**CDBG LOAN AGREEMENT**

**(Project Title)**

**by and between the**

**CITY OF SAN DIEGO,**

**a California municipal corporation,**

**and**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
a California (nonprofit/limited partnership/liability company)**

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CITY OF SAN DIEGO

CDBG LOAN AGREEMENT   
(Project Title)

This Community Development Block Grant (“**CDBG**”) Loan Agreement (“**Agreement**”)is entered into by and between the City of San Diego, a California municipal corporation (“**City**”),and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (nonprofit/limited partnership/liability company) (“**Developer**”).

In consideration of the promises and covenants of City and Developer set forth in this agreement and other good and valuable consideration, City and Developer agree, as follows:

1. **PURPOSES**. Developer intends to purchase that certain real property located at (Site Address), in the City of San Diego, California, and more specifically defined in Section 2 as the “Property.” Developer intends to use the Property for the new construction/rehabilitation of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, which shall be rent and income-restricted affordable rental units as more specifically defined in Section 2 as the “Project.” The purchase of the Property will be financed by a loan from the City to Developer of up to $\_\_\_\_\_\_\_\_\_\_\_(“City Loan”) in U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant (“CDBG”) funds. Developer intends to operate the Project as an affordable rental housing development in accordance with the “Regulatory Agreement and Declaration of Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing (Project Title) (“Regulatory Agreement”), defined in Section 2, and all applicable law, rules, regulations and conditions of approval from HUD, the City, the various lenders involved with the Project and the terms and conditions of this Agreement. The lending of money to the Developer, Developer’s acquisition of the Property and construction of the affordable rental housing apartments and improvements on the Property, and Developer’s operation of the Project as an affordable rental housing development are all in the vital and best interests of City and the health, safety and welfare of City residents.
2. **DEFINITIONS**. The following words, terms, and phrases are used in this Agreement with the following meanings:
   1. **Acquisition Budget**. The budget set forth in **Exhibit L** attached to this Agreement, as may be amended, subject to City approval, to be reflected as the final Acquisition Budget in accordance with Section 8.3, which is a condition precedent to the Close of Escrow and the funding of the City Loan.
   2. **Acquisition Cost**. The aggregate consideration to be paid by Developer to purchase the Property and certain work product generated for the benefit of the Property in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
   3. **Actual Project Costs**. The actual aggregate cost amount in each of the categories of expenses for the Project set forth in the Project Budget and all other costs related to the Project that are incurred by Developer as determined by a cost certification performed at Developer’s expense by a certified public accountant acceptable to City within six (6) months after issuance of a final Certificate of Occupancy for the entire Project.
   4. **Additional Government Financing**.Any other financing obtained by Developer from a Government Lender to be applied towards Actual Project Costs.
   5. **Affiliate**. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person.
   6. **Affordable Units**. The \_\_\_\_\_\_\_\_\_\_\_ dwelling units to be constructed by Developer on the Property, the rent and occupancy of which shall be restricted for fifty five (55) years as set forth in the Regulatory Agreement.
   7. **Agreement**. This CDBG Loan Agreement by and between City and Developer, including all of the attached exhibits.
   8. **Application**. Any agreement, application, certificate, document or submission (or amendment of any of the foregoing): (a) necessary or appropriate for financing, development, use or operation of the Project, including any application for any building permit, Certificate of Occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision or such other instrument or entitlement necessary for the Project or as Developer may reasonably request; or (b) to enable Developer to seek any Approval or to use or operate the Project in accordance with this Agreement or the Regulatory Agreement.
   9. **Appraisal**. That certain appraisal of the Property by \_\_\_\_\_\_\_\_\_\_\_\_\_\_, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
   10. **Approval**. Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform or complete the construction, development, use or operation of the Project.
   11. **Bankruptcy Law**. Title 11 of the United States Code or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.
   12. **Bankruptcy Proceeding**. Any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.
   13. **Builder**. A California licensed general contractor with experience in construction projects similar to the Project.
   14. **Business Day**. Any weekday on which City is open to conduct regular City functions with City personnel.
   15. **CDBG**. United States Department of Housing and Urban Development Community Development Block Grant program.
   16. **CDBG Funds**. Entitlement grant funds provided to City by HUD under the CDBG program or Program Income received by either City or Developer.
   17. **CEQA**. The California Environmental Quality Act, Public Resources Code sections 21000-21189.70.10.
   18. **CEQA Documents**. Any consistency evaluation, exemption determination, any Negative Declaration (mitigated or otherwise) or any Environmental Impact Report (including any addendum or amendment to, or subsequent or supplemental Environmental Impact Report) required or permitted by any Government, under CEQA, to issue any Approval or to approve this Agreement or the Project.
   19. **Certificate of Occupancy**. A Certificate of Occupancy as defined in the Uniform Building Code, published by the International Conference of Building Officials, as adopted by the City from time to time.
   20. **City.** The City of San Diego, a California municipal corporation, and any assignee of or successor to the rights, powers or responsibilities of the City of San Diego, a California municipal corporation.
   21. **City Deed of Trust.** A deed of trust in substantially the form of **Exhibit E** attached to this Agreement recorded against the Property securing Developer’s obligation to repay the City Loan under the terms of the Developer Note.
   22. **City Loan.** A residual receipts loan from City to Developer in a maximum principal amount not to exceed \_\_\_\_\_\_\_\_\_\_ in CDBG Funds evidenced by the Developer Note and secured by the City Deed of Trust. CDBG Funds provided through the City Loan shall be applied to costs associated solely with the purchase of the Property.
   23. **City Parties.** Collectively, City, the City Council, and all City elected or appointed officials, employees, agents, and attorneys.
   24. **City Title Policy**. An ALTA lender’s title insurance policy issued by the Title Company, with coverage in the amount of the City Loan, insuring the priority of the City Deed of Trust consistent with the order of recording in Section 8.7.1.
   25. **Claim**. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if an Indemnitor improperly fails to provide a defense for an Indemnitee or provides a defense under a reservation of rights, then Legal Costs of the Indemnitee) and any judgment.
   26. **Close of Escrow**. The first date on which the Escrow Agent has filed all of the documents set forth in Section 8.7.1 with the County for recording in the official records of the County in accordance with Section 8.7.1.
   27. **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by Developer/Ownership of Equity Interests, by contract or otherwise. “Controlling” and “Controlled” shall have correlating meanings.
   28. **Cost Certification**. The audited certification prepared by a Certified Public Accountant under generally accepted accounting principles with all disclosures and notes, as required by Title 4, Section 10322 of the California Code of Regulations. The Cost Certification shall reflect all costs, expenditures and funds used for the project, as identified by the certified public accountant, up to the date the Project is placed "in service" (as such term is used in 26 U.S.C. § 42) and include a CTCAC provided sources and uses form reflecting actual total costs incurred up to the date the Project is placed "in service" (as such term is used in 26 U.S.C. § 42).
   29. **County.** The County of San Diego, California.
   30. **CTCAC**. The California Tax Credit Allocation Committee or successor in function.
   31. **Default.** An Escrow Default, a Monetary Default or a Non-Monetary Default.
   32. **Default Interest.** Interest at an annual rate equal to the lesser of: (a) six percent (6%) per annum; or (b) the highest rate of interest, if any, that Law allows under the circumstances.
   33. **Deferred Developer Fee**. The amount remaining of the Developer Fee, not previously disbursed prior to receipt of Form 8609.
   34. **Developer.** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_(nonprofit/limited partnership/liability company), and its assignees and transferees permitted by this Agreement.
   35. **Developer Fee**. An aggregate amount not to exceed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_), or such greater amount as allowed by TCAC or CDLAC, which is to be paid in accordance with Section 12.4.
   36. **Developer Note.** A promissory note in substantially the form of **Exhibit D** attached to this Agreement evidencing Developer’s obligation to repay the City Loan under the terms of such note
   37. **Developer Official Action.** The official action of the directors, managers, partners or other Persons in Control of Developer in substantially the form attached to this Agreement as **Exhibit F** authorizing Developer to enter into and perform this Agreement.
   38. **Developer Parties.** Collectively, Developer and the directors, officers, employees, agents, shareholders, members, managers, and partners of Developer.
   39. **Developer Partnership Agreement**. The agreement of limited partnership organizing and establishing Developer as a legal entity, as such document may be amended or restated.
   40. **Developer Title Policy**. An extended ALTA Developer/Owners’ policy of title insurance issued by the Title Company, with coverage in an amount reasonably determined by Developer, showing title to the Property vested in Developer consistent with the Title Report. If a survey is required to obtain the Developer Title Policy, such survey must be completed by Developer before the Escrow Closing Date and at Developer’s sole cost and expense.
   41. **DOF**. The California Department of Finance.
   42. **Dwelling Unit.** Any one of the \_\_\_\_ residential apartment units in the Project.
   43. **Effective Date**. Defined in Section 3.
   44. **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge relating in any manner to the Project or the Property.
   45. **Environmental Documents.** Any exemption determination, any negative declaration (mitigated or otherwise) or any environmental impact report (including any addendum or amendment to, or subsequent or supplemental environmental impact report) under CEQA, and any categorial exclusion, exemption, environmental assessment, finding of no significant impact, or environmental impact statement under NEPA required or permitted by any Government to issue any Approval, approve this Agreement or approve the Project.
   46. **Environmental Law.** All Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under or about the Property, as now or may at any later time be in effect.
   47. **Escrow.** An escrow conducted by the Escrow Agent for the closing of the City Loan to Developer under this Agreement.
   48. **Escrow Agent.**, or such other Person mutually agreed upon in writing by both City and Developer.
   49. **Escrow Closing Date.** The earlier of: (a) on or before the fifth (5) Business Day following the Escrow Agent’s receipt of written confirmation from both Parties of the satisfaction or waiver of all conditions precedent to the Close of Escrow; or (b) another date mutually agreed upon in writing between the Parties for the Close of Escrow.
   50. **Escrow Closing Statement**. A statement prepared by the Escrow Agent showing, among other things, the Escrow Agent’s estimate of all funds to be deposited or received by City or Developer, respectively, and all charges to be paid by City or Developer, respectively, through the Escrow.
   51. **Escrow Default**. The unexcused failure to submit any document or funds to the Escrow Agent as reasonably necessary to close the Escrow under the terms and conditions of this Agreement, after all other conditions precedent to the Close of Escrow for the benefit of such Party are satisfied or waived by such Party.
   52. **Escrow Opening Date**. The first date on which a copy of this Agreement signed by both City and Developer is deposited with the Escrow Agent and the Escrow is opened, as provided in Section 8.
   53. **Equity Interest.** All or any part of any direct equity or Developer/Ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an Developer/Ownership or equity nature) in any entity, at any tier of Developer/Ownership, that directly owns or holds any Developer/Ownership or equity interest in a Person.
   54. **Event of Default.** The occurrence of any one or more of the following:
       1. *Monetary Default.* A Monetary Default that continues for fifteen (15) calendar days after Notice to the Party in Default specifying in reasonable detail the amount of money not paid and the nature and calculation of each such amount or bond, surety or insurance not provided;
       2. *Escrow Closing Default*. An Escrow Default that continues for seven (7) calendar days after Notice to the Party in Default specifying in reasonable detail the document or funds not submitted, subject to force majeure delays;
       3. *Bankruptcy or Insolvency.* Developer admits in writing that Developer is unable to pay Developer’s debts as they become due or Developer becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Developer’s assets or Developer’s interest in this Agreement, the Property or the Project (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within ninety (90) days);
       4. *Transfer.* The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Agreement; or
       5. *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Section 2.56.3 or Section 2.56.4, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of such a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of a Notice of Default, the Party asserted to be in Default shall only be in Default if such Party does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.
       6. *Tax Credit Investor Cure Rights.* Following admission of the Tax Credit Investor as limited partner of Developer, a copy of any Notice of Default delivered to Developer shall also be delivered to the Tax Credit Investor at the address provided to the City by such Tax Credit Investor in writing. The Tax Credit Investor shall have the right, but not the obligation, to cure the Event of Default in the time periods provided to Developer. City will accept a cure from the Tax Credit Investor with the same force and effect as a cure by Developer.
   55. **Federal.** Relating to or arising from the authority of the federal government of the United States of America.
   56. **Government.** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, City or otherwise) whether now or later in existence.
   57. **Hazardous Substance.** Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, any matter, waste or substance that is subject to any Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source or in the regulations adopted by Law; provided, however, Hazardous Substance shall not include any household chemical products in normal quantities used for operation and maintenance of the Project in compliance with Law.
   58. **Hazardous Substance Discharge.** Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property, or that arises at any time from the construction, installation, use or operation of the Project or any activities conducted at, on, under or from the Property, whether or not caused by a Party.
   59. **HUD National Objective Term.** In compliance with 24 C.F.R. § 570.505, the term beginning when CDBG funds are first spent for the Property and continuing until five years after the City provides Notice to Developer that: (1) the HUD National Objective Report to be provided by Developer under this Agreement is complete and delivered to City, and (2) the City has determined that the Project satisfies a national objective under 24 C.F.R. § 570.208.
   60. **Indemnify.** Where this Agreement states that any Indemnitor shall “Indemnify” any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). **“Indemnified”** shall have the correlative meaning.
   61. **Indemnitee.** Any Person entitled to be indemnified under the terms of this Agreement.
   62. **Indemnitor.** A Party that agrees to Indemnify any other Person under the terms of this Agreement.
   63. **Institutional Lender.** Any of the following: (a) a banking corporation (State or Federal), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (State or Federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority Developer/Owner), Federal or State agency regularly making or guaranteeing mortgage loans, investment bank, a Fortune 500 company, or a corporation established for the purpose of making mortgage loans for affordable rental projects, or (b) any Person that is an Affiliate of or is a combination of any one or more of the Persons described in clause “(a)” of this Section.
   64. **Insurance Documents.** Copies or originals of insurance policies and endorsements evidencing all insurance coverage required to be obtained or maintained by Developer under Section 10.
   65. **Law**. Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Property or the Project, in any way, including relating to any development, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Property or the Project, or otherwise relating to this Agreement or any Party’s rights, obligations or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, including any retroactively-applicable law, subject in all cases, however, to any applicable waiver, variance or exemption.
   66. **Legal Costs.** In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses and consultant and expert witness fees and expenses.
   67. **Lender.** The holder of any Security Instrument and such holder’s successors and assigns.
   68. **Liquidated Damages Amount**. Twenty Thousand Dollars ($20,000).
   69. **Manager Unit(s)**. The \_\_\_\_ Dwelling Unit(s) designated for on-site residential managers or maintenance personnel, which shall remain unrestricted in terms of income or affordability level.
