expended for repair and/or reconstruction of the Development (other than funds received from Approved Lenders). Second, the balance, if any, shall be paid to the Lessee and the County *pari passu*. The Lessee shall receive the portion of the payment attributable to the Improvements, Lessee's leasehold interest, and Lessee's trade fixtures and personal property. The County shall receive the portion of the payment attributable to the County's fee interest in the Property and the County's reversionary interest in the Improvements.



(f) The Lessee shall receive any award granted for or allocated to trade fixtures, moving expenses or loss of business.

Section 7.2 Administration of Construction Fund in the Event of Condemnation, or Damage or Destruction of Development.

In the event the Approved Loans have not been paid in full, then the Approved Lender with the deed of trust with the most senior loan priority may act as the disbursing agent for any insurance proceeds or condemnation award for the repair or reconstruction of the Improvements (and Day Care Improvements, as applicable) in accordance with its standard practices for administering construction loans. If the Approved Loans have been paid in full or as otherwise required under Section 6.3 above, and if the Improvements, or any part of it, is to be repaired or reconstructed after damage or destruction or condemnation, then all proceeds collected under any and all policies of insurance referred to in Article 6 above covering such damage or destruction, or all compensation received for such taking by the exercise of the power of eminent domain, shall be paid into a special trust fund to be created and held by the Lessee during such repairing or reconstructing (the "Construction Fund"). Any surplus of such insurance or condemnation proceeds remaining in the Construction Fund after the completion of all payments for such repairing or reconstructing shall be held or applied by the Lessee in a manner consistent with the applicable provision of this Article 7.

Section 7.3 Lessee, County, Approved Lenders to be Made Parties in Legal Proceedings.

(a) In the event proceedings shall be instituted (i) for the exercise of the power of eminent domain, or (ii) as a result of any damage to or destruction of the Development, the resulting proceeds shall be paid to the Approved Lenders for application or disbursement in accordance with the Approved Loan Documents (in the order of their respective lien priority, if there is more than one such Approved Lender). The Lessee, County, and, as necessary, any Approved Lender with a then-outstanding Approved Loan shall be made parties to those proceedings, and if not made parties by the petitioning party, shall be brought into the proceedings by appropriate proceedings of the other parties so that adjudication may be made of the damages, if any, to be paid to the Lessee, the County and Approved Lenders as compensation for loss of their rights in the Improvements or the Property, or for damage to or destruction of the Development. Should the County or Lessee receive notice of institution of any proceedings subject to Section 7.1, the Party receiving such notice shall notify the other Party not later than thirty (30) days after receiving such notice.

(b) The County and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration, or adjustment of any and all claims and demands for damages on account of damage to, or destruction of, the Development, or for damages on account of the taking or condemnation of the Improvements or the Property.

Section 7.4 Termination.

In the event of a total taking or in the event of damage, destruction, or a partial taking, other than a temporary taking of the Development, which the Lessee reasonably determines

renders continued operation of the Development infeasible both as a whole and in substantial part, this Lease shall terminate at the option of the County (except if the Lessee is rebuilding the Development in accordance with the terms of this Lease), and in such event any proceeds shall be allocated pursuant to Section 6.3 or Article 7, as appropriate. In the event of a partial taking that does not result in termination pursuant to this Section 7.4, this Lease shall remain in full force and effect as to the portion of the Development remaining. Notwithstanding the foregoing, County shall not terminate this Lease on account of such damage, destruction or taking without the prior written consent of any Approved Lender with an outstanding Approved Loan.

## ARTICLE 8. ASSIGNMENT AND TRANSFERS

### Section 8.1    Definitions.

As used in this Article 8, the term "Transfer" means:

(a)     Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Lease or of the Property or any part thereof or any interest therein or of the Development constructed thereon, or any contract or agreement to do any of the same; or

(b)     Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in the Lessee, or any contract or agreement to do any of the same.

### Section 8.2    Purpose of Restrictions on Transfer.

This Lease is entered into solely for the purpose of development and operation of the Development on the Property and its subsequent use in accordance with the terms of this Lease. The qualifications and identity of the Lessee are of particular concern to the County, in view of:

(a)     The importance of the redevelopment of the Property to the general welfare of the community; and

(b)     The fact that a Transfer as defined in Section 8.1 above is for practical purposes a transfer or disposition of the Property.

It is because of the qualifications and identity of the Lessee that the County is entering into this Lease with the Lessee and that Transfers are permitted only as provided in this Lease.

### Section 8.3    Prohibited Transfers.

The limitations on Transfers set forth in this Section 8.3 shall apply for the Lease Term. Except as expressly permitted in this Lease, the Lessee represents and agrees that the Lessee has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the County. The County may approve any such Transfer in its sole discretion. The Parties agree and acknowledge that at

all times prior to any conveyance of the Lessee's interest in the Development to a Foreclosure Transferee, an AMCAL Affiliate shall remain the managing general partner of the Lessee throughout the Lease Term. Any Transfer made in contravention of this Section 8.3 shall be void and shall be deemed to be a default under this Lease, whether or not the Lessee knew of or participated in such Transfer.

#### Section 8.4 Permitted Transfers.

Notwithstanding the provisions of Section 8.3, the following Transfers shall be permitted without the prior written consent of the County (subject to satisfaction of the conditions of Section 8.5):

(a) Any Transfer creating a lien or trust relationship pursuant to an Approved Loan, and after receipt of a certificate of occupancy, any Transfer creating a lien or trust relationship to refinance any Approved Loan, so long as such refinancing does not exceed the then outstanding principal balance of the replaced Approved Loan 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);

(b) Any Transfer directly resulting from the foreclosure of an Approved Loan or the granting of a deed in lieu of foreclosure of an Approved Loan;

(c) The leasing of residential units within the Development in accordance with the Regulatory Agreement, provided, however, the leasing of any residential unit(s) within the Development that is not done in accordance with the Regulatory Agreement shall not give the County any right to terminate this Lease; instead, the County's remedies for such violation of the Regulatory Agreement shall be as set forth in the Regulatory Agreement;

(d) The leasing and subleasing of the Day Care Improvements pursuant to Section 2.6(a);

(e) At all times prior to any conveyance of the Lessee's interest in the Development to a Foreclosure Transferee, a transfer of any partnership interest in Lessee to any affiliate of AMCAL or as collateral for any Approved Loan;

(f) The granting of easements, licenses, or permits to facilitate the development of the Property;

(g) The County hereby approves a Transfer of a limited partnership interest in the Lessee to the Investor, or to an affiliate of the Investor or which is controlled by Hudson Housing Capital LLC, a change in the beneficial ownership of the Investor, so long as such entity remains controlled by Hudson Housing Capital LLC or an affiliate thereof; (iii) the pledge and encumbrance of the interests of the Investor to or for the benefit of any financial institution which enables the Investor 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 and issuance of membership interests in the Borrower equal to 99.99% of the profits, losses, credits, distributions and other interests in the Borrower to the Investor of the Borrower

(provided such affiliate provides documentation reasonably acceptable to the County that the affiliate has sufficient financial capability to provide the capital contributions set forth in the Financing Plan) and future transfers of such interest provided that:

(1) the Lessee's partnership agreement provides for capital contributions of the limited partners consistent with Financing Plan and is first approved by the County in its reasonable discretion;

(2) all documents, including but not limited to the associated with the tax credit syndication of the Development are submitted to the County for approval prior to execution, which approval shall not be unreasonably withheld; and

(3) in subsequent transfers the Investor (or an affiliate of the Investor or of Hudson Housing Capital LLC) remains liable for all unpaid capital contributions.

