

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL DOCUMENT TO:

NAME

STREET  
ADDRESS

CITY, STATE &  
ZIP CODE

SPACE ABOVE FOR RECORDER'S USE ONLY

Regulatory Agreement and Declaration of Restrictive Covenants

Title of Document

**THIS AREA FOR  
RECORDER'S  
USE ONLY**

THIS COVER SHEET ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(\$3.00 Additional Recording Fee Applies)

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

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

**RECITALS**

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

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

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

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

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

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

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

## ARTICLE 1 DEFINITIONS; EXHIBITS

### 1.1 Definitions.

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

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

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

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

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

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

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

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

(h) "Completion Date" means the date that all of the following have occurred: (1) a temporary or final certificate of occupancy, or equivalent document is issued by the County to certify completion of the construction of the Improvements; (2) the final disbursement of HOME Funds for the Development has been made; (3) the County has verified the Development complies with the property standards set forth in 24 C.F.R. 92.251; and (4) all project completion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 1.2 Exhibits

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

- Exhibit A: Legal Description of the Property
- Exhibit B: Schedule of HOME Rents
- Exhibit C: Certificate of Continuing Program Compliance
- Exhibit D: Form of Certification of Tenant Eligibility
- Exhibit E: Uniform Physical Conditions Standard

## ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

### 2.1 Occupancy Requirements.

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

(a) Extremely Low Income Units. During the Term, six (6) one-bedroom Units, shall be rented to and occupied by or, if vacant, available for occupancy to, Extremely Low Income Households; these Units shall be considered HOME-Assisted Units.

(b) Very Low Income Units. During the Term, twelve (12) one-bedroom Units, eleven (11) two-bedroom Units and four (4) three-bedroom Units, shall be rented to or occupied by, or if vacant, available for occupancy to, Very Low Income Households, these Units shall be considered HOME-Assisted Units.

(c) Low Income Units. During the Term, fifteen (15) one-bedroom Units shall be rented to or occupied by, or if vacant, available for occupancy to, Low Income Households; these Units shall be considered HOME-Assisted Units.

(d) Intermingling of Units. The HOME-Assisted Units are required to be intermingled throughout the Development and of comparable quality to all other Units. All Tenants must have equal access to and enjoyment of all common facilities in the Development.

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

(f) Foreclosure Occupancy Requirements. Notwithstanding anything to the contrary contained in this Agreement, in the event of a foreclosure (or deed in lieu of foreclosure) of an approved or permitted Senior Lien (as defined in the Loan Agreement) or in the event that any project-based rental assistance or operating subsidy to the Property is terminated, substantially reduced or not renewed, then the occupancy requirements set forth in Section 2.1(c) above with respects to Units required to be occupied or available to Low Income Households shall be of no further force and effect. Nothing in this subsection (f) shall be read to reduce or otherwise change the Borrower's obligations to continue to comply with the

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

## 2.2 Allowable Rent.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

(c) Increased Income Over Very Low Income but Below Low Income Limit.

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

(d) Low Income Household. If, upon recertification of a Tenant's income the

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

(e) Non-Qualifying Household. If, upon the annual certification of the

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

(f) Termination of Occupancy. Upon termination of occupancy of a HOME-

Assisted Unit by a Tenant, such Unit will be deemed to be continuously occupied by a household

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

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

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

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

### ARTICLE 3 INCOME CERTIFICATION AND REPORTING

#### 3.1 Income Certification.

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

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

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

### 3.2 Tenant Selection.

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

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

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

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

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

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

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

3.8 On-Site Inspection.

(a) The County may perform, or cause to be performed, during normal business hours, an on-site inspection of the Development (including HOME-Assisted Units, subject to the rights of Tenants) at least one (1) time per year upon no less than two (2) business days' prior written notice to Borrower to monitor compliance with this Agreement. Borrower shall cooperate in making the Development available for such inspection. Borrower agrees and acknowledges that during the HOME Term the County must conduct on-site inspections, consistent with the requirements of 24 C.F.R. 92.504(d), to determine compliance with the property standards set forth in 24 C.F.R. 92.251, at least once every three (3) years after the Completion of Construction of the Improvements or as otherwise required under 24 CFR 200.285. Such right to annually inspect the Development shall be in addition to the County's right to inspect the Development in accordance with the County's code as may be amended from time to time.

(b) After the completion of an inspection the County shall deliver a copy of the Uniform Physical Conditions Standards inspection report to the Borrower. If the

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

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

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

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

#### ARTICLE 4 OPERATION OF THE DEVELOPMENT

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

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

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

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

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

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

## ARTICLE 5 PROPERTY MANAGEMENT, MAINTENANCE AND TENANT SERVICES

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

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

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

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

5.4 Replacement of Management Agent.

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

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



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

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

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

5.6 Tenant Service Provider.

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

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

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

## 5.7 Property Maintenance.

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

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

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

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

## 5.8 Safety Conditions.

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

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

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

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

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

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

## ARTICLE 6 MISCELLANEOUS

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

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

## 6.2 Lease Provisions.

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

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

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

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

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

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

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

expression, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry, or disability, age, or military and veteran status, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor will Borrower or any person claiming under or through Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit. Borrower shall, to the extent applicable, comply with Executive Orders 11246, 11375, 11625, 12138, 12431, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

#### 6.5 Notice of Expiration of Term.

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

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

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

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

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

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

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

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

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

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

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

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

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

6.13 Notices.

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

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

County:

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

with a copy to:

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

Borrower:

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

With a copy to:

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

with a copy to:

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

with a copy to:

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

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt will be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

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

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

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

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

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

6.19 Subordination. This Agreement shall not be subordinated.



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

6.21 No Claims. Nothing contained in this Agreement shall create or justify any claim against the County by any person that the Borrower may have employed or with whom the Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction or operation of the Improvements.