   70. **Mayor.** The Mayor of City or his or her designee or successor in function.
   71. **Monetary Default.** Any failure by either Party to pay, deposit or deliver, when and as this Agreement requires, any amount of money, any bond or surety or evidence of any insurance coverage required to be provided under this Agreement, whether to or with a Party or a Third Person.
   72. **Monitoring Agreement**. That certain “Reporting and Monitoring Agreement (Project Title)” to be entered into by and among the City, the San Diego Housing Commission and Developer to be effective at the Close of Escrow, substantially in the form of **Exhibit M** attached to this Agreement.
   73. **NEPA**. National Environmental Policy Act.
   74. **Non-Monetary Default.** The occurrence of any of the following, except to the extent constituting a Monetary Default or an Escrow Default: (a) any failure of a Party to perform any of such Party’s obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement by a Party, all subject to force majeure delays.
   75. **Notice.** Any consent, demand, designation, election, notice, or request relating to this Agreement, including any Notice of Default. All Notices must be in writing.
   76. **Notice of Affordability Restrictions**.A notice in substantially the form of **Exhibit P** attached to this Agreement to be recorded against the Property concurrently with the Regulatory Agreement.
   77. **Notice of Default.** Any Notice claiming or giving Notice of a Default.
   78. **Notify.** To give a Notice.
   79. **Parties.** Collectively, City and Developer.
   80. **Party.** Individually, either City or Developer, as applicable.
   81. **Performance Schedule.** The schedule for the performance of certain actions by City or Developer set forth in **Exhibit O** attached to this Agreement.
   82. **Permanent Lender.** Any Lender that provides permanent financing to Developer following completion of construction of the Project.
   83. **Permit Ready**. An Approval that is in a position to be issued to Developer by the applicable Government upon payment of applicable fees and assessments, and the posting of required bonds, the costs of which are included in the final Project Budget approved by City.
   84. **Permitted Encumbrance.** Any lien or encumbrance to which the Property is subject when Developer acquires Developer/Ownership of the Property, any and all Laws applicable to the Property, the City Deed of Trust, any Permitted Security Instrument, utility, street or shared driveway easements directly related to the Project, any encumbrance or conveyance made to comply with an Approval for the Project and any other document required or expressly allowed to be recorded against the Property by the express terms of this Agreement or the Regulatory Agreement.
   85. **Permitted Security Instrument.** Any Security Instrument: (a) that encumbers only the Property or any interest in the Property; (b) a copy of which (recorded or unrecorded) is delivered to City promptly after being signed, with a certification by the Lender that the copy is complete and accurate and stating the Lender’s name and notice address; (c) that is held by a Lender, that is an Institutional Lender or a Government Lender, subject to the jurisdiction of the courts of the State, not immune from suit and cannot elect to be immune from suit; and (d) that only secures: (i) the repayment of money used to pay or reimburse the Total Project Costs; or (ii) any Refinancing permitted under the express terms and conditions of this Agreement.
   86. **Person.** Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.
   87. **Prevailing Wage Action.** Any of the following: (a) any determination by the State Department of Industrial Relations or the Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State Department of Industrial Relations or the Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code sections 1720 through 1781, as amended from time to time, or any Federal law regarding prevailing wages, including maintaining certified payroll records under California Labor Code section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity, including under California Labor Code section 1781 or applicable Federal Law.
   88. **Prohibited Encumbrance.** Any lien, Security Instrument, mechanic’s lien, easement, property interest or other encumbrance recorded or asserted against the Property or the Project that is not a Permitted Encumbrance.
   89. **Project.** The \_\_\_\_\_\_ residential apartments with appropriate landscaping, site improvements, and parking (inclusive of \_\_\_\_\_ (\_\_\_) Manager Unit(s)) specifically described in the Project Scope subject to the terms and conditions of all Approvals.
   90. **Project Budget.** The budget set forth in **Exhibit N** attached to this Agreement, as may be amended and provided to the City in accordance the Performance Schedule.
   91. **Project Commencement Date**. The date within thirty-six (36) months following the date of the Close of Escrow when construction of the Project commences.
   92. **Project Completion Date**. The date that is twenty-four (24) months following the closing of the financing for construction of the Project, as may be extended by Unavoidable Delay; in the event of an Unavoidable Delay such Project Completion Date may be extended within a reasonable time in accordance with Section 2.109, or in accordance with section 9.2.3.
   93. **Project Scope**. The scope of development for the Project, attached to this Agreement as **Exhibit G.**
   94. **Property**. That certain real property and improvements described in **Exhibit** **A** attached to this Agreement.
   95. **Punchlist Work**. Construction of an insubstantial nature that, if not completed, will not delay issuance of a final Certificate of Occupancy (or equivalent approval) for the Project by City or materially interfere with use or occupancy of the Project.
   96. **Refinancing**. Any loan secured by a Permitted Security Instrument that Developer obtains from an Institutional Lender for any of the following purposes: (1) to pay off all or a portion of an existing loan secured by a Permitted Security Instrument, where the Lender providing the new loan will disburse loan proceeds to or on behalf of Developer exceeding the amount of principal and interest under the existing loan being paid, plus the amount of any reasonable and customary fees and costs associated with obtaining such new loan that are actually paid by Developer and not rebated or refunded to Developer; (2) disbursing funds to or on behalf of Developer without paying off all or any portion of any existing loan secured by a Permitted Security Instrument; or (3) any loan extension, modification, or equivalent regarding an existing loan to Developer secured by a Permitted Security Instrument that results in the Lender of the existing loan disbursing additional loan proceeds to or on behalf of Developer in excess of the original principal amount of the loan.
   97. **Release of Construction Covenants.** City’s written certification that the Project is complete in accordance with the terms and conditions of this Agreement, substantially in the form of **Exhibit B** attached to this Agreement.
   98. **Regulatory Agreement**. That certain “Regulatory Agreement and Declaration of Covenants, Conditions and Restrictions (Project Title)” to be entered into by and between City and Developer and recorded against the Property, substantially in the form of **Exhibit** **C** attached to this Agreement. The Regulatory Agreement shall be senior to all Security Instruments, except as explicitly provided in this Agreement.
   99. **Security Instrument**. Any security instrument, deed of trust, security deed, contract for deed, deed to secure debt or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Property, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned or supplemented from time to time, unless and until paid, satisfied and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Lender (as applicable), then all such security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a security instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.
   100. **State**. The State of California.
   101. **Tax Credit Equity**. The amount to be paid by the Tax Credit Investor to acquire substantially all the Equity Interests in Developer, subject to adjustment in accordance with the terms of Developer’s amended and restated limited partnership agreement.
   102. **Tax Credit Investor**. The Person that provides the Tax Credit Equity. The Tax Credit Investor shall be subject to the reasonable approval of the City. In no event may the Tax Credit Investor be an Affiliate of Developer.
   103. **Tax Credits**. An allocation from CTCAC of State or Federal low income housing tax credits in the amount specified in the Project Budget to finance a portion of the Project, all in accordance with Section 42 of the United States Internal Revenue Code of 1986, as amended, all associated United States Internal Revenue Service regulations, State law and all associated CTCAC regulations.
   104. **Third Person.** Any Person that is not a Party, an Affiliate of a Party or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.
   105. **Title Report**. The Preliminary Title Report No. \_\_\_\_\_\_\_\_\_\_\_, dated \_\_\_\_\_\_, in accordance with Section 8.3, as a condition precedent to the Close of Escrow, which Developer has received prior to the Effective Date.
   106. **Title Company**., \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a California corporation, or such other Person mutually agreed upon in writing by both City and Developer.
   107. **Total Project Costs**.All of the costs set forth in the Project Budget.
   108. **Transfer.**Regarding any property, right or obligation, any of the following, whether by operation of law or otherwise, whether voluntary or involuntary and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale or other transfer, whether direct or indirect, of all or any part of such property, right or obligation or of any legal, beneficial or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale or other transfer of any Equity Interest(s) in the Developer/Owner of such property, right or obligation by or among the holder(s) of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “(b)” or “(c)” of this Section 2.108, shall be deemed a Transfer by Developer, even though Developer is not technically the transferor. A “Transfer” shall not, however, include any of the following (provided that the other Party has received Notice of such occurrence) relating to the Property or any Equity Interest: (i) a mere change in form of Developer/Ownership with no material change in beneficial Developer/Ownership and which constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a conveyance only to any Person that, as of the Effective Date, holds an Equity Interest in the Person whose Equity Interest is being transferred; (iv) making of a Permitted Security Instrument; (v) issuance of previously unissued or new Equity Interests in Developer that increases the amount of outstanding Equity Interests in Developer by less than ten percent (10%); (vi) the admission of a non-profit public benefit corporation or a limited liability company in which the nonprofit corporation is the sole member and manager, as a managing general partner or manager or member of Developer to the extent required for Developer to qualify for the welfare exemption from property taxation provided under Section 214(g) of the California Revenue and Taxation Code; (vii) grants of easements required for construction of the Project; (viii) actions taken to comply with any Approvals for the Project; (ix) a transfer of a limited partnership interest to a Tax Credit Investor and thereafter by the Tax Credit Investor of its limited partnership interest in Developer to a syndicated equity fund Controlled by the Tax Credit Investor for purposes of syndication of the Tax Credit Equity or a pledge to its line of credit lender to secure a loan to enable the payment of capital contributions by the Tax Credit Investor; (x) the removal of the general partner of Developer by the Tax Credit Investor in accordance with the terms of the Developer Partnership Agreement and replacement of such general partner with a Person approved by the Mayor, which approval shall not be unreasonably withheld; or (xi) the grant to or exercise by Developer’s general partners of an option or right of first refusal to purchase the Property or the limited partnership interests of the Tax Credit Investor in accordance with the terms of the Developer Partnership Agreement upon the exit of the Tax Credit Investor from the Developer partnership on or around the expiration of the Tax Credit credit period or compliance period under Section 42 of the United States Internal Revenue Code;
   109. **Unavoidable Delay.** A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party’s reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, Government action or inaction, pandemic, regional natural disasters or inability to obtain required materials or labor. Unavoidable Delay shall not include delay caused by a Party’s financial condition or insolvency.
   110. **Uniform Act.** Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91-646, 42 U.S.C. §§ 4601-4655), which covers HUD assisted programs and projects as required by 49 C.F.R. Part 24 and 24 C.F.R. Part 570.
3. EFFECTIVE DATE. This Agreement shall not become effective until the first date on which all of the following events have occurred: (“Effective Date”): (a) City has received three (3) counterpart originals of this Agreement signed by the authorized representative(s) of Developer; (b) City has received the Developer Official Action signed by the authorized representative(s) of Developer; (c) this Agreement has been approved by the City Council; (d) this Agreement has been signed by the authorized representative(s) of City; and (e) this Agreement has been approved as to form by the City Attorney.
4. SUBMISSION OF DEVELOPMENT APPLICATIONS. Developer shall prepare and submit all required Applications, documents, fees, charges or other items (including deposits, funds or sureties in the ordinary course) required for the construction of the Project, under all applicable Laws and Approvals, to each Government for review and approval. Further, Developer shall exercise commercially reasonable efforts to obtain all Approvals for the construction of the Project on the Property from each Government in a Permit Ready status, at least ten (10) days before the Project Commencement Date. Prior to commencement of any part of the construction of the Project, Developer shall obtain all Approvals from each Government required for the construction of the Project.
5. NATIONAL OBJECTIVE CERTIFICATION. Developer certifies that the Project meets one or more of the national objectives for use of CDBG Funds under 24 C.F.R. § 570.208 and will continue to meet one or more of the national objectives for use of CDBG Funds under 24 C.F.R. § 570.208 during the HUD National Objective Term.
6. **NON-REFUNDABLE DEVELOPER DEPOSIT.** Concurrent with Developer’s delivery of this Agreement to City, Developer shall pay $25,000 to City to cover costs incurred by City, in connection with this Agreement. Developer shall not be entitled to any refund or reimbursement of this amount under any circumstances. This payment by Developer to City shall constitute independent and separate consideration paid by Developer for the rights extended to Developer under this Agreement. Developer and City agree that this payment shall be fully earned by City on the Effective Date and shall not be refundable to Developer.
7. **CITY LOAN ESCROW**. The closing of the City Loan shall take place through the Escrow to be administered by Escrow Agent. City shall cause the Escrow to be opened in accordance with this Agreement. Escrow Agent shall promptly confirm the Escrow Opening Date in writing to each of the Parties.
8. JOINT ESCROW INSTRUCTIONS. This Section 8 constitutes the joint instructions of the Parties to Escrow Agent for conduct of the Escrow for the closing of the City Loan. Developer and City shall submit such further escrow instructions consistent with the provisions of this Agreement as may be reasonably required. In the event of any conflict between the provisions of this Agreement and any further escrow instructions, the provisions of this Agreement shall control.
   1. **Escrow Agent Authority**. City and Developer authorize Escrow Agent to:
      1. *Charges*. Pay and charge each Party for its respective share of the applicable fees, taxes, charges, or costs payable by either City or Developer regarding the Escrow;
      2. *Settlement/Closing Statements*. Release each Party’s Escrow Closing Statement to the other Party;
      3. *Document Recording*. File any documents delivered for recording through the Title Company with the office of the Recorder of the County for recordation in the official records of the County, in compliance with the joint instructions of the Parties; and
      4. *Counterpart Documents*. Utilize documents signed by City or Developer in counterparts, including attaching separate signature pages to one version of the same document.
   2. **Developer’s Conditions Precedent to Close of Escrow**. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Developer, Developer’s obligation to close the Escrow shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Developer) of each of the following conditions precedent on or before the Escrow Closing Date:
      1. *Title Policy***.** Title Company is prepared to issue the Developer Title Policy to Developer upon payment of the premium.
      2. *City Escrow Deposits*. City deposits all of the items into Escrow required by Section 8.6;
      3. *Settlement/Closing Statemen***t**. Developer reasonably approves Developer’s Escrow Closing Statement; and
      4. *City Pre-Closing Obligations*. City performs all of City’s material obligations under this Agreement required to be performed by City prior to the Escrow Closing Date.
   3. City’s Conditions Precedent to the Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by City, City’s obligation to make the City Loan and close the Escrow shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by City) of each of the following conditions precedent on or before the Escrow Closing Date:
      1. *Document Approval***.** City has received from Developer and approved all of the documents listed below in this Section 8.3.1 in City’s reasonable discretion. Developer shall deliver draft and final versions of each document listed in this Section 8.3.1 to City in accordance with this Agreement. Further, Developer shall have all of the following described documents completed and signed by all of the Persons required to make such documents operative (if applicable) and shall have delivered true, accurate and legible copies or originals (as specified in this Agreement) of all such documents to City, at least one (1) Business Day before the Escrow Closing Date:
         1. A current Title Report;
         2. All Insurance Documents;
         3. A copy of the Developer Partnership Agreement;
         4. A copy of the final Acquisition Budget; and
         5. Any documents required by HUD.