The Parties agree and acknowledge that an AMCAL Affiliate shall remain the administrative general partner of the Lessee throughout the Lease Term. In the event the general partner of the Lessee is removed by the limited partner of the Lessee for cause following default under the Lessee's partnership agreement, the County hereby approves the transfer of the general partner interest to an entity that is an affiliate of the Investor and/or Hudson Housing Capital LLC. Any replacement general partner that is not such an affiliate shall be selected by the Investor and approved in advance and in writing by the County, which approval shall not be unreasonably withheld.

#### Section 8.5 Procedure for Approval of Certain Transfers.

Except as otherwise permitted pursuant to Section 8.4 above, the County shall in its sole discretion approve or disapprove a request for a Transfer made by the Lessee upon the Lessee's delivery of written notice to the County requesting such approval. Such notice shall be accompanied by evidence regarding the proposed Transfer in reasonably sufficient detail to enable the County to evaluate the proposed Transfer, including, without limitation, transferee financial statements, information regarding prior transferee experience, and information regarding transferee's proposed use and/or development of the Property. Within thirty (30) days after receipt of the Lessee's written notice requesting County approval of a proposed Transfer, the County shall either reasonably approve or disapprove such proposed Transfer, or shall respond in writing by stating what further information, if any, the County reasonably requires in order to determine whether or not to grant the requested approval. Upon receipt of such a response, the Lessee shall promptly furnish to the County such further information as may be reasonably requested. Within ten (10) days after the County's receipt of the Lessee's submittal of the requested further information, the County shall either reasonably approve or disapprove such proposed Transfer. The County's failure to respond within such ten (10) day period to any such request for approval shall be deemed to be the County's approval thereof.

Upon the County granting approval of such proposed Transfer, the person or entity to which such Transfer is made, by an instrument in writing prepared by the County and in form recordable among the land records of the County of San Bernardino, shall expressly assume the obligations of the Lessee under this Lease and agree to be subject to the conditions and

restrictions to which the Lessee is subject arising during this Lease, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Development conveyed in such Transfer.

Section 8.6 Assignments.

Any assignment of rights and/or delegation of obligations under this Lease in connection with a Transfer (whether or not County approval is required) shall be in writing executed by the Lessee and the assignee or transferee, with a copy thereof delivered to the County within thirty (30) days after the effective date thereof. Upon assignment or transfer of the Development pursuant to an assumption agreement described in Section 8.5 above, the assignor shall be relieved of liability with respect to any such obligations relating to the Development assumed by the assignee. Notwithstanding the foregoing, unless such assignee specifically assumes the obligations under this Lease with respect to the Development, the assignor will retain such obligations and remain jointly and severally liable for such obligations with such assignee. In the absence of specific written agreement by the County (which the County may grant or withhold in its sole discretion), no Transfer permitted by this Lease or approved by the County shall be deemed to relieve the transferor from any obligation under this Lease.

ARTICLE 9.  
REPRESENTATIONS AND ASSURANCES

Section 9.1 County to Give Peaceful Possession.

Lessee shall have, hold, and enjoy, during the Lease Term, peaceful, quiet, and undisputed possession of the Property without hindrance or molestation by or from the County so long as the Lessee is not in default under this Lease following the expiration of all applicable notice and cure periods.

Section 9.2 Lessee Representations.

The Lessee represents and warrants, as of the Commencement Date, as follows:

(a) Organization. The Lessee is a duly organized, validly existing California limited partnership, and is 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.

(b) Authority of Lessee. The Lessee has full power and authority to execute and deliver this Lease, and all documents to be executed and delivered, pursuant to this Lease, and to perform and observe the terms and provisions of this Lease and of all documents to be executed and delivered pursuant to this Lease.

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

and performance of this Lease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease, have been duly taken.

(d) Valid Binding Agreements. This Lease and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Lease constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Lessee enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Lease or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Lease, 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 County whatsoever binding on the Lessee, or any provision of the organizational documents of the Lessee, or will conflict with or constitute a breach of or a default under any agreement to which the Lessee is a party, or will result in the creation or imposition of any lien upon any assets or property of the Lessee, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Improvements 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 County.

(g) Pending Proceedings. The Lessee is not in default under any law or regulation or under any order of any court, board, commission or County whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Lessee, threatened against or affecting the Lessee, at law or in equity, before or by any court, board, commission or County whatsoever which might, if determined adversely to the Lessee, materially affect the Lessee's ability to develop the Improvements.

(h) Title to Property. Upon the recordation of the Memorandum of Lease, the Lessee will have good and marketable leasehold title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the County, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the County or approved in writing by the County.

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

(j) Sufficient Funds. The Lessee holds sufficient funds or binding commitments for sufficient funds to complete the construction of the Improvements in accordance with this Agreement.

#### Section 9.3 Release of County.

The County may not sell, assign, transfer or convey all or any part of County's interest in the Property, reversionary interest in the Improvements, or this Lease without obtaining the consent of the Lessee, all Approved Lenders and the Investor, which consent will not be unreasonably delayed, conditioned or withheld. County does not intend to encumber its fee interest in the Property. Nonetheless, the County agrees that any mortgage, deed of trust or other encumbrance on the fee estate in the Property or reversionary interest in the Improvements shall be junior and subordinate to the Lease and any Approved Loan Documents, and County agrees to execute, acknowledge (as appropriate) and deliver any additional documents reasonably requested by any Approved Lender to confirm the foregoing

#### Section 9.4 Holding Over.

If the Lessee shall retain possession of the Property or the Improvements thereon or any part thereof without the County's prior written consent following the expiration of the Lease Term or sooner termination of this Lease for any reason, then the Lessee shall pay to the County the fair market rent for the Property as of the date the Lessee retained possession of the Property or the Improvements, or any part thereof without the County's prior written consent following the expiration or sooner termination of this Lease as determined by a licensed real estate appraiser selected by the County in its sole discretion (the "Holdover Rent").