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

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

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

*[Remainder of Page Left Intentionally Blank]*

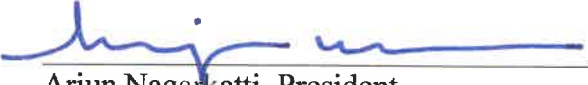
IN WITNESS WHEREOF, the County and Developer have executed this Agreement by duly authorized representatives, all on the date first written above.

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]*

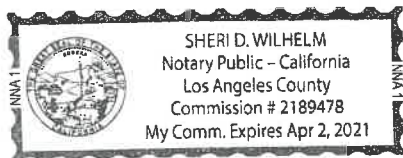
## CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

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 11-10-2020, 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 whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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



PLACE NOTARY SEAL ABOVE

WITNESS my hand and official seal.

SIGNATURE

A handwritten signature in blue ink, appearing to read "Sheri D. Wilhelm", written over a horizontal line.

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

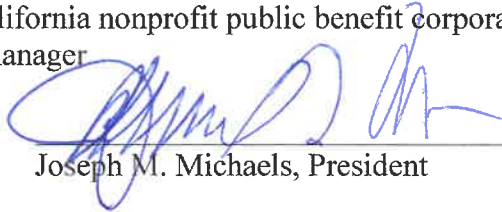
By: AMCAL FNMA LLC,  
a California limited liability company,  
its administrative general partner

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]**

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

STATE OF CALIFORNIA )

COUNTY OF San Diego )

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

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

WITNESS my hand and official seal.

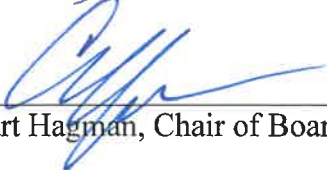


Ryan Jason Monty  
Name: Ryan Jason Monty  
Name: Notary Public

**COUNTY:**

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

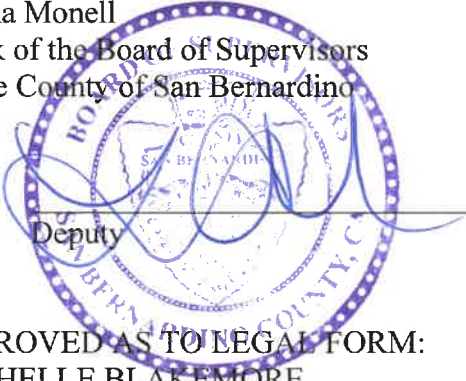
By:

  
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

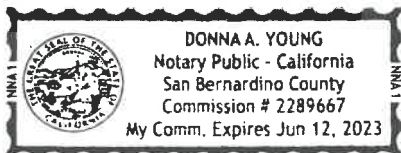
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF 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

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

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

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

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

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

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

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

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

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

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

THENCE SOUTH 94 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE WESTERLY 45 FEET.

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

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

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

PARCEL C-1:

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

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

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

PARCEL C-2:

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

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



## **EXHIBIT B**

### **HOME PROGRAM RENTS**

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

[Insert current HOME Rents]

**EXHIBIT C**

**INITIAL/ANNUAL CERTIFICATE OF  
PROGRAM COMPLIANCE**

## EXHIBIT D

### FORM OF CERTIFICATION OF TENANT ELIGIBILITY

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

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

| 1.                                  | 2.                                   | 3.  | 4.        | 5.                     |
|-------------------------------------|--------------------------------------|-----|-----------|------------------------|
| Name of Members<br>in the Household | Relationship to<br>Head of Household | Age | Ethnicity | Place of<br>Employment |
|                                     |                                      |     |           |                        |
|                                     |                                      |     |           |                        |
|                                     |                                      |     |           |                        |
|                                     |                                      |     |           |                        |
|                                     |                                      |     |           |                        |
|                                     |                                      |     |           |                        |

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

Date of Occupancy of Rental Unit by Tenant: \_\_\_\_\_  
Date of Lease Signed for Rental Unit by Tenant: \_\_\_\_\_  
Amount of Rent Paid Per Month: \_\_\_\_\_  
Certification Date (Earlier of Date of Occupancy or Date Lease signed): \_\_\_\_\_

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

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

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

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

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

(a) the total value of all such assets owned by all such persons: \$\_\_\_\_\_, and

(b) the amount of income expected to be derived from such assets in the twelve (12) month period commencing this date: \$\_\_\_\_\_.

**8. Students**

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

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

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

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

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

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

**(Signature Must be Notarized)**

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

STATE OF CALIFORNIA )

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

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

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

WITNESS my hand and official seal.

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

FOR COMPLETION BY DEVELOPMENT OWNER ONLY:

A. Calculation of eligible income:

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

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

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

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

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

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

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

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

G. Applicant:

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

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

EXHIBIT E

UNIFORM PHYSICAL CONDITION STANDARDS  
INSPECTION REPORT