8.3.2 *Developer Note***.** The Developer Note signed by the authorized representative(s) of Developer has been received by City;

* + 2. *City Title Policy*

. Title Company is prepared to issue the City Title Policy to City upon payment of Title Company’s premium for such policy;

* + 1. *Developer Escrow Deposits*. Developer deposits all of the items into Escrow required by Section 9.3;
    2. *Settlement/Closing Statement*. City reasonably approves City’s Escrow Closing Statement; and
    3. *Developer Pre-Closing Obligation***s**. Developer performs all of Developer’s material obligations under this Agreement required to be performed by Developer on or before the Escrow Closing Date.
  1. **Failure of Conditions Not a Default**. Notwithstanding any provision of this Agreement to the contrary, Developer’s failure to satisfy any of the conditions set forth in Section 8.2 shall not constitute an Escrow Default (or any other type of Default or Event of Default) by Developer under this Agreement, unless Developer fails to exercise reasonable efforts to satisfy the conditions. Notwithstanding any provision of this Agreement to the contrary, City’s failure to satisfy any of the conditions set forth in Section 8.3 shall not constitute an Escrow Default (or any other type of Default or Event of Default) by City under this Agreement, unless City fails to act reasonably regarding the conditions; provided, however, where the City is entitled to act in the City’s sole and absolute discretion, the City’s failure to approve a matter constituting the condition shall not be any type of Default or Event of Default. Nothing in this Agreement is intended to limit City’s legislative or other discretion or result in the exercise of such discretion being a Default or Event of Default.
  2. **Developer’s Escrow Deposits**. Developer shall deposit the following items into Escrow and, concurrently, provide a copy of each document deposited into Escrow to City, at least one (1) Business Day before the Escrow Closing Date:
     1. *Developer Note*. The Developer Note signed by the authorized representative(s) of Developer;
     2. *Regulatory Agreement***.** The Regulatory Agreement signed by the authorized representative(s) of Developer in recordable form;
     3. *City Deed of Trust.*The City Deed of Trust signed by the authorized representative(s) of Developer in recordable form;
     4. *Other Reasonable Items***.** Any other documents or funds required to be delivered by Developer under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow that have not previously been delivered by Developer.
  3. **City’s Escrow Deposits.** City shall deposit the following items into Escrow and, concurrently, provide a copy of each document deposited into Escrow to Developer, at least one (1) Business Day before the Escrow Closing Date:
     1. *City Loan Proceeds***.** Not to exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for disbursement under the Developer Note;
     2. *Regulatory Agreement***.** The Regulatory Agreement signed by the authorized representative(s) of City in recordable form;
     3. *Other Reasonable Items.* Any other documents or funds required to be delivered by City under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow that have not been previously delivered by City.
  4. **Closing Procedure.** Upon Escrow Agent’s receipt of written confirmation from both Developer and City that each of their respective conditions precedent to the Close of Escrow are satisfied or waived, Escrow Agent shall close the Escrow by doing all of the following:
     1. *Recordation and Distribution of Documents.* Filing with the Recorder of the County for recording in the official records of the County regarding the Property in the following order of priority at Close of Escrow: (a) the Regulatory Agreement; (b) the Notice of Affordability Restrictions; (c) the City Deed of Trust; and (d) any other documents to be recorded regarding the Property through the Escrow in accordance with the joint instructions of the Parties. At Close of Escrow, Escrow Agent shall deliver conformed copies of all documents filed for recording in the official records of the County through the Escrow to City, Developer, and any other Person designated in the written instructions of the Parties to receive a conformed copy of each such document. Each conformed copy of a document filed for recording in the official records of the County shall show all recording information. The Parties intend and agree that this Section 8.7.1 shall establish the relative priorities of the documents and interests to be recorded in the official records of the County through the Escrow, by providing for recordation of senior interests prior in time to junior interests, in the order provided in this Section 8.7.1.
     2. *Distribution of Other Documents.* Delivering originals or copies of all documents to be delivered through the Escrow that are not filed for recording (if any) to the Parties and any other Person designated in the written joint escrow instructions of the Parties to receive an original or copy of each such document.
     3. *Funds.*Distributing all funds held by Escrow Agent in compliance with the Escrow Closing Statements approved in writing by City and Developer, respectively.
  5. **Close of Escrow.** The Close of Escrow shall occur on or before the Escrow Closing Date. The Parties may mutually agree to change the Escrow Closing Date by joint written instruction to Escrow Agent. The Mayor is authorized to agree to one or more extensions of the Escrow Closing Date on behalf of City up to a maximum time period extension of one hundred and eighty (180) calendar days, in the aggregate, in the Mayor’s sole and absolute discretion. If for any reason (other than a Default or Event of Default by such Party) the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in Default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering Notice of termination to both the other Party and Escrow Agent. Following any such Notice of termination of this Agreement and cancellation of the Escrow, the Parties and Escrow Agent shall proceed under Section 8.11. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, under this Section 8.8, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 8.8 before the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement, then the Escrow shall close as soon as reasonably possible following the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement.
  6. **Escrow Costs.** Escrow Agent shall notify Developer and City of the costs to be borne by each of them at the Close of Escrow by delivering an Escrow Closing Statement to both City and Developer at least two (2) Business Days before the Escrow Closing Date. Developer shall pay the premium charged by the Title Company for the Developer Title Policy, including any endorsements or other supplements to the coverage of the Developer Title Policy that may be requested by Developer, and the premium charged by the Title Company for the City Title Policy, exclusive of any endorsements or other supplements to the coverage of the City Title Policy that may be requested by City. Developer shall pay all of the fees and other costs as the Escrow Agent may charge for the conduct of the Escrow, all recording fees, documentary transfer taxes and any and all other charges, fees and all taxes levied by each and every Government relative to the conveyance of the Property to Developer.
  7. **Escrow Cancellation Charges.** If the Escrow fails to close due to City’s Default under this Agreement, City shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close due to Developer’s Default under this Agreement, Developer shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close for any reason other than the Default of either Developer or City, Developer and City shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively.
  8. **Escrow Cancellation.** If this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement (other than due to an Event of Default by the other Party), the Parties shall do all of the following:
     1. *Cancellation Instructions***.** The Parties shall, within three (3) Business Days following Escrow Agent’s written request, sign any reasonable Escrow cancellation instructions requested by Escrow Agent;
     2. *Return of Funds and Documents.* Within ten (10) Business Days following receipt by the Parties of a settlement statement of Escrow or title order cancellation charges from Escrow Agent (if any) or within twenty (20) days following Notice of termination, whichever is earlier: (a) Developer or Escrow Agent shall return to City all documents previously delivered by City to Developer or Escrow Agent regarding this Agreement or the Escrow; (b) City or Escrow Agent shall return to Developer all documents previously delivered by Developer to City or Escrow Agent regarding this Agreement or the Escrow; (c) City or Escrow Agent shall, unless otherwise provided in this Agreement, return to Developer all funds deposited in Escrow by Developer, less Developer’s share of customary and reasonable Escrow or title order cancellation charges (if any) in accordance with Section 8.10; and (d) Escrow Agent shall, unless otherwise provided in this Agreement, return to City all funds deposited in Escrow by City, less City’s share of customary and reasonable Escrow or title order cancellation charges (if any) in accordance with Section 8.10.