In addition to the Holdover Rent, the Lessee shall pay the County all other payments that would have been due had the Lease not expired or been terminated and had the Rent, Added Rent and other payment terms in effect at the time of the expiration or sooner termination of the Lease remained in effect. These payments shall be applicable to a holding over of any kind by the Lessee. The Lessee shall also indemnify and hold the County harmless from any loss or liability resulting from delay by the Lessee in surrendering the Property, including, without limitation, any claims made by any succeeding lessee founded on such delay. Acceptance of Rent or Added Rent by the County following expiration or termination shall not constitute a renewal of this Lease and nothing contained in this Section 9.4 shall waive the County's right of reentry or any other right. The Lessee shall be only a Lessee at sufferance, whether or not the County accepts any Rent or Added Rent from the Lessee while the Lessee is holding over without the County's written consent.

#### Section 9.5 No Merger.

Except upon expiration of the Lease Term or upon termination of this Lease pursuant to an express right of termination set forth herein, there shall be no merger of either this Lease or the Lessee's estate created hereunder with the fee estate of the Property or any part thereof by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (a) this Lease, the Lessee's estate created hereunder or any interest in this Lease or the Lessee's estate (including the Improvements), and (b) the fee estate in the Property or any part thereof or any

interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of the County, having an interest in (i) this Lease or the Lessee's estate created hereunder, and (ii) the fee estate in the Property or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

## ARTICLE 10. DEFAULTS AND REMEDIES

### Section 10.1 Events of Default; Remedy for Default by Lessee.

Any one or more of the following events shall constitute an "Event of Default" by the Lessee:

- (a) Failure to pay Rent or Added Rent, as required pursuant to Section 2.5 of this Lease, or any other payment required hereunder, and continuance of such failure for a period of fifteen (15) days after receipt by the Lessee of written notice specifying the nonpayment;
- (b) Failure of the Lessee to observe and perform any other covenant, condition or agreement hereunder on its part to be performed, and (1) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default, or (2) if by reason of the nature of such default the same cannot be remedied within such thirty (30) days, the Lessee fails to proceed with reasonable diligence after receipt of such notice to cure the same, within a reasonable amount of time thereafter but in no event later than one hundred twenty (120) days following the County's initial notice; or
- (c) The Lessee's abandonment of the Property for the period of time required for such abandonment to be legally recognized as such under California law; or
- (d) A general assignment by the Lessee for the benefit of creditors; or
- (e) The filing of a voluntary petition by the Lessee, or the filing of an involuntary petition by any of the Lessee's creditors, seeking the rehabilitation, liquidation or reorganization of the Lessee under any law relating to bankruptcy, insolvency or other relief of debtors, provided that in the case of an involuntary petition Lessee shall have ninety (90) days to cause such petition to be withdrawn or dismissed; or
- (f) The appointment of a receiver or other custodian to take possession of substantially all of the Lessee's assets or of this leasehold, which appointment is not withdrawn or dismissed within sixty (60) days, excluding any receivership initiated by an Approved Lender which shall not constitute an Event of Default; or
- (g) The Lessee becomes insolvent or declares in writing it is unwilling or unable to pay its debts as they become due; or any court enters a decree or order directing the winding up or liquidation of the Lessee or of substantially all of its assets; or the Lessee takes any action toward the dissolution or winding up of its affairs or the cessation or suspension of its use of the Development; or



(h) Attachment, execution or other judicial seizure of substantially all of the Lessee's assets or this leasehold, which is not dismissed, bonded, or stayed within thirty (30) days; or

(i) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 8.

(j) Whenever any default has occurred and is continuing and upon expiration of any applicable cure periods, and subject to the cure rights of Approved Lenders and the Investor, an Event of Default shall exist, the County may take whatever action at law or in equity as may appear reasonably necessary to enforce performance or observance of this Lease, including without limitation, termination of this Lease. Notwithstanding the foregoing, the County shall not terminate this Lease prior to the expiration of the fifteen year tax credit compliance period for the Improvements. In the event of an Event of Default, County's remedies shall be cumulative, and no remedy expressly provided for in this section shall be deemed to exclude any other remedy allowed by law. If and to the extent the Lessee's default under this Lease is associated solely with a violation of or default under the Regulatory Agreement, the County's remedies for such violation of or default under the Regulatory Agreement shall be limited to the remedies set forth in the Regulatory Agreement and nothing in this Agreement shall be read to give the County any additional remedies, including, without limitation, any right to terminate this Lease as a result of a default or Event of Default under this Lease associated solely with a violation of or default under the Regulatory Agreement.

#### Section 10.2 Remedy for Default by County.

If the County defaults under this Lease, then the Lessee shall first notify the County in writing of its purported breach or failure, giving the County thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event the County does not then so cure within said thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, the County fails to commence to cure within such thirty (30) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the Lessee shall be afforded all of its rights at law or in equity, including terminating in writing this Lease (provided, however, that the indemnification provisions shall survive such termination).

### ARTICLE 11. MISCELLANEOUS

#### Section 11.1 Instrument Is Entire Agreement.

This Lease and the Disposition Agreement constitute the entire agreement between the Parties with respect to the matters set forth herein and completely supersede all prior understandings or agreements, both written and oral, between the Parties relating to the lease of the Property.

Section 11.2 Notices.

All notices hereunder shall be in writing signed by the Authorized Officer(s) and shall be sufficient if sent by United States first class, certified mail, postage prepaid, or express delivery service with a receipt showing the date of delivery, addressed:

- if to the County:      Community Development and Housing Agency  
County of San Bernardino  
385 North Arrowhead Avenue, 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
- if to Lessee:      AMCAL Las Terrazas Fund, L.P.  
c/o AMCAL Multi-Housing Inc.  
30141 Agoura Road, Suite 100  
Agoura Hills, CA 91301  
Attn: President
- With a copy to:      Bocarsly Emden Cowan Esmail & Arndt, LLP  
633 West Fifth Street, 64th Floor  
Los Angeles, CA 91301  
Attn: Kyle Arndt
- with a copy:      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

or any other address as either Party may have furnished to the other in writing pursuant to the requirements of this Section 11.2 as a place for service of notice. Any notice so mailed shall be deemed to have been given on the delivery date or the date that delivery is refused by the addressee, as shown on the return receipt.

### Section 11.3 Non-Liability of Officials, Employees and Agents.

No supervisor, member, official, employee or agent of the County shall be personally liable to the Lessee, or any successor in interest, in the event of a County default.

### Section 11.4 Force Majeure.

Performance by either Party shall not be deemed to be in default where 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; lack of transportation; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Lease); weather or soils conditions which, in the opinion of the Lessee's contractor, will necessitate delays; inability to secure necessary labor; 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 Lessee's inability to obtain financing for the Development) beyond the control or without the fault of the Party claiming an extension of time to perform. Times of performance under this Lease may also be extended in writing by the County and the Lessee. In no event shall the cumulative delays exceed one hundred eighty (180) days, unless otherwise agreed to in writing by the Parties.