1. PROJECT DEVELOPMENT.
   1. **Developer’s Covenant to Develop the Project.** Developer covenants to and for the benefit of City that Developer shall commence, pursue, and complete the development of the Project on the Property in accordance with the terms and conditions of this Agreement and the Regulatory Agreement. Developer covenants and agrees, for itself, its successors and assigns, that the Property shall be improved and developed with the Project, in conformity with the terms and conditions of this Agreement, the Regulatory Agreement, and all applicable Laws and Approvals. The covenants of this Section 9.1 shall run with the land comprising the Property, until the earlier of: (a) the date of issuance of a Release of Construction Covenants for the Project; or (b) the twentieth (20th) anniversary of the date of the Close of Escrow.
   2. **Construction Start and Completion of Project.**
      1. *Commencement***.** Developer shall commence construction of the Project no later than the Project Commencement Date. Thereafter, Developer shall diligently proceed to pursue and complete the construction of the Project, in a good and workmanlike manner, in accordance with the terms and conditions of this Agreement, all applicable Laws, and all Approvals.
      2. *Completion.*On or before the Project Completion Date, Developer shall do all of the following:
         1. Record a Notice of Completion, in accordance with Section 8182 of the California Civil Code, for the entirety of the Project;
         2. Request each applicable Government to inspect the Project, as required by all applicable Approvals or Laws;
         3. Address any defects or deficiencies that may be disclosed by any inspection conducted under Section 9.2.2(b) to the satisfaction of the applicable Government; and
         4. Request each applicable Government to issue all final Certificates of Occupancy or other Approvals necessary for the occupancy and operation of the completed Project and take such other actions reasonably required to obtain all such Certificates of Occupancy or other Approvals.
      3. The Project Completion date shall be subject to amendment from time to time upon the mutual agreement of City and Developer. Upon Developer’s request and showing of good cause, the Mayor or their designee may, on behalf of City, and without referring the matter to City Council, extend the Project Completion Date up to 12 additional months.
   3. **Compliance with Laws.** All work performed in connection with the construction of the Project shall comply with all applicable Laws and Approvals.
   4. **Prevailing Wage.** Developer acknowledges and agrees that, because of financing to be obtained by Developer, the Project is subject to prevailing wage rate requirements under San Diego Municipal Code section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861. Developer shall pay prevailing wage rates pursuant to San Diego Municipal Code section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861 for construction work performed under this Agreement cumulatively exceeding $25,000 and for alteration, demolition, repair, and maintenance work performed pursuant to this Agreement cumulatively exceeding $15,000, all as further described in **Exhibit K** attached to this Agreement. Developer acknowledges and agrees that the CDBG Funds obtained by Developer will be used only for acquisition of the Property and do not require compliance with the federal “Davis-Bacon Act” (40 U.S.C. §§ 3141-3144 and 3146-3148), as supplemented by Department of Labor regulations (20 C.F.R. Part 5), for construction contracts in excess of $2,000 Dollars.
   5. **Developer Attendance at City Meetings.** Developer agrees to have one or more of Developer’s employees or consultants who are knowledgeable regarding this Agreement and the construction of the Project, such that such Person(s) can meaningfully respond to City Council or City staff questions regarding the progress of the Project, attend meetings with City staff or meetings of the City Council, when requested to do so by City staff, with reasonable advance Notice to Developer.
   6. **City Right to Inspect Project and Property.** Developer agrees that City shall have the right of reasonable access to the Property, without the payment of charges or fees, during normal construction hours, during the period of construction of the Project upon reasonable advance Notice. Any and all City representatives who enter the Property shall at all times be accompanied by a representative of Developer, while on the Property. Developer shall make a representative of Developer available for this purpose at all times during normal construction hours, upon reasonable advance Notice from City. If in City’s reasonable judgment it is necessary, Developer agrees that City shall have the further right, from time to time, to retain one or more consultants to inspect the Project and verify compliance by Developer with the provisions of this Agreement. Developer acknowledges and agrees that any such City inspections are for the sole purpose of protecting City’s rights under this Agreement, are made solely for City’s benefit, City’s inspections may be superficial and general in nature, are for the purposes of informing City of the progress of the Project and the conformity of the Project with the terms and conditions of this Agreement, and Developer shall not be entitled to rely on any such inspection(s) as constituting City’s approval, satisfaction or acceptance of any materials, workmanship, conformity of the Project with this Agreement or otherwise. Developer agrees to make its own regular inspections of the work of construction of the Project to determine that the progress and quality of the Project and all other requirements of the work of construction of the Project are being performed in a manner satisfactory to Developer.
   7. **Release of Construction Covenants.**Developer may request that City inspect the completed Project and issue a Release of Construction Covenants for the Project following: (1) the issuance of a final Certificate of Occupancy for the Project by City; (2) recordation of a Notice of Completion by Developer or its contractor; (3) certification or equivalent by the project architect that construction of the Improvements (excluding any outstanding Punchlist Work) has been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications; (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic’s liens that have been recorded or stop notices that have been delivered; (5) evidence reasonably satisfactory to City that the Property has been developed in accordance with this Agreement, the Scope of Development, and plans approved by City under this Agreement; and (6) occurrence of the “Occupancy Date” under the Regulatory Agreement. Following City’s receipt of such a written request from Developer for a Release of Construction Covenants, City shall promptly inspect the Project to determine whether or not the Project has been completed in compliance with this Agreement. If City determines that the Project is complete (excluding any outstanding Punchlist Work) and in compliance with this Agreement, City shall issue a Release of Construction Covenants for the Project to Developer. If City determines that the Project is not complete or not in compliance with this Agreement, City shall send Notice to Developer describing with specificity each non-conformity, within fifteen (15) calendar days following City’s receipt of Developer’s written request for a Release of Construction Covenants. The Notice shall also contain City’s opinion of the action(s) Developer must take to obtain a Release of Construction Covenants from City. If the reason for Developer’s failure to complete the Project is confined to the immediate unavailability of specific items or materials for construction or landscaping at a price reasonably acceptable to Developer or Punchlist Work, City may issue a Release of Construction Covenants upon the delivery by Developer to City of a bond, irrevocable standby letter of credit or other security reasonably acceptable to City in an amount representing the fair value of the work on the Project remaining to be completed, as reasonably determined by City.
   8. **Use of the Property.**Developer covenants and agrees for itself, its successors, its assigns, and every successor interest to the Property or any part of the Property, that Developer, such successor, and such assigns shall use the Property only for the uses specified in the Approvals and this Agreement, including all Exhibits to this Agreement, specifically including (i) residential affordable rental units, consisting of the \_\_\_\_\_\_ Dwelling Units; (ii) parking; and (iii) all other uses identified in this Agreement and its Exhibits, and the Approvals, and in a manner which satisfies the Uniform Physical Conditions Standards promulgated by the Department of Housing and Urban Development (24 C.F.R. §5.703), as such standards are interpreted and enforced by City under its normal policies and procedures.
   9. **Uniform Act.** Developer shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 49 C.F.R. Part 24 and 24 C.F.R. Part 570, and applicable HUD program regulations and policy guidance.
      1. Developer shall provide a residential antidisplacement and relocation assistance plan which provides for: (1) one-for-one replacement of occupied and vacant occupiable low- and moderate-income dwelling units demolished or converted to another use in connection with a development project assisted under 24 C.F.R. Parts 570 and 92, and (2) provide relocation assistance for all low- and moderate-income persons who occupied housing that is demolished or converted to a use other than for low- or moderate-income housing, in compliance with Section 104(d) of the Housing and Community Development Act of 1974, as amended, (Pub. L. 93-383, 42 U.S.C. §§ 5301-5321) and 24 C.F.R. Part 42.
      2. Developer shall maintain records in sufficient detail to demonstrate compliance with all statutory and regulatory requirements in this Section 9.9 and shall provide these immediately when requested by the City.
2. REPORTS, FINANCIAL STATEMENTS AND AUDITS. Developer shall supply City with such records and reports as are required and are requested by City to aid in complying with the reports and record keeping provisions, terms and conditions of 24 C.F.R. § 570.506, as amended from time to time, and any and all other requirements of this Agreement.
   1. **HUD National Objective Report**. When the Project has been completed and reached full occupancy of the \_\_\_\_\_\_\_\_\_\_\_ Affordable Units, Developer shall submit to City a report containing demographics and income for the \_\_\_\_\_\_\_\_\_\_\_ Affordable Units, demonstrating that the Project meets one or more of the national objectives for use of CDBG Funds under 24 C.F.R. § 570.208, substantially in the form of **Exhibit Q** attached to this Agreement.
   2. Financial Statements. For each fiscal year that Developer receives CDBG Funds pursuant to this Agreement, Developer shall have audited financial statements prepared by an independent certified public accountant, in accordance with Generally Accepted Accounting Principles (GAAP) and Generally Accepted Government Auditing Standards (GAGAS). Developer shall provide City a copy of Developer’s audited financial statements within six (6) months after the end of Developer’s fiscal year. Audited financial statements shall include all of the following: (a) a balance sheet, income statement, and cash flow statement showing use of revenues and expenditures for all CDBG Funds received by Developer pursuant to this Agreement; (b) a statement certifying compliance with all terms and conditions of this Agreement signed by the Developer Representative; and (c) a statement certifying that all reports and disclosures required from Developer under this Agreement have been completed, signed, and submitted by the Developer Representative.
   3. Audit. If Developer expends $750,000 or more in total federal funding from all sources in a year, Developer shall have an audit conducted in accordance with 2 C.F.R. Subpart F (§§ 200.500 – 200.520) within nine (9) months after the end of Developer’s fiscal year. Developer shall electronically submit a copy of the audit to the Federal Audit Clearinghouse, including the required data collection and reporting package described in 2 C.F.R. § 200.512, within the earlier of thirty (30) calendar days after Developer’s receipt of the audit or nine (9) months after the end of Developer’s fiscal year. Developer must submit a copy of any management letters issued by the auditor for the audit to City within nine (9) months after the end of Developer’s fiscal year.
   4. City and Federal Government Access to Audit Information. Developer shall provide in any agreement Developer enters into with an audit firm that: (a) the audit firm shall provide access for City or the Federal government to the working papers of the auditor(s) who prepare(s) the audit(s) for Developer; and (b) Developer waives any claim of privilege or confidentiality regarding, and consents to and authorizes the audit firm to release to City or the Federal government, any and all information obtained and utilized by such audit firm as the basis of any audit report issued by the audit firm and relating to Developer.
   5. Other Audits. If Developer is subject to an audit from a source other than City, Developer shall provide a copy of the audit to City within thirty (30) calendar days after Developer’s receipt of the audit. City, in its sole and absolute discretion, may conduct a review of any such Third Person audit(s). Developer shall fully cooperate with any such review by City, including providing any and all documentation associated with any such Third Person audit(s) within fourteen (14) calendar days after Notice from City.
   6. Developer Cooperation. Developer shall cooperate with City and any other auditors in any review or investigation of Developer’s conduct or action(s) relating to this Agreement. Failure by Developer to so cooperate shall be a Monetary Default by Developer under this Agreement.
3. PROGRAM INCOME. Program Income is the gross income directly generated from the use of CDBG funds and includes the gross income received from the use or rental of real property acquired by the Developer with the use of CDBG funds, less costs incidental to the generation of income (Residual Receipts, as defined in the Developer Note). Program Income shall be held by Developer and/or returned to the City in accordance with Section 12.5 of this Agreement.
4. PROJECT FINANCING.
   1. **City Loan.** Subject to the terms and conditions of this Agreement, the Developer Note, and the City Deed of Trust, City shall disburse to or for the benefit of Developer an amount not to exceed the original principal amount of the City Loan. As an inducement to City to make the City Loan, Developer has agreed to enter into this Agreement and has agreed to the performance of the terms and conditions set forth in this Agreement. Developer shall apply the City Loan proceeds solely toward payment of the Acquisition Cost in accordance with this Agreement. Developer shall not be entitled to apply any portion of the City Loan proceeds to reimburse Developer for any internal management, administrative, or overhead expenses or for any purpose other than paying a portion of the Acquisition Cost.
      1. *Repayment of City Loan.* Developer shall repay the City Loan under the terms and conditions of the Developer Note. The Developer Note shall be secured by the City Deed of Trust. The City Deed of Trust shall only be subordinate in lien priority regarding the Property to the Regulatory Agreement, the Notice of Affordability Restrictions, a Permitted Security Instrument, and all matters identified in Schedule B of the City Title Policy issued to City.
      2. *Disbursement of City Loan.* The entire principal amount of the City Loan will be deposited into a project account established for disbursement in accordance with the terms and conditions of this Agreement.
      3. *No Other City Financial Assistance.* City shall be under no obligation to contribute any financial assistance to the construction or operation of the Property or the Project other than the City Loan.
   2. **Additional Government Financing****.** The Developer shall obtain the necessary Additional Government Financing, such that when the amount of the available proceeds of the Additional Government Financing are combined with the amount of the proceeds of all other financing sources for the Project, Developer will have sufficient funds to pay all of the Total Project Costs.
   3. **Tax Credit Equity**. Developer shall use best efforts to apply for the Tax Credits in each available round of the CTCAC application cycles for the Tax Credits during 2024, 2025 and 2026 until Developer’s application is successful. Developer will meet and confer with the City if the application is unsuccessful at the end of these cycles. For purposes of this Section 13.3, “best efforts” means Developer has used diligent efforts to submit applications that are timely, complete, responsive and competitive. If Developer fails to use best efforts to apply for the required CTCAC application cycle for the Tax Credits in accordance with this Section 13.3, City shall have the right to terminate this Agreement upon fifteen (15) calendar days’ Notice to Developer.
   4. **Developer Fee.** The Developer shall be entitled to receive the Developer Fee for its services related to development of the Project. The portion of the Developer Fee other than the Deferred Developer Fee may only be paid to the Developer in accordance with the requirements of the Project funding sources. The Deferred Developer Fee shall be paid to Developer from net operating income from the completed Project (except as otherwise specifically provided in this Section 12). Notwithstanding any other provisions of this Agreement, to the extent that the Tax Credit Investor has more restrictive requirements regarding the amount or timing of payment of all or any portion of the Developer Fee than those set forth in this Agreement, the more restrictive requirements shall control.
   5. **Residual Receipts Payments.** Residual Receipts (as defined in the Developer Note) from the operation of the Project shall be paid first to pay any outstanding amount of Developer Fee, until paid in full, then 50% to Developer and 50% to City.
   6. **Only Permitted Encumbrances**. Developer shall not record and shall not allow to be recorded against the Property any Security Instrument, lien or other encumbrance that is a Prohibited Encumbrance. Developer shall remove or cause to be removed any Prohibited Encumbrance made or recorded against the Property or shall assure the complete satisfaction of any such Prohibited Encumbrance to the City’s satisfaction, in the City’s sole and absolute discretion; provided, however, Developer shall have the right to contest the validity of any tax, assessment, lien or charge in good faith. The covenants of Developer set forth in this Section 12.6 regarding the placement of encumbrances on the Property shall run with the land of the Property and bind successive Developer/Owners of the Property, until recording of a Release of Construction Covenants for the Project. After completion of construction of the Project, the restrictions on encumbrance under the Regulatory Agreement shall apply.
   7. **City Right to Discharge Prohibited Encumbrances.** After sixty (60) calendar days’ Notice to Developer of a Prohibited Encumbrance and provided that Developer has not caused such Prohibited Encumbrance to be removed during such time period or is not diligently pursuing removal of such Prohibited Encumbrance, where removal reasonably requires more than sixty (60) calendar days, the City shall have the right, but not the obligation, to satisfy or remove any Prohibited Encumbrance against the Property and receive reimbursement from Developer for any amounts paid or incurred in satisfying or removing any such Prohibited Encumbrance, upon demand. Any amount expended by the City to discharge a Prohibited Encumbrance that is not reimbursed to the City by Developer within thirty (30) calendar days following Notice that such amount is due shall accrue Default Interest from the date of such Notice, until paid in full. Nothing in this Section 12.7, though, shall require Developer to pay or make provisions for the payment of any tax, assessment, lien or charge that Developer is in the process of contesting the validity or amount thereof, in good faith, and so long as such contest does not subject all or any portion of the Property to forfeiture or sale.
5. INSURANCE. Developer shall obtain and maintain, to protect the City Parties against all insurable Claims relating to this Agreement, the Property, or the Project, at the sole cost and expense of Developer, all of the insurance coverage described in Exhibit H attached to this Agreement (or its then reasonably available equivalent) until the issuance of a Release of Construction Covenants for the Project.
6. INDEMNIFICATION.
   1. **City Indemnity Obligations.** City shall Indemnify the Developer Parties against any Claim to the extent such Claim arises from any wrongful intentional act or negligence of the City Parties, but only to the extent that City may be held liable under applicable law for such wrongful intentional act or negligence, and exclusive of any violation of law (including the State Constitution) relating to City’s approval of, entry into, or performance of this Agreement (in accordance with Developer’s assumption of such risks under Section 17.15). Nothing in this Agreement is intended nor shall be interpreted to: (a) waive any limitation on City’s liability, any exemption from liability in favor of City, any claim presentment requirement for bringing an action regarding any liability of City or any limitations period applicable to liability of City, all as set forth in Government Code sections 800, *et seq.,* sections 900, *et seq.,* or in any other law, or (b) require City to Indemnify any Person beyond such limitations on City’s liability.
   2. **Developer Indemnity Obligations.** Developer shall Indemnify the City Parties against any Claim to the extent such Claim arises from or relates to: (a) any wrongful intentional act or negligence of the Developer Parties; (b) any Application made by or at Developer’s request; (c) any agreements that Developer (or anyone claiming by or through Developer) makes with a Third Person regarding this Agreement, the Property or the Project; (d) any worker’s compensation claim or determination relating to any employee of the Developer Parties or their contractors; (e) any Environmental Claim attributable to any action or failure to act by the Developer Parties; or (f) any Prevailing Wage Action.
   3. **Independent of Insurance Obligations.** Developer’s indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Developer’s insurance or other obligations under this Agreement. Developer’s obligation to Indemnify the City Parties under this Agreement is independent of Developer’s insurance and other obligations under this Agreement. Developer’s compliance with Developer’s insurance obligations and other obligations under this Agreement shall not in any way restrict, limit or modify Developer’s obligations to Indemnity the City Parties under this Agreement and are independent of Developer’s obligations to Indemnify the City Parties and other obligations under this Agreement.
   4. **Survival of Indemnification and Defense Obligations.** The obligations of the Parties under this Agreement to Indemnify each other or other Persons shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to any such obligation under this Agreement to Indemnify each other or other Persons are fully, finally, absolutely and completely barred by applicable statutes of limitations.
   5. **Indemnification Procedures.** Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:
      1. *Prompt Notice.* The Indemnitee shall promptly Notify the Indemnitor of any Claim.
      2. ***Selection of Counsel.***The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor’s insurance carrier that is providing coverage for a Claim shall be deemed reasonably acceptable to the Indemnitee, except in the event of a potential or actual conflict of interest, such counsel is reasonably determined by the Indemnitee to be incompetent regarding such representation, or the Indemnitor provides a defense to the Indemnitee under a reservation of rights. Even though the Indemnitor shall defend the Claim, Indemnitee may, at Indemnitee’s option and Indemnitee’s own expense (except where Indemnitor provides a defense to Indemnitee under a reservation of rights, a conflict of interest between Indemnitor and Indemnitee or another Person exists that requires the Indemnitee to be represented by separate legal counsel from Indemnitor’s legal counsel, or Indemnitor’s legal counsel is reasonably determined by the Indemnitee to be incompetent regarding the representation, in each case, Indemnitor shall pay the Legal Costs of Indemnitee’s separate legal counsel), engage separate counsel to advise Indemnitee regarding the Claim and Indemnitee’s defense. The Indemnitee’s separate counsel may attend all proceedings and meetings. The Indemnitor’s counsel shall actively consult with the Indemnitee’s separate counsel, subject to applicable conflict of interest and privileged communication limitations.
      3. *Cooperation.* The Indemnitee shall reasonably cooperate with the Indemnitor’s defense of the Indemnitee.
7. Settlement*.* The Indemnitor may only settle a Claim against an Indemnitee with the consent of the Indemnitee. Any settlement shall procure a complete release of the Indemnitee from the subject Claim, shall not require the Indemnitee to make any payment to the claimant and shall provide that neither the Indemnitee nor the Indemnitor on behalf of the Indemnitee admits any liability.
8. REMEDIES AND INDEMNITY
   1. **PRE-CLOSING LIQUIDATED DAMAGES TO CITY.** DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, SUBJECT TO ALL APPLICABLE NOTICE AND CURE PERIODS, CITY MAY CANCEL THE ESCROW AND TERMINATE THIS AGREEMENT. UPON CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT, CITY SHALL BE RELIEVED OF ALL OBLIGATIONS OF CITY UNDER THIS AGREEMENT, INCLUDING THE OBLIGATION TO MAKE THE CITY LOAN TO DEVELOPER. ANY SUCH ESCROW CANCELLATION AND TERMINATION OF THIS AGREEMENT SHALL BE WITHOUT ANY LIABILITY OF CITY TO DEVELOPER OR ANY OTHER PERSON ARISING FROM SUCH ACTION. CITY AND DEVELOPER ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY CITY, IN THE EVENT OF A CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES CITY WOULD SUFFER, IN THE EVENT OF A CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, CITY AND DEVELOPER AGREE THAT A REASONABLE ESTIMATE OF CITY’S DAMAGES IN SUCH EVENT IS THE LIQUIDATED DAMAGES AMOUNT (AS DEFINED IN SECTION 2.71 OF THIS AGREEMENT). THEREFORE, UPON THE CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT BY CITY DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW, THE ESCROW AGENT SHALL IMMEDIATELY CANCEL THE ESCROW AND THE PARTIES AND ESCROW AGENT SHALL PROCEED IN ACCORDANCE WITH SECTION 8.11. ALSO, DEVELOPER SHALL PAY THE LIQUIDATED DAMAGES AMOUNT TO CITY, WITHIN FIVE (5) DAYS FOLLOWING ESCROW CANCELLATION. RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT SHALL BE CITY’S SOLE AND EXCLUSIVE REMEDY UPON THE CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW; PROVIDED, HOWEVER, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, CITY SHALL HAVE THE RIGHT TO RECOVER CITY’S LEGAL COSTS INCURRED IN COLLECTING THE LIQUIDATED DAMAGES AMOUNT, IN ADDITION TO THE LIQUIDATED DAMAGES AMOUNT.

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| ***Initials of Authorized***  ***City Representative***  ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** | ***Initials of Authorized***  ***Developer Representative***  ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** |

* 1. **LIMITATION ON DAMAGES.** UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR ANY SPECULATIVE, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFITS SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED.
  2. **Legal Actions.** Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages, subject to the provisions of Section 16.1 and Section 16.2.
  3. **Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same Default or the same rights or remedies for any other Default by the other Party

1. **GENERAL PROVISIONS**
   1. **Compliance with City Standard Contract Provisions**. Developer shall comply with the City’s standard contract provisions set forth in **Exhibit I** attached to this Agreement.
   2. **Compliance with Federal Contract Provisions.** Developer shall comply with the federal contract provisions set forth in **Exhibit J** attached to this Agreement.
   3. **Notices, Demands and Communications between the Parties**. Any and all Notices and communications required or permitted by this Agreement must be in writing and may be sent by (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, as designated in this Section 16.3 or (iv) electronic transmission, including email (which shall be followed by a hard copy delivered in accordance with one of the preceding clauses (i) through (iii) or via regular U.S. mail, unless the hard copy is waived by reply email from a named recipient representing the recipient Party in response to a Notice email). To conserve resources and reduce administrative burden, the Parties intend to deliver Notices and communications via email, and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. Any Notice shall be deemed received by the addressee, on the Business Day that the Notice is sent by messenger for immediate personal delivery and received at the notice address before 5:30 p.m. Pacific Time, on the Business Day the notice is transmitted electronically and received at the Notice address before 5:30 p.m. Pacific Time, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or two (2) Business Days after the Notice is placed in the United States mail (regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt). Any attorney representing a Party may give any Notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to any Notices or communications delivered via email. The Notice addresses for the Parties, as of the Effective Date, are as follows:

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| To Developer: | [Company name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  [address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  [address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ]  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| With a Copy to: | [Company name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  [address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  [address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ]  Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| To City: | City of San Diego  1200 Third Avenue, 14th Floor  San Diego, CA 92101  Attention: CDBG Loan – (Project Title) |
| With a Copy to: | City Attorney  City of San Diego  1200 Third Avenue, Suite 1620  San Diego, CA 92101 |

* 1. **Relationship of Parties.** The Parties each intend and agree that City and Developer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture or similar business arrangement, relationship or association between them.
  2. **Warranty against Payment of Consideration for Agreement.** Developer represents and warrants to City that: (a) Developer has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Developer and Third Persons to whom fees are paid for professional services related to planning, design or construction of the Project or documentation of this Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Developer or any of Developer’s agents, employees or representatives to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 17.5 shall entitle City to terminate this Agreement immediately without liability, and cancel the Escrow (if open) upon seven (7) days’ Notice to Developer and, if the Escrow is open, to Escrow Agent. Upon any such termination of this Agreement, Developer shall immediately refund any payments made to or on behalf of Developer by City pursuant to this Agreement prior to the date of such termination.
  3. **No Discrimination or Segregation.** Developer covenants by and for itself and all Persons claiming under or through Developer that this Agreement is made and accepted upon and subject to the following conditions:
     1. *Standards.* 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 Property or the Project, nor shall Developer or any Person claiming under or through Developer 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 Property or the Project.
     2. *Interpretation.* With respect to familial status, Section 17.6.1 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 Section 17.6.1 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 Section 17.6.1.
  4. **Non-liability of City Officials and Employees.** No elected official or employee of City shall be personally liable to Developer, or any successor in interest to Developer, in the event of any Default by City under this Agreement or for any amount that may become due to Developer or to Developer’s successor on any obligations under the terms of this Agreement, except to the extent resulting from the negligence or willful misconduct of such elected official or employee.
  5. **Inspection of Books and Records.** Subject to other rights of the City under this Agreement or Law to obtain or receive information from Developer, City shall have the right at all reasonable times, at City’s cost and expense, to inspect the books and records of Developer pertaining to the Property or the Project. City shall not disclose proprietary information of Developer to Third Persons, unless required by law or otherwise resulting from or related to the pursuit of any remedies or the assertion of any rights of City under this Agreement.
  6. **Calculation of Time Periods.** Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.
  7. **Principles of Interpretation.** No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words “include” and “including” in this Agreement shall be construed to be followed by the words: “without limitation.” Each collective noun in this Agreement shall be interpreted as if followed by the words “(or any part of it),” except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word “or” in this Agreement includes the word “and,” except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.
  8. **Governing Law.** The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.
  9. **Unavoidable Delay; Extension of Time for Performance**.
     1. *Notice***.** Subject to any specific provisions of this Agreement stating that they are not subject to Unavoidable Delay or otherwise limiting or restricting the effects of an Unavoidable Delay (if any), performance by either Party under this Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.
     2. *Assumption of Economic Risks.*EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY’S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

|  |  |
| --- | --- |
| ***Initials of Authorized***  ***City Representative(s)***  ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** | ***Initials of Authorized***  ***Developer Representative(s)***  ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** |

* 1. **Tax Consequences.** Developer acknowledges and agrees that Developer shall bear any and all responsibility, liability, costs or expenses connected in any way with any tax consequences experienced by Developer related to this Agreement.
  2. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.
  3. **Developer Assumption of Risks of Legal Challenges.** Exclusive of Claims for which City has agreed to Indemnify Developer pursuant to Section 14.1, Developer assumes the risk of delays or damages that may result to Developer from each and every Third Person legal action related to: (a) City’s approval of this Agreement, even in the event that an error, omission or abuse of discretion by City is determined to have occurred; or (b) any associated Approvals. If a Third Person files a legal action for which Developer assumes the risk under this Section 17.15, Developer shall have the option to either: (1) prior to the Close of Escrow, cancel the Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 8.11; (2) after the Close of Escrow, terminate this Agreement and cause the return of all of the City Loan to City; or (3) at any time, Indemnify City against such Third Person legal action, including all Legal Costs, monetary awards, sanctions and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action, provided, however that in no event shall Developer be required to indemnify City hereunder for claims resulting from the City’s exclusive gross negligence and/or willful misconduct. Should Developer fail to Notify City of Developer’s election pursuant to this Section 17.15 at least fifteen (15) days before response to the legal action is required by City, Developer shall be deemed to have elected to cancel the Escrow and terminate this Agreement pursuant to option “(1)” or “(2),” as applicable, under this Section 17.15, without further Notice to or action by either Party. City shall reasonably cooperate with Developer in defense of City in any legal action subject to this Section 17.15, subject to Developer completely performing Developer’s indemnity obligations for such legal action. Should Developer elect or otherwise be required to Indemnify City regarding a legal action subject to this Section 17.15, but fail to or stop providing such indemnification of City, then City shall have the right to immediately terminate this Agreement or cancel the Escrow (or both) by Notice to Developer and Escrow Agent (in the latter case, if the Escrow is open). Nothing contained in this Section 17.15 is intended to be nor shall be deemed or construed to be an express or implied admission that City may be liable to Developer or any other Person for damages or other relief regarding any alleged or established failure of City to comply with any law. Any legal action that is subject to this Section 17.15 (including any appeal periods and the pendency of any appeals) shall constitute an Unavoidable Delay and the time periods for performance by either Party under this Agreement may be extended pursuant to the provisions of this Agreement regarding Unavoidable Delay.
  4. **Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.
  5. **Time Declared to be of the Essence.** As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.
  6. **Entire Agreement.** This Agreement (including the exhibits attached to this Agreement) integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect the subject matter of this Agreement.
  7. **Waivers and Amendments.** All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of both City and Developer.
  8. **Prohibition against Transfers, Changes in Developer/Ownership, Management or Control of Developer, or Assignment**. Developer acknowledges and agrees that the qualifications and identity of Developer are of particular importance and concern to City. Developer further acknowledges and agrees that City has relied and is relying on the specific qualifications and identity of Developer in entering into this Agreement and City would not have entered into this Agreement, but for the specific qualifications and identity of Developer. As a consequence, before the recordation of a Release of Construction Covenants for the Project, Transfers by Developer are only permitted with the prior written consent of City, in City’s sole and absolute discretion. Developer represents and warrants to City that Developer has not made and agrees that Developer will not create or permit to be made or created any Transfer, except in accordance with this Section 17.20, whether made or created voluntarily, involuntarily or by operation of law. Any Transfer made in contravention of this Section 17.20 shall be voidable at the election of City, in City’s sole and absolute discretion. Developer acknowledges and agrees that the restrictions on Transfers set forth in this Section 17.20 are reasonable. Developer agrees to reimburse City for all costs and expenses incurred by City in connection with City’s review of each proposed Transfer, including all Legal Costs and other Third Person consultant fees and expenses, up to a maximum amount of $5,000.
  9. **Exhibit List.** All of the exhibits attached to this Agreement are as follows:

|  |  |
| --- | --- |
| Exhibit A | Property Legal Description |
| Exhibit B | Release of Construction Covenants |
| Exhibit C | Regulatory Agreement |
| Exhibit D | Developer Note |
| Exhibit E | City Deed of Trust |
| Exhibit F | Developer Official Action |
| Exhibit G | Project Scope |
| Exhibit H | Insurance Requirements |
| Exhibit I | City Contract Provisions |
| Exhibit J | Federal Contract Provisions |
| Exhibit K | Prevailing and Living Wage Requirements |
| Exhibit L  Exhibit M  Exhibit N  Exhibit O  Exhibit P  Exhibit Q  Exhibit R | Acquisition Budget  Monitoring Agreement  Project Budget  Performance Schedule  Notice of Affordability Restrictions  HUD National Objective Report  UCC-1 |
|  |  |

* 1. **No Implied Waiver.** Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.
  2. **Mayor Implementation.** City shall implement this Agreement through its Mayor. The Mayor is authorized to enter into agreements and sign documents referenced in this Agreement or reasonably required to implement this Agreement, issue approvals, interpretations or waivers and enter into amendments to this Agreement, all on behalf of City, to the extent that any such action(s) does/do not materially or substantially change the Project, increase the monetary obligations of City, result in an increase of greater than ten percent (10%) in the amount of the Total Project Costs, or result in an increase of greater than ten percent (10%) in the aggregate principal amount of the loans secured by Security Instruments to which the City Deed of Trust is subordinated. All other actions shall require the consideration and approval of the City Council, unless expressly provided otherwise by action of the City Council. Nothing in this Section 17.23 shall restrict the submission to the City Council of any matter within the Mayor’s authority under this Section 17.23, in the Mayor’s sole and absolute discretion, to obtain the City express and specific authorization on such matter. The specific intent of this Section 17.23 is to authorize certain actions on behalf of City by the Mayor, but not to require that such actions be taken by the Mayor without consideration by the City Council.
  3. **Survival of Agreement.** All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution, indemnity or limitations on damages or remedies shall survive any expiration or termination of this Agreement.
  4. **Counterparts.** This Agreement shall be signed in three (3) triplicate originals, each of which is deemed to be an original. This Agreement includes thirty-six (36) pages and seventeen (17) exhibits (each exhibit is incorporated into this Agreement by reference) that constitute the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement.
  5. **Facsimile or Electronic Signatures.** Signatures delivered by facsimile or electronic means shall be binding as originals upon the Party so signing and delivering; provided, however, that original signature(s) of the authorized representative(s) of each Party shall be required for each document to be recorded.
  6. **Attorney’s Fees.** If either Party initiates any litigation or other legal proceeding to interpret or enforce any provision of this Agreement, then the prevailing Party in such litigation or proceeding shall be entitled to recover its reasonable attorneys’ fees and other legal expenses from the non-prevailing Party, in addition to any other damages or remedies to which the prevailing Party is entitled.

**[Remainder of page intentionally blank. Signatures appear on following page.]**

SIGNATURE PAGE

TO

CDBG LOAN AGREEMENT

(Project Title)

|  |  |
| --- | --- |
| **CITY:** | DEVELOPER: |
| CITY OF SAN DIEGO,  a municipal corporation  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Approved as to form:  City Attorney  By:  Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |

**Exhibit A**

**to**

**CDBG LOAN AGREEMENT**

**(Project TiTle)**

PROPERTY LEGAL DESCRIPTION

**Exhibit B**

**to**

**CDBG LOAN AGREEMENT**

**(Project TiTle)**

Release of Construction Covenants

[Attached behind this cover page]

|  |  |
| --- | --- |
| **RECORDING REQUESTED BY**  **WHEN RECORDED MAIL TO:** |  |

SPACE ABOVE FOR RECORDER’S USE ONLY

APN(s):

RELEASE OF CONSTRUCTION COVENANTS

CDBG Loan Agreement  
(Project Title)

In his or her or their capacity as an authorized representative of the City of San Diego, a California municipal corporation (“**City**”), the undersigned certifies that: (1) City and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (nonprofit/limited partnership/liability company) (“**Developer**”), are parties to that certain unrecorded CDBG Loan Agreement (Project Title), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ (“**Loan Agreement**”), and that certain **R**egulatory Agreement and Declaration of Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing (Project Title) dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, and recorded on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, as Document No. \_\_\_\_\_\_\_\_\_\_\_ in the Official Records of the San Diego County Recorder’s Office (“**Regulatory Agreement**”**)**; and (2) the “Project” described in the Loan Agreement and required to be constructed in accordance with the Loan Agreement on that certain real property specifically described in the legal description attached to this Release of Construction Covenants as Exhibit 1 (“**Property**”) is complete, in accordance with the provisions of the Loan Agreement. The Loan Agreement is an official record of City, and a copy of the Loan Agreement may by inspected in the offices of the City Clerk located at 202 C Street, San Diego, CA 92101, during the regular business hours of City. Unless otherwise specified, all capitalized terms in this Release of Construction Covenants shall have the meaning ascribed to them in the Loan Agreement.