### Section 11.5 Non-Waiver of Breach.

Neither the failure of a Party to insist upon strict performance of any of the covenants and agreements of this Lease nor the failure by the Party to exercise any rights or remedies granted to such Party under the terms of this Lease shall be deemed a waiver or relinquishment (a) of any covenant herein contained or of any of the rights or remedies of the applicable Party, (b) of the right in the future of the applicable Party to insist upon and to enforce, by any appropriate legal remedy a strict compliance with all of the covenants and conditions thereof, or (c) the right of the County to recover possession of the Property upon occurrence of a default and the expiration of applicable notice and cure periods or the expiration of the Lease Term.

### Section 11.6 Binding Upon Successors; Covenants to Run With Land.

This Lease shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties; provided, however, that there shall be no transfer of any interest by the Lessee except pursuant to the terms of this Lease. Any reference in this Lease to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Lease, or under law.

The terms of this Lease shall run with the land and shall bind all successors in title to the Property during the Lease Term, except that the provisions of this Lease that are specified to survive termination of this Lease shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property or the Improvements or any portion thereof shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless

the County expressly releases the Property, the Improvements, or the applicable portion of the Property, from the requirements of this Lease.

Section 11.7 Employment Opportunity.

The Lessee and its successors, assigns, contractors and subcontractors shall not discriminate against any employee or applicant for employment in connection with the construction and operation of the Improvements because of race, color, religion, sex, sexual preference, marital status, ancestry or national origin. Each of the following activities shall be conducted in a nondiscriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rate of pay and other forms of compensation; and selection for training including apprenticeship.

Section 11.8 Relationship of Parties.

Nothing contained in this Lease shall be deemed or construed by the Parties or by any third party to create the relationship of principal or agent; partnership; joint venture; association; or buyer and seller. Neither the computation of any payments and other charges under the terms of this Lease nor any other provisions contained in this Lease, nor any act of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of landlord and tenant.

Section 11.9 Titles.

Any titles of the sections or subsections of this Lease are inserted for convenience of reference only and shall be disregarded in interpreting any of its provisions.

Section 11.10 Severability.

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

Section 11.11 Applicable Law.

This Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 11.12 Venue.

The Superior Court of the County of San Bernardino shall be the forum and venue for all litigation arising from this Lease.

Section 11.13 Approvals.

(a) Whenever this Lease calls for a Party's approval, consent, or waiver, the written approval, consent, or waiver of the Party's Authorized Officer(s) shall constitute the approval, consent, or waiver of the Party, without further authorization required from the Party's board. The Parties hereby authorize their Authorized Officers to deliver such approvals or consents as are required by this Lease, or to waive requirements under this Lease, on behalf of them.

(b) All approvals under this Lease shall be subject to a reasonableness standard, except where a sole discretion standard is specifically provided.

Section 11.14 Inspection of Books and Records.

The County has the right, at all reasonable times, to inspect and copy, on a confidential basis, subject to the California Public Records Act (California Government Code Section 6251 et seq.), the books, records and all other documentation of the Lessee pertaining to its obligations under this Lease. The Lessee also has the right, at all reasonable times, to inspect and copy the books, records and all other documentation of the County pertaining to its obligations under this Lease. Each Party shall maintain adequate records for a period of at least five (5) years after the end of the operating year in which the records were created.

Section 11.15 Lease Binding on Successors.

This Lease shall inure to the benefit of, and shall be binding upon, the County, the Lessee, and their respective permitted successors and assigns.

Section 11.16 Counterparts.

This Lease may be executed in counterparts and multiple originals, each of which shall be an original and all of which shall constitute the same instrument.

Section 11.17 Prohibition on Fee Interest Encumbrances.

No encumbrances will be allowed to be recorded against the County's fee interest in the Property, with the sole exception of a lease rider, if required under the California Tax Credit Allocation Committee ("TCAC") regulations, in a form to be provided by TCAC, and any lease rider required by the California Department of Housing and Community Development associated with an approved or permitted Senior Lien.

**[Signature Page Follows]**

BY SIGNING BELOW, the Parties confirm their agreement to the terms of this Lease as of the date first written above.

**LESSEE:**

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:

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Joseph M. Michaels, President

**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

## EXHIBIT A

### LEGAL DESCRIPTION

The land is situated in the County of San Bernardino, State of California, and is described as follows: (Note: The Deed of trust covers Trustor's interest in the leasehold and fee interest in the improvements)

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

### INSURANCE REQUIREMENTS

(a) The Lessee shall maintain the following insurance coverage throughout the Term of the County 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 Lessee use existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Lessee 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 Lessee shall secure and maintain 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 Lessee and all risks to such persons under this Agreement.

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

(C) With respect to Lessee 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 the Lessee 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.
- (C) Broad form property damage (including completed operations).
- (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 Lessee 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 Lessee 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 County Loan proceeds caused by dishonesty, in an amount approved by the County, naming the County a Loss Payee, as its interests may appear.

(c) The Lessee shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with the Lessee or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (i), (ii), and (iii) above, meeting all of the general requirements of subsections (e) and (f) below and naming the County as an additional insured. The Lessee agree 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 the Lessee 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 County Board of Supervisors. The additional insured endorsements must not limit the scope of coverage for the County to vicarious liability but must allow coverage for the County to the full extent provided by the policy. Such additional insured coverage must be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

(g) All policies and bonds are to contain (i) 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; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the County; (iii) a provision that no act or omission of the Lessee shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) 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 Lessee 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 Lessee and the Lessee's employees or agents from waiving the right of subrogation prior to a loss or claim. The Lessee 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 Lessee 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 the Lessee shall maintain such insurance from the time the Lessee commences performance of services hereunder until the completion of such services. Within fifteen (15) days following the close of Escrow, the Lessee 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 Lessee 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 Lessee 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 the County's risk management agent.

(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 the Lessee or County disbursements to the Lessee will be reduced to pay for the County purchased insurance.

(o) Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or 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. The Lessee agree 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.

(p) In addition, the Lessee hereby agrees shall possess and maintain a pollution legal liability and/or environmental liability insurance policy with a minimum ten year term with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence, subject to the approval of the County's Director of Risk Management (the "Pollution Liability Policy"). The required additional insured endorsement shall protect the County without any restrictions or exceptions.

EXHIBIT C

PRELIMINARY TITLE REPORT

ATTACHMENT E

EXHIBIT E

UPDATED FORM OF REGULATORY AGREEMENT

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

This 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 (the "Developer").

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 Disposition 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. Developer 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 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. The County and the Developer have entered into the Disposition Agreement, under which the County agreed to: (1) ground lease the Property to the Developer; and (2) make the County Loan to the Developer. The County Loan funds are required to be used by the Developer solely to finance the acquisition, construction and development of the Development.