This Release of Construction Covenants shall only be evidence of City’s conclusive determination of satisfactory completion of the construction of the Project on the Property in accordance with the terms of the Loan Agreement. The issuance and recording of this Release of Construction Covenants shall release Developer from the construction obligations under the Loan Agreement with respect to the Property. This Release of Construction Covenants shall not: (a) constitute a Notice of Completion under California Civil Code section 8182; (b) act to terminate the continuing reservations, covenants, restrictions or conditions contained in the Loan Agreement, the Regulatory Agreement, or any other instrument or document recorded against the Property or otherwise; (c) waive or modify any term, provision, covenant, condition, restriction or agreement contained in any other document; (d) constitute evidence of the compliance of the Project with any Laws or Approvals; or (e) evidence the satisfaction of any obligation of Developer to City under the Loan Agreement or otherwise, other than Developer’s obligation to construct the Project on the Property in compliance with the terms and conditions of the Loan Agreement. After recordation of this Release of Construction Covenants for the Project in the official records of the County regarding the Property, any Person then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property or the Project shall not (because of such Developer/Ownership, purchase, lease or acquisition) incur any obligation or liability under the Loan Agreement regarding construction of the Project, but such Person shall be bound by any other reservations, covenants, conditions, restrictions and interests affecting the Property under the Loan Agreement, the Regulatory Agreement, or otherwise.

ISSUED as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_\_\_.

|  |  |
| --- | --- |
|  | CITY:  CITY OF SAN DIEGO,  a municipal corporation  By:  Department |

**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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public in and for said State, 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 forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT 1**

TO RELEASE OF CONSTRUCTION COVENANTS

Property Legal Description

**Exhibit C**

**to**

**CDBG LOAN AGREEMENT**

**(Project TiTle)**

**Regulatory Agreement and Declaration of Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing**

[Attached behind this cover page]

|  |  |
| --- | --- |
| RECORDING REQUESTED BY:  WHEN RECORDED MAIL TO:  City of San Diego  Economic Development Dept.  Attn: (Project Title) CDBG Loan  1200 Third Ave, Suite 1400  San Diego, CA 92101 |  |

SPACE ABOVE LINE FOR RECORDER’S USE ONLY

EXEMPT FROM RECORDING FEES UNDER GOVT. CODE § 27383

**CITY OF SAN DIEGO**

**REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS RESTRICTING USE OF PROPERTY FOR AFFORDABLE HOUSING**(Project Title)

This Regulatory Agreement and Declaration of Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing (Project Title)(“Regulatory Agreement”) is dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_, and is made by and between the CITY OF SAN DIEGO, a California municipal corporation (“City”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_), a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (nonprofit/limited partnership/liability company) (“Developer/Owner”), with reference to the following recited facts (each, a “Recital”).

RECITALS

1. Developer/Owner plans the acquisition, construction, development and operation of \_\_\_\_\_\_\_ residential rental units, including \_\_\_\_\_\_units subject to affordability restrictions and \_\_\_ manager’s unit(s) not subject to affordability restrictions, consisting of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_with site improvements (defined collectively as the “Project” in Section 1), on that certain real property specifically defined as the “Property” in Section 1.
2. Developer/Owner obtained a loan from City funded with United States Department of Housing and Urban Development (“HUD”) Community Development Block Grant (“CDBG”) program funds and used the CDBG loan proceeds to acquire the Property pursuant to that certain Community Development Block Grant Loan Agreement, dated \_\_\_\_\_\_\_\_\_\_\_\_, between Developer/Owner and City (“Loan Agreement”).
3. CDBG program regulations at 24 C.F.R. § 570.505 prohibit changing the use or planned use of real property acquired or improved, in whole or in part, with more than $25,000 of CDBG grant funds.
4. Developer/Owner is willing to enter into and make this Regulatory Agreement to assure City of the construction and operation of the Project for the purpose of increasing and improving the supply of affordable rental housing in the City of San Diego and to assure City the use of the Property meets the requirements of the CDBG program regulations.
5. This Regulatory Agreement shall restrict the use of the Property following the date of the first recording of this Regulatory Agreement in the official records of the County of San Diego, California (“Recording Date”), to ensure that no less than one hundred percent of the Dwelling Units (defined in Section 1) within the Project shall, at all times until expiration of this Regulatory Agreement, be occupied or reserved for occupancy by a Qualifying Household (defined in Section 1) at anAffordable Rent (defined in Section 1).
6. Under the Loan Agreement, Developer/Owner agreed to construct and maintain \_\_\_\_\_\_\_\_\_\_\_ new residential units within the Project as affordable rental housing for the use and benefit of Qualifying Households and, therefore, Developer/Owner is willing to impose the conditions, covenants, restrictions and agreements set forth in this Regulatory Agreement upon the Developer/Ownership and operation of the Property and the Project that will bind the Property, the Project, Developer/Owner and Developer/Owner’s successors and assigns.
7. The purpose of this Regulatory Agreement is to create conditions, covenants, restrictions, reservations, agreements, liens, servitudes and charges upon the Property and the Project, subject to which each and every part of the Property and the Project shall be developed, occupied, owned, maintained, held, leased, rented, sold and conveyed.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES, COVENANTS AND UNDERTAKINGS SET FORTH IN THIS REGULATORY AGREEMENT AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, DEVELOPER/OWNER COVENANTS, DECLARES AND AGREES FOR THE BENEFIT OF CITY, AS FOLLOWS:

1. **DEFINITIONS**. As used in this Regulatory Agreement, the following words, terms or phrases shall have the meaning as provided in the initial paragraph of this Regulatory Agreement, the Recitals or in this Section 1, unless the specific context of usage of a particular word, term or phrase may otherwise require:
   1. **Additional Government Financing**.Any other financing obtained by Developer/Owner from a Government Lender to be applied towards Actual Project Costs.
   2. **Affiliate**.Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person.
   3. **Affordable Rent**. A gross monthly rent that does not exceed the maximum monthly rent for an individual or household with a household income equal to or less than sixty percent (60%) of the then current CTCAC Area Median Income, including Utilities Allowance, adjusted for family size appropriate for the Dwelling Unit, as published by from time to time by CTCAC.
   4. **Annual Report**. A report in substantially the form of Exhibit C attached to this Regulatory Agreement or in such other form as subsequently reasonably required by City, together with a current rent roll for the Project and all Income Certification Forms completed and signed by Qualifying Households regarding each Dwelling Unit.
   5. **Application**. Any agreement, application, certificate, document or submission (or amendment of any of the foregoing): (a) necessary or appropriate for construction or operation of the Project, including any application for any building permit, Certificate of Occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision or such other instrument as Developer/Owner may reasonably request for the Project; or (b) to enable Developer/Owner to seek any Approval or to operate the Project in accordance with this Regulatory Agreement.
   6. **Approval**. Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform or complete the construction of the Project or to use or occupy the Project.
   7. **Available**. When a Dwelling Unit is held available for occupancy by a Qualifying Household. A Dwelling Unit shall be considered to be held available for occupancy by a Qualifying Household when the Dwelling Unit remains unoccupied until the Dwelling Unit is occupied or reoccupied by a Qualifying Household appropriate to the income category of the Dwelling Unit, provided that Developer/Owner is exercising good faith efforts to let or relet the Dwelling Unit to an appropriate Qualifying Household.
   8. **Bankruptcy Law**. Title 11 of the United States Code or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization or similar matters.
   9. **Bankruptcy Proceeding**. Any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.
   10. **Building Equipment**.All fixtures incorporated into the Project or used, useful or necessary to operate the Project as such (including boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; irrigation systems; machinery; pipes; and the like).
   11. **Capital Improvement**. Any Restoration, installation of any Building Equipment, Construction, or addition or change of the exterior finishes of any structure.
   12. **Capital Replacement Account**.An account established by Developer/Owner with an Institutional Lender to be held, administered and disbursed by the Institutional Lender solely for making Capital Improvements to the Project, as described in Section 4.2.
   13. **Loan Agreement**. Defined in Recital B.
   14. **Certificate of Occupancy**. A Certificate of Occupancy as defined in the Uniform Building Code published by the International Conference of Building Officials, as adopted by the City, from time to time.
   15. **City**. The City of San Diego, a California municipal corporation, and any assignee of or successor to the rights, powers or responsibilities of the City of San Diego, a California municipal corporation.
   16. **City Parties**. Collectively, City, the City Council, and the elected officials, employees, agents and attorneys of City.
   17. **City Party**. Individually, City, the City Council, or the elected officials, employees, agents or attorneys of City.
   18. **Claim**. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if an Indemnitor improperly fails to provide a defense for an Indemnitee or provides a defense under a reservation of rights, then Legal Costs of the Indemnitee) and any judgment.
   19. **CNA**. A capital needs assessment of the Project, as further described in Section 4.2.5.
   20. **Condemnation**. Any of the following: (a) any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Property by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or any part of the Property, but creating a right to compensation.
   21. **Construction**. Any alteration, construction, excavation, demolition, grading, development, expansion, reconstruction, redevelopment, repair, restoration or other work affecting the Property, including new construction.
   22. **Control**. Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by Developer/Ownership of Equity Interests, by contract or otherwise.
   23. **Controlling and Controlled**. Exercising or having Control.
   24. **County**. The County of San Diego, California.
   25. **Crime Free Lease Addendum**. An addendum to each lease for a Dwelling Unit in substantially the form of Exhibit D attached to this Regulatory Agreement signed by each of the residents of the subject Dwelling Unit.
   26. **CTCAC**. The California Tax Credit Allocation Committee or successor in function.
   27. **CTCAC Area Median Income**. The median gross income for San Diego County as determined by the Secretary of the Treasury of the United States for purposes of Section 42 of the Internal Revenue Code of 1986, and any related regulations published from time to time by CTCAC.
   28. **Default**. Any Monetary Default or Non-Monetary Default.
   29. **Default Interest**. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per annum; or (b) the highest rate of interest, if any, that Law allows under the circumstances.
   30. **Dwelling Unit**. Any one of the residential apartment units within the Project.
   31. **Environmental Claim**. Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.
   32. **Environmental Law**. All Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene (only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under or about the Property), occupational or environmental conditions on, under or about the Property, as now or may at any later time be in effect, and any other Federal, State, local or municipal law, statute, ordinance or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, to the extent the occupational health or industrial hygiene laws, ordinances or regulations relate to Hazardous Substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water or land use.
   33. **Equity Interest**. All or any part of any direct equity or Developer/Ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an Developer/Ownership or equity nature) in any entity, at any tier of Developer/Ownership, that directly owns or holds any Developer/Ownership or equity interest in a Person.
   34. **Exceptions**.Defined in Section 7.2.
   35. **Event of Default**. The occurrence of any one or more of the following:
       1. *Monetary Default.* A Monetary Default that continues for thirty (30) calendar days after Notice from City, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment or the bond, surety or evidence of insurance not provided;
       2. *Reporting Default.* If Developer/Owner fails to deliver any Annual Report as and when required in Section 2.10.6 or fails or refuses to allow and cooperate with any City audit of Project Records in accordance with Section 2.14.2, each after thirty (30) calendar days’ Notice of such failure;
       3. *Bankruptcy or Insolvency.* Developer/Owner admits in writing that Developer/Owner is unable to pay Developer/Owner’s debts as they become due or Developer/Owner becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Developer/Owner’s assets or Developer/Owner’s interest in this Regulatory Agreement, the Property or the Project (unless such appointment, attachment, execution or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within ninety (90) days);
       4. *Transfer.* The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Regulatory Agreement; or
       5. *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Section 1.36.2, Section 1.36.3 or Section 1.36.4, that is not cured within thirty (30) days after Notice to Developer/Owner describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of a Notice of Default, the Developer/Owner shall only be in Default if the Developer/Owner does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the City of Developer/Owner’s intention to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.
   36. **Federal**. Relating to or under the authority of the federal government of the United States of America.
   37. **Government**. Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal or otherwise) whether now or later in existence.
   38. **Gross Income**. All amounts received by Developer/Owner from the use or occupancy of, or the right to use or occupy, all or any portion of the Property or the Project, including all revenue from vending machines, laundry facilities or other amenities of the Project (if any), and all other revenue, income or receipts of every kind that accrue or are accounted for on an accrual or other basis in conformity with generally accepted accounting principles, exclusive of: (a) any security deposits (unless and until such deposits are payable to Developer/Owner); (b) interest on security deposits; (c) interest on the Capital Replacement Account when such interest is deposited into the Capital Replacement Account and reserved exclusively for use in accordance with the purposes of the Capital Replacement Account; (d) interest on the Operating Reserve account when such interest is deposited into the Operating Reserve account and reserved exclusively for use in accordance with the purposes of the Operating Reserve account; (e) insurance or condemnation proceeds (except as paid to Developer/Owner for loss of rents); or (f) the proceeds from the refinancing of any obligation secured by the Property or the Project that do not exceed the payoff amount of the obligation being refinanced and the proceeds of loans to Developer/Owner which are not income to Developer/Owner under generally accepted accounting principles, for example, loans from the general partner of Developer/Owner to Developer/Owner covering operation shortfalls, or for reasonably necessary emergency, unanticipated, and unbudgeted costs. Gross Income shall be determined on a cash basis.
   39. **Hazardous Substance**. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, any matter, waste or substance that is subject to any Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source or in the regulations adopted under any Law. Notwithstanding the foregoing, “Hazardous Substance” shall not include common household substances typically used in normal quantities in the ordinary course of developing, operating and maintaining apartment complexes provided that such substances are used in accordance with all applicable laws
   40. **Hazardous Substance Discharge**. Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property, or that arises at any time from the Construction, installation, use or operation of the Project or any activities conducted at, on, under or from the Property, whether or not caused by a Party.
   41. **HCD**. The California Department of Housing and Community Development.
   42. **HUD**. The United States Department of Housing and Urban Development.
   43. **Income Certification Form**. A certification in substantially the form of Exhibit B attached to this Regulatory Agreement or in such other form subsequently reasonably required by City.
   44. **Indemnify**. Where this Regulatory Agreement states that any Indemnitor shall “indemnify” any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). “**Indemnified**” shall have the correlative meaning.
   45. **Indemnitee**. Any Person entitled to be Indemnified under the terms of this Regulatory Agreement.
   46. **Indemnitor**. A Party that agrees to Indemnify any other Person under the terms of this Regulatory Agreement.
   47. **Institutional Lender**. Any of the following: (a) a banking corporation (State or Federal), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (State or Federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority Developer/Owner), Federal or State agency regularly making or guaranteeing mortgage loans, investment bank or a Fortune 500 company; or (b) any Person that is an Affiliate of or is a combination of any one or more of the Persons described in clause “(a)” of this Section 1.48.
   48. **Law**. Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Property or the Project, in any way, including any development, Construction, use, maintenance, taxation, operation, occupancy of or environmental condition affecting the Property or the Project, or otherwise relating to this Regulatory Agreement or any Party’s rights, obligations or remedies under this Regulatory Agreement, or any Transfer of any of the foregoing, whether in force on the date of this Regulatory Agreement or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption.
   49. **Legal Costs**. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses, and consultant and expert witness fees and expenses.
   50. **Lender**. The holder of any Security Instrument and its successors and assigns.
   51. **Maintenance Deficiency**. Defined in Section 4.12.2.
   52. **Maintenance Standard**. Defined in Section 4.12.1.
   53. **Management Agent**. As designated by Developer/Owner from time to time, either Developer/Owner or another Person with experience managing affordable rental housing projects substantially similar to the Project and that is, at the time, managing other financially self-supporting affordable rental housing projects substantially similar to the Project.
   54. **Manager Unit**. The \_\_\_ (\_\_) residential unit(s) within the Project reserved exclusively for use by the on-site manager(s) employed by Developer/Owner or the Management Agent, as applicable, and that is not required to be rent or income restricted.
   55. **Mayor**. The Mayor of City or his or her designee or successor in function.
   56. **Minimum Balance**. Defined in Section 4.3.
   57. **Monetary Default**. Any failure by Developer/Owner to pay or deposit, when and as this Regulatory Agreement requires, any amount of money, any bond or surety or evidence of any insurance coverage required to be provided under this Regulatory Agreement, whether to or with City or a Third Person.
   58. **Non-Monetary Default**. The occurrence of any of the following described events, except to the extent constituting a Monetary Default: (a) Developer/Owner’s failure to perform any of Developer/Owner’s obligations under this Regulatory Agreement; (b) Developer/Owner’s failure to comply with any affirmative or negative covenant or material restriction or prohibition in this Regulatory Agreement; or (c) any other event or circumstance that, with the passage of time or giving of Notice, or both, would constitute a breach of this Regulatory Agreement by Developer/Owner.
   59. **Notice**. Any consent, demand, designation, election, notice or request relating to this Regulatory Agreement, including any Notice of Default. All Notices must be in writing.
   60. **Notice of Default**. Any Notice of a Default or alleged Default.
   61. **Notify**. To give a Notice.
   62. **Occupancy Date**. The date of issuance by City of a final Certificate of Occupancy for the entire Project.
   63. **Operating Reserve**. An interest-bearing account established by Developer/Owner with an Institutional Lender to be maintained by Developer/Owner to fund any shortfalls between Gross Income and the actual operating costs of the Project.
   64. **Developer/Owner**. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (nonprofit/limited partnership/liability company), and the successors and assigns of such \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ permitted by this Regulatory Agreement.
   65. **Developer/Owner Parties**. Collectively, Developer/Owner and all of the partners, members, directors, officers, employees, agents, managers and holders of Equity Interests in Developer/Owner.
   66. **Parties**. Collectively, City and Developer/Owner.
   67. **Party**.Individually, either City or Developer/Owner, as applicable.
   68. **Permitted Encumbrance**. Any lien or encumbrance to which the Property was subject when Developer/Owner acquired its title to the Property, any and all Laws applicable to the Property, any Permitted Security Instrument, utility, street or shared driveway easements directly related to the Project, any encumbrance or conveyance made to comply with an Approval for the Project and any other document required or expressly allowed to be recorded against the Property by the express terms of this Regulatory Agreement.
   69. **Permitted Security Instrument**. Any Security Instrument: (a) that encumbers only the Property or any interest in the Property; (b) a copy of which (recorded or unrecorded) is promptly after execution delivered to City; (c) that is held by a Lender that is an Institutional Lender or a Governmental Lender, subject to the jurisdiction of the courts of the State, not immune from suit and cannot elect to be immune from suit; and (d) only secures: (i) the repayment of money used to pay or reimburse the Total Project Costs; or (ii) any Refinancing permitted under the express terms and conditions of this Regulatory Agreement.
   70. **Permitted Transfer.** Permitted Transfer” means any of the following: (a) Transfer of Developer/Owner’s title to the Property in trust under a Permitted Security Instrument; (b) a mere change in form of Developer/Ownership with no material change in beneficial Developer/Ownership that is a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (c) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (d) a conveyance only to a Person that, as of the date the Regulatory Agreement is recorded, holds an Equity Interest in the entity whose Equity Interest is being transferred; (e) a collateral pledge of the Equity Interests in Developer/Owner to the Institutional Lender providing senior project financing for the Project; (f) Transfer(s) of the outstanding Equity Interests in Developer/Owner that, in the aggregate, result in transfer of less than forty percent (40%) of the outstanding Equity Interests in Developer/Owner; (g) issuance of previously unissued or new, Equity Interests in Developer/Owner that increase the amount of outstanding Equity Interests in Developer/Owner by less than ten percent (10%); (h) the admission of a non-profit public benefit corporation, or a limited liability company in which the non-profit corporation is the sole member and manager, as a managing general partner or manager or member of Developer/Owner in order for Developer/Owner to qualify for the welfare exemption from property taxation provided under California Revenue and Taxation Code Section 214(g); (i) actions taken to comply with any Approvals for the Project; (j) a transfer by the Tax Credit Investor of its limited partnership interest in Developer/Owner (i) to an Affiliate, including, without limitation, a syndicated equity fund Controlled by the Tax Credit Investor for purposes of syndication (or re-syndication) of the Tax Credit Equity; (k) the removal of the general partner of Developer/Owner by the Tax Credit Investor in accordance with the Developer/Owner Partnership Agreement and replacement of such general partner with a Person approved by the Mayor, which approval shall not be unreasonably withheld; or (l) the grant and exercise of an option and/or right of first refusal from the Tax Credit Investor to the general partner of Developer/Owner and/or Developer/Owner Affiliates in accordance with the Developer/Owner Partnership Agreement upon the anticipated exit of the Tax Credit Investor from the partnership on or around the expiration of the Tax Credit compliance period.
   71. **Person.** Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.
   72. **Prohibited Encumbrance.** Any lien, Security Instrument, mechanic’s lien, easement, property interest or other encumbrance recorded or asserted against the Property or the Project that is not a Permitted Encumbrance.
   73. **Project Records**. All books, records, statements, contracts and other records of Developer/Owner, any Affiliate of Developer/Owner, or any Management Agent relating in any way to the Construction, use, occupancy or operation of the Property or the Project, including Income Certification Forms completed by applicants or tenants of the Project and accounting of Project revenues and expenses. All Project Records shall be prepared in accordance with industry standards and otherwise in accordance with generally accepted accounting principles consistently applied.
   74. **Property**. That certain real property located within the City of San Diego, County of San Diego, State of California, as described in the legal description attached as Exhibit A to this Regulatory Agreement, which is incorporated by reference into this Regulatory Agreement.
   75. **Qualifying Household**. An individual or household with a household income equal to or less than sixty percent (60%) of the then current CTCAC Area Median Income, including Utilities Allowance, adjusted for family size appropriate for the Dwelling Unit, as published from time to time by CTCAC.
   76. **Record, recorded, recording or recordation**. Recordation of the referenced document in the official records of the County.
   77. **Recording Date**. Defined in Recital E.
   78. **Refinancing**. Any loan secured by a Permitted Security Instrument that Developer/Owner obtains from an Institutional Lender subsequent to recordation of a Permitted Security Instrument securing repayment of a senior Project Loan for any of the following purposes: (1) to pay off all or a portion of an existing loan secured by a Permitted Security Instrument where the Lender providing the new loan will disburse loan proceeds to or on behalf of Developer/Owner exceeding the amount of principal and interest under the existing loan being paid off, plus the amount of any reasonable and customary fees and costs associated with obtaining such new loan that are actually paid by Developer/Owner and not rebated or refunded to Developer/Owner, and City will subordinate the lien of its deed of trust (but not this Regulatory Agreement) to the lien of such new Permitted Security Instrument from an Institutional Lender; (2) disbursing funds to or on behalf of Developer/Owner without paying all or any portion of any existing loan secured by a Permitted Security Instrument; or (3) any loan extension, modification or equivalent regarding an existing loan to Developer/Owner secured by a Permitted Security Instrument that results in the Lender of the existing loan disbursing additional loan proceeds to or on behalf of Developer/Owner in excess of the original principal amount of the loan.
   79. **Release of Construction Covenants**. Defined in the Loan Agreement.
   80. **Restoration**. After a loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration or safeguarding of the damaged or remaining improvements, substantially consistent with their condition before the loss, subject to any changes in Law that would limit the foregoing.
   81. **Restore**. Accomplish a Restoration.
   82. **SDHC**. Defined in Section 3.
   83. **Security Instrument**.Any security instrument, deed of trust, security deed, contract for deed, deed to secure debt or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Property, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned or supplemented from time to time, unless and until paid, satisfied and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Lender (as applicable), then all such security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a security instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.
   84. **Services Coordinator**. As designated by Developer/Owner from time to time, either Developer/Owner or another Person with experience coordinating supportive services for the occupants of affordable rental housing units substantially similar to the Case Management and Resident Services.
   85. **State**. The State of California.
   86. **Tax Credit Equity**. The amount to be paid by the Tax Credit Investor to acquire substantially all of the Equity Interests in Developer/Owner.
   87. **Tax Credit Investor**. The Person that provides the Tax Credit Equity, including \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and its successors and assigns. In no event may the Tax Credit Investor be an Affiliate of Developer/Owner.
   88. **Term**. The period of time beginning on the Recording Date and ending on the fifty-fifth (55th) anniversary of the date of the Occupancy Date.
   89. **Third Person**. Any Person that is not a Party, an