E. The County has received Neighborhood Stabilization Program 3 funds ("NSP3 Funds") from the United States Department of Housing and Urban Development ("HUD") under Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "NSP3 Act"), which amends Title III of Division B of the Housing and Economic Recovery Act of 2008. The NSP3 Funds must be used by the County in accordance with 75 F.R. 64322 (Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants) (the "NSP3 Regulations"). Together, the NSP3 Act and the NSP3 Regulations are the "NSP3 Requirements."

F. Except as otherwise prescribed by the NSP3 Requirements, the statutory and regulatory provisions that govern the Community Development Block Grant ("CDBG") program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), as amended (including those at 24 CFR part 570 subparts A, C, D, J, K, and O,



as appropriate), (the "CDBG Regulations"), apply with equal force to the NSP3 Funds. The County has adopted the Home Investment Partnerships Act ("HOME") program standards at 24 C.F.R. Part 92 (the "HOME Regulations") to define the affordable rents, continued affordability standards, and enforceability mechanisms governing the use of the NSP3 Funds

G. The County has the authority to lend the Loan to Developer pursuant to Government Code Section 26227, which authorizes counties to spend county funds for programs that will further a county's public purposes. In addition, the County has the authority to loan the NSP3 Funds pursuant to Section 2301(c)(3)(B) of HERA, and 24 C.F.R. 570.202 of the CDBG Regulations.

H. The County has agreed to make the Loan on the condition that the Developer maintain and operate the Development in accordance with restrictions set forth in this Agreement and in the related documents evidencing the Loan.

I. In consideration of receipt of the County Loan from the County, and in order to ensure that the entire Development will be used and operated in accordance with these conditions and restrictions, the Developer has agreed to observe all the terms and conditions set forth below for the entire Term of this Agreement.

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

## ARTICLE 1. DEFINITIONS

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

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

(d) "AMI" means the area median gross yearly income, adjusted for Actual Household 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 the Developer with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD

(e) "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.

(f) "CDBG Program" means the Community Development Block Grant Program.

(g) "CDBG Regulations" means Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), as amended (including those at 24 CFR part 570 subparts A, C, D, J, K, and O, as appropriate)

(h) "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.

(i) "County" means the County of San Bernardino, a political subdivision of the State of California.

(j) "County Assisted Units" means the one hundred eleven (111) units within the Development that are restricted to occupancy by Extremely Low Income Households and Very Low Income Households.

(k) "County Loan" means a loan from the County to the Developer in an amount not to exceed).

(l) "County Loan Documents" means this Agreement, the Disposition Agreement, the Promissory Note, the Leasehold Deed of Trust, and the Housing Lease.

(m) "Developer" means AMCAL Las Terrazas, L.P., a California limited partnership, and its successors and assigns to the Development.

(n) "Development" means the Property and the Development Improvements; the Development is also referred to herein as the "Development."

(o) "Development Improvements" means the one hundred twelve (112) units of affordable multi-family rental housing, including one (1) manager's unit, all common areas, amenities, appurtenances, improvement easements, buildings and fixtures associated with the Development, as the same may exist from time to time.

(p) "Disposition Agreement" means the Amended and Restated Land Disposition, Development and Loan Agreement dated as of January 7, 2020, as amended by that certain First Amendment to the Amended and Restated Land Disposition, Development

and Loan Agreement dated as of November 17, 2020, as such may be further amended from time to time, entered into by and between the County and the Developer, as such may be amended.

(q) "Extremely Low Income Household" means a household with an Adjusted Income that does not exceed the qualifying limits for extremely low income households, adjusted for Actual Household Size, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by HUD.

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

(s) "Extremely Low Income Units" means the Units, which, pursuant to Section 2.1(a)(i) below, are required to be occupied by Extremely Low Income Households.

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

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

(v) "Improvements" has the meaning set forth in Paragraph C of the Recitals.

(w) "Investor Limited Partner" means the tax credit limited partner or partners, and their respective successors and assigns, admitted to the Developer 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.

(x) "Leasehold Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith by and among the Developer, as trustor, Fidelity National Title Company, as trustee, and the County, as beneficiary, that will encumber the Property to secure repayment of the County Loan and the Developer's performance of the covenants set forth in the County Loan Documents.

(y) "Low Income Household" shall mean a household with an Adjusted Income that does not exceed the qualifying limits for lower income households, adjusted for Actual Household Size, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by HUD.

(z) "Low Income Rent" means the rent permitted to be charged for a Very Low Income Unit pursuant to Section 2.2(c) below.

(aa) "Low Income Unit" means the Units which, pursuant to Section 2.1(a)(iii) below, are required to be occupied by Low Income Households.

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

(cc) "NSP 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 NSP Term, for the purpose of the NSP3 Regulations, the Development will no longer be considered an existing federally assisted rental project.

(dd) "NSP3 Act" means Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which amends Title III of Division B of the Housing and Economic Recovery Act of 2008.

(ee) "NSP3 Funds" means Neighborhood Stabilization Program 3 funds allocated to the County under the NSP3 Act.

(ff) "NSP3 Regulations" means 75 F.R. 64322 (Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants).

(gg) "NSP3 Requirements" has the meaning set forth in paragraph E of the Recitals.

(hh) "Promissory Note" means the Amended and Restated Promissory Note, dated as of November 17, 2020, that evidences Developer's obligation to repay the County Loan, as such may be amended from time to time.

(ii) "Property" means approximately 5.92 acres of real Property located in unincorporated San Bernardino County, more particularly described in Exhibit A attached hereto and incorporated herein.

(jj) "Regulatory Agreement" means this Agreement.

(kk) "Rent" means the total of monthly payments by the residents of a Unit (other than the manager's unit) for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Developer which are required of all residents, other than security deposits; the cost of an adequate level of service for utilities paid by the resident, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable TV or telephone service; 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 Developer, and paid by the Resident. In no event shall the Rent of a Unit exceed the amount permitted by the County pursuant to Section 2.2 hereof.

(ll) "Resident" means a household occupying a Unit pursuant to a valid lease with the Developer.

(mm) "Resident Services" has the meaning set forth in Section 5.6.

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

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

(pp) "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 initial commencement date of the Housing Lease.

(qq) "Units" means each of the one hundred twelve (112) units of affordable multi-family and intergenerational rental housing to be constructed by the Developer on the Property and shall explicitly exclude the one (1) manager's unit.

(rr) "Very Low Income Household" means a household with an Adjusted Income that does not exceed the qualifying limits for very low income households, adjusted for Actual Household Size, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by HUD.

(ss) "Very Low Income Rent" means the rent permitted to be charged for a Very Low Income Unit pursuant to Section 2.2(b) below.

(tt) "Very Low Income Units" means the Units, which, pursuant to Section 2.1(a)(ii) below, are required to be occupied by Very Low Income Households.

## ARTICLE 2. AFFORDABILITY AND OCCUPANCY COVENANTS

### Section 2.1 Occupancy Requirements.

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

(a) Extremely Low Income Units. During the Term, twelve (12) one-bedroom Units, shall be rented to and occupied by, or if vacant, available for occupancy to, Extremely Low Income Households.

(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 and occupied by, or if vacant, available for occupancy to, Very Low Income Households.

(c) Low Income Units. During the Term, fifteen (15) one-bedroom Units, twenty-eight (28) two-bedroom Units and twenty-nine (29) three-bedroom Units shall be rented to and occupied by, or if vacant, available for occupancy to, Low Income Households.

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

(e) 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 Developer'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.

## Section 2.2 Allowable Rent.

(a) Extremely Low Income Rent. Subject to Section 2.3 below, the Rent charged to Residents of the Very Low Income Units shall not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of thirty percent (30%) of AMI, adjusted for Assumed Household Size.

(b) Very Low Income Rent. Subject to Section 2.3 below, the Rent charged to Residents of the Very Low Income Units shall not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size.

(c) Low Income Rent. Subject to Section 2.3 below, the Rent charged to Residents of the Low Income Units shall not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of eighty percent (80%) of AMI, adjusted for Assumed Household Size.

(d) Assumed Household Size. For purposes of calculating the allowable Rent for the Units under the Health and Safety Code, the Assumed Household Sizes means the 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) and shall be:

<u>Number of Bedrooms</u>	<u>Assumed Household Size</u>
One	2
Two	3
Three	5

(e) Approval of Rents. Initial Rents for all Units shall be approved by the County prior to occupancy. Subject to Section 2.2(h) below, all Rent increases for all 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 Developer with a schedule of permissible maximum Extremely Low Income Rent, 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 Developer raise rents above the permissible maximum rents as allowed under the annual rent schedule provided by the County.

(f) No Additional Fees. The Developer may not charge any fee, other than Rent, to any Resident of any of the Units for any housing or other services provided by the Developer (other than laundry and vending services) that are not customarily charged in rental housing. All Residents must have equal access to and enjoyment of all common facilities in the Development. Nothing herein shall prevent Developer from establishing charges for tenant defaults and for other voluntary services, so long as such fees are not prohibited under the NSP3 Regulations.

(g) Occupancy. Developer 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. Developer 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 Developer's failure to comply with applicable legal requirements related to housing for persons with disabilities and housing for seniors. 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 Residents 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 Developer's right to charge TCAC rents to the extent they are lower than HOME rents.

### Section 2.3 Rent Increases. Increased Income of Residents.

(a) Rent Increases. The proposed initial Rents and subsequent Rents for all Units shall be provided to the Developer by the County prior to initial or subsequent occupancy and prior to a rent increase. Subject to Sections 2.1(e) and 2.2(h), Developer may not impose any Rent increases on any 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 Units may be increased 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. Residents shall be given at least sixty (60) days written notice

prior to any Rent increase. The County will provide Developer 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 Resident's income, the Developer 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 Resident shall be permitted to retain the Unit and shall continue to be charged Extremely Low Income Rent. Upon expiration of the Resident'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 Resident'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 Resident's income, the Developer 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 Resident shall be permitted to retain the Unit and shall continue to be charged Very Low Income Rent. Upon expiration of the Resident's lease for such year and upon sixty (60) days' written notice, the Rent may be increased to the Low Income Rent, and such Resident's Unit may be considered a Low Income Unit; subject to Section 6.18, with 60 days' advance written notice, increase such Resident'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 Resident, and (ii) the fair market rent (subject to 24 C.F.R. 92.252(i)(2) regarding low income housing tax credit requirements); and (2) Rent the next available Unit to 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.

(d) Low Income Household. If, upon recertification of a Resident's income the Developer 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 area AMI), the Resident may continue to occupy the Unit. Upon expiration of the Resident's Lease for such year, the Developer shall:

(1) Subject to Section 6.20, with sixty (60) days' advance written notice, increase such Resident's Rent to the lesser of, (i) one-twelfth (1/12) of thirty percent (30%) of the actual Adjusted Income of the Resident, and (ii) the fair market rent (subject to 24 C.F.R. 92.252(i)(2) regarding low income housing tax credit requirements); and

(2) Rent the next available Unit to 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) Termination of Occupancy. Upon termination of occupancy of a Unit by a Resident, 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 Resident, until such unit is



reoccupied, at which time categorization of the Unit will be established based on the occupancy requirements of Section 2.1 above.

Section 2.4 Units Available to the Disabled. The Developer 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 and be readily accessible and usable by households with a mobility impaired member and a minimum of three (3) Units shall be constructed and be readily accessible and usable by households with a hearing and/or visually impaired member. Not less than thirty (30) days from the Completion of Construction, the Developer shall deliver to the County the certification required pursuant to Section 6.20 of the Disposition Agreement.

Section 2.5 Lease Provisions. Developer shall include in leases for all Units provisions which authorize Developer 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 Household, 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 Household, a 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.

Section 2.6 Condominium Conversion. During the Term of this Agreement, the Developer 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

##### Section 3.1 Income Certification.

(a) The Developer shall obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Resident renting any of the Units (excluding the manager's unit). The Developer 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, the Developer shall take one or more of the following steps as a part of the verification process: (1) obtain a minimum of the three (3) 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 Resident income certifications shall be available to the County upon reasonable written request.

### Section 3.2 Resident Selection.

(a) Before leasing any Units in the Development, the Developer 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") and any modification thereto, as required under Section 7.14 of the Disposition Agreement.

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

Section 3.3 Annual Report to County. The Developer 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 statistical report, including income and rent data for all Units, setting forth the information called for therein, and (b) within fifteen (15) days after receipt of a written request, 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.

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

Section 3.5 Records. The Developer 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 Residents and Rent charged to such Residents. All Resident lists, applications and waiting lists relating to the Development are to be at all times: (a) kept separate and identifiable from any other business of the Developer; (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. The Developer 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; provided however, records pertaining to Resident 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 NSP Term. The Developer is subject to the audit requirements set forth in 24 C.F.R. 92.506 during the NSP3 Term.

Section 3.6 Annual Operating Budget. The Developer , at least thirty (30) days prior to the end of each of Developer's fiscal year, shall furnish the County the Annual Operating Budget for the upcoming calendar year. The Developer and Management Agency shall make available to the County for inspection all books and records with respect to the Development upon reasonable prior written notice from the County. Within ninety (90) days following the end of each calendar year, the Developer 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 (c) within one hundred twenty (120) days following the end of each calendar year, a copy of the Developer's federal income tax filings for the calendar year, all in conformance with the requirements of Section 8.10(c) of the Housing Lease.

Section 3.7 On-site Inspection. The County may perform, or cause to be performed, during normal business hours, an on-site inspection of the Development at least one (1) time per year upon no less than two (2) business days' prior notice to monitor compliance with this Agreement. The Developer agrees to cooperate in making the Development available for such inspection. Developer agrees and acknowledges that during the NSP 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.

Section 3.8 Use of Reserve Funds. The Developer agrees to create and maintain the reserves required by the Approved Financing (as defined in the Disposition Agreement) and the reserves in the amounts approved by the County as part of the Approved Financing Plan submitted by the Developer pursuant to the terms of the Disposition Agreement. The Developer shall notify the County of any withdrawals from the reserve accounts.

Section 3.9 Resident Services Plan. For the entire Term of this Agreement, the Developer shall provide social services programs in accordance with the Services Plan and Services Budget reasonably approved by the County pursuant to Section 7.17 of the Disposition Agreement. The Annual Budget shall show required expenditures of Annual Operating Expenses to fund Resident Services required under the Services Plan.

#### ARTICLE 4. OPERATION OF THE DEVELOPMENT

Section 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 Income Households, Very Low Income Households and Low Income Households, as applicable, in conformity with this 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.

Section 4.2 Compliance with County Documents and Program Requirements. The Developer actions with respect to the Property shall at all times be in full conformity with: (a) all requirements imposed on projects assisted with NSP3 Funds 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 the Development.

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

Section 4.4 Property Tax Exemption. Developer will 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).

Section 4.5 Section 8 Certificate Holders. The Developer will accept as residents, on the same basis as all other prospective residents, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Developer shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective residents, nor shall the Developer 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 Residents.

Section 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 Developer 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 Agreement.

ARTICLE 5.  
PROPERTY MANAGEMENT AND MAINTENANCE

Section 5.1 Management Responsibilities. The Developer is responsible for all management functions with respect to the Development, including without limitation the selection of residents, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County shall have no responsibility over management of the Development. The Developer shall retain a professional property management company, approved by the County in its reasonable discretion, to perform its management duties hereunder. A resident manager shall also be required. Pursuant to Section 7.8 of the Disposition Agreement, the Developer 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 Developer setting forth, in reasonable detail, the reasons for such disapproval. The Developer 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.

Section 5.2 Management Agent; Periodic Reports. Developer 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 Developer shall submit for the County's approval the identity of any proposed Management Agent. The Developer 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 Developer in writing.

Section 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 of Construction. 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 Developer shall cooperate with the County in such reviews.

#### Section 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 deliver notice to the Developer of such operational issues which notice shall describe the County's findings with specificity and the County may, in the same notice, notify the Developer of its intention to cause replacement of the Management Agent, subject to the rights of partners of the Developer. Within thirty (30) days of receipt by the Developer of such written notice, County staff and the Developer, and any partners of the Developer, 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 Developer and the Senior Lenders, the Developer shall promptly dismiss the then current Management Agent, and shall 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 the Developer shall 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 shall constitute a Developer Event of Default under this Agreement, and the County may enforce this provision through legal proceedings as specified in Section 6.7.

Section 5.5 Approval of Management Plan Modifications. Each year, within sixty (60) days of the end of the calendar year, the Developer 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 Developer setting forth, in reasonable detail, the reasons for such disapproval. The Developer 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.

#### Section 5.6 Resident Service Provider.

(a) The Developer will be providing on-site services which Developer will make available to all Residents in the Development (the "Resident Services"). The Developer 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 Resident Services in residential facilities like the Development in an effective manner. The Developer 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 Developer 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.

#### Section 5.7 Property Maintenance.

(a) The Developer 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 similarly situated 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 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 Developer 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 Developer agrees to provide all necessary improvements to assure the Development is maintained in good condition. The Developer shall promptly make all repairs and replacements necessary to keep the Development 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 the Developer breaches any of the covenants contained in this Section and such default continues for a period of seven (7) days after written notice from the County with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the County with respect to landscaping and building improvements, then the County, in addition to whatever other

remedy it may have at law or in equity, shall have the right to enter upon the Property 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 Developer 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 upon the Property and perform all acts and work necessary to protect, maintain, and preserve the Development Improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, 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 Developer 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.

#### Section 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 Developer 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 on the Property and/or contact the San Bernardino County Sheriff's Department if it becomes aware of or is notified of any conditions that pose a danger to the peace, health, welfare or safety of the Residents and/or the surrounding community, and to perform or cause to be performed such acts as are necessary to correct the condition.

Section 5.9 Crime Prevention Program. For the entire Term of this Agreement, the Developer shall cause the Management Agent to participate in the San Bernardino County Sheriff-Coroner Department's Crime Free Multi-Housing Unit 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 5.8 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.

Section 5.10 Insurance. The Developers shall maintain the insurance coverage required under Section 7.11 of the Disposition Agreement throughout the Term.

## ARTICLE 6. MISCELLANEOUS

Section 6.1 Term. The provisions of this Agreement shall apply to the Property for the entire Term even if the entire County Loan is paid in full prior to the end of the Term. this Agreement shall bind any successor, heir or assign of Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the County. The County makes the County Loan on the condition, and in consideration of, this provision, and would not do so otherwise. For the purposes of the NSP3 Regulations, the Development shall only be considered a HOME assisted project for the duration of the NSP Term, and nothing in this Agreement may be read to imply otherwise.

Section 6.2 Lease Provisions. In newly leasing the Units within the Development, Developer shall use a form of written lease reasonably approved by the County. The lease must not contain any provision which is prohibited by 24 C.F.R. 92.253(b) and any amendments thereto. The form of lease must comply with all requirements of this Agreement, and must, among other matters:

(a) Provide for termination of the lease for failure to: (1) provide any information required under this Agreement or reasonably requested by Developer to establish or recertify the Resident's qualification, or the qualification of the Resident'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, a Very Low Income Household, or a Low Income Household, as applicable, as a result of any material misrepresentation made by such Resident with respect to the income computation.

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

(c) Include a provision which requires a Resident who is residing in a Unit required to be accessible pursuant to Section 7.20 of the Disposition Agreement 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 Resident or prospective Resident is in need of an accessible Unit.

Section 6.3 Lease Termination. Any termination of a lease or refusal to renew a lease for a Unit within the Development must be preceded by prior written notice (specifying the grounds for the action) from the Developer to the Resident 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 NSP3 Term. Any termination of a lease for a default of the Tenant shall be in accordance with all applicable laws.

Section 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. Developer shall not give preference to any particular class or group of persons in renting the Units, except to the extent that the Units are required to be leased to income eligible households pursuant to this Agreement. 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), disability, ancestry, age, or military and veteran status, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Developer or any person claiming under or through the Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of residents, 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. Developer 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. All deeds, leases or contracts made or entered into by Developer as to the Units or the Development or portion thereof, shall contain covenants concerning discrimination as prescribed by the Disposition Agreement.

Section 6.5 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Developer shall provide by first-class mail, postage prepaid, a notice to all Residents 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 Resident will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Developer 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, Developer 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; (4) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

Section 6.6 Covenants to Run With the Land. The County and Developer 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 such 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.

Section 6.7 Enforcement by the County. If Developer fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the County has notified the Developer 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 Promissory Note, accelerate the indebtedness evidenced by the Promissory 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 the Developer'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 the Developer.

Section 6.8 Attorney's 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 attorney's fees. This section must be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

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

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

Section 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.

Section 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.

Section 6.13 Notice.

(a) Formal notices, demands, and communications between 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

Developer:

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 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.

Section 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.

Section 6.16 Hold Harmless. The Developer 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 Developer'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 Property from the burdens of this Agreement, and the provisions of this section shall remain in full force and effect

Section 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 the Developer), obtains an ownership interest in the Development or Property.

Section 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.

Section 6.19 Subordination. This Agreement shall not be subordinated.

Section 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 Developer.

Section 6.21 No Claims. Nothing contained in this Agreement shall create or justify any claim against the County by any person that the Developer may have employed or with whom the Developer 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.

Section 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.

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

Section 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.

**[Signature Page Follows]**

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

DEVELOPER:

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 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

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

PROPERTY DESCRIPTION

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

ATTACHMENT F

EXHIBIT F

UPDATED AMENDED AND RESTATED PROMISSORY NOTE

## EXHIBIT "F"

### AMENDED AND RESTATED PROMISSORY NOTE (Las Terrazas-County Loan)

\$4,995,289

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 Four Million Nine Hundred Ninety-Five Thousand Two Hundred Eighty-Nine (\$4,995,289) (the "County Loan"), or so much as is disbursed to Borrower, plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This amended and restated promissory note (the "Note") evidences the Borrower's obligation to pay the County the principal amount of up to Four Million Nine Hundred Ninety-Five Thousand Two Hundred Eighty-Nine (\$4,995,289), for funds loaned to the Borrower by the County to finance the acquisition of a leasehold interest, development and construction of the Affordable Development pursuant to that certain First Amended and Restated Disposition, Development and Loan Agreement between the County and the Borrower, dated as of January 7, 2020, as amended by that certain First Amendment to First Amended and Restated Disposition, Development and Loan Agreement, dated as of November 17, 2020, as such may be amended from time to time (the "Disposition Agreement"). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the Disposition Agreement.

2. Interest.

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

(b) Default Rate. In the event of a Default, interest on the County Loan shall begin to accrue, as of the date of Default and continuing until such time as the County 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 County Loan shall commence on the date of this Note and shall expire fifty-seven (57) years from the Housing Lease commencement date, but in no event later than December 31, 2077.

(b) This Note shall be due and payable as set forth in Section 3.5 of the Disposition Agreement. Repayment of this Note shall be non-recourse to the Borrower pursuant to Section 3.11 of the Disposition Agreement. Each of the Disposition Agreement sections cited in this subsection (b) are incorporated herein by this reference.

4. No Assumption. Except as otherwise provided for in the Disposition Agreement, 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 Disposition Agreement.

5. Security. This Note is secured by the Leasehold Deed of Trust recorded against the Borrower's leasehold interest in the Property and is secured by the Assignment Agreement (as defined in the Disposition 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 Community Development and Housing Agency, at 385 North Arrowhead Ave., Third Floor, San Bernardino, CA 92415-0140, Attention: Community Development and Housing Agency 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 re-conveyance 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 9.4(a) of the Disposition Agreement; and

(3) The occurrence of any Event of Default under the Disposition Agreement, the Leasehold Deed of Trust, the Regulatory Agreement, the Disposition Agreement, or other 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 Disposition Agreement or the Leasehold Deed of Trust, subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of such an Event of Default, 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 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 Disposition 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 provision 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 County Loan Documents (as defined in the Disposition Agreement), contains the entire agreement between the parties as to the County Loan. This Note may not be modified except upon written consent of the parties.

10. Cancellation of all Previous Notes. This Note replaces, supersedes, and makes null and void any other promissory notes previously executed by the Borrower, in favor of Holder, including a promissory note dated February 20, 2013 for \$850,000, a promissory note dated February 12, 2013 in the amount of \$2,266,000, and a promissory note date January 7, 2020 in the amount of \$3,042,000, all of which are hereby cancelled.

*[Signature Page Follows]*

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

ATTACHMENT G

EXHIBIT G

UPDATED FORM OF LEASEHOLD DEED OF TRUST

**EXHIBIT “G”**

[ADD COUNTY RECORDER'S COVER SHEET]

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

## EXHIBIT "G"

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

THIS LEASEHOLD DEED OF TRUST WITH ASSIGNMENT OF RENTS AND SECURITY AGREEMENT ("Leasehold Deed of Trust") is made as of November 17, 2020, by and among AMCAL Las Terrazas Fund, L.P., a California limited partnership ("Trustor"), Commonwealth National 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 the 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 County Note (defined in Article 1 below) until paid or cancelled and any other amounts owing under the County Loan Documents (defined in Section 1.2 below). Said principal and other payments shall be due and payable as provided in the County Note. Said County 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 County Loan Documents; and

(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 "Disposition and Loan Agreement" means that certain First Amended and Restated Disposition, Development and Loan Agreement by and between Trustor and Beneficiary, dated as of January 7, 2020, as amended by that certain First Amendment to First Amended and Restated Disposition, Development and Loan Agreement, dated as of November 17, 2020, as such may be amended, providing for the Beneficiary to loan to the Trustor up to Four Million Nine Hundred Ninety-Five Thousand Two Hundred Eighty-Nine (\$4,995,289) for the development of the Property.

Section 1.2 "County Loan Documents" means this Leasehold Deed of Trust, the Note, the Disposition and Loan Agreement, the Regulatory Agreement, the Housing Lease, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

Section 1.3 "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 1.4 "Note" means that certain Amended and Restated Promissory Note in the principal amount not to exceed Four Million Nine Hundred Ninety-Five Thousand Two Hundred Eighty-Nine (\$4,995,289), dated as of November 17, 2020, 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 1.5 "Principal" means the amount required to be paid under the Note.

Section 1.6 "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 1.7 "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 County 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 County 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 County 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 Loan 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 covenants 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 County 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 County 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 3.10 of the Disposition and 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 County 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 County 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 Disposition and 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 County 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 County 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 Disposition and 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 County 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 County Loan Documents; (b) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the County 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 County 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 County 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 County 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 County 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 County 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:

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:

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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:

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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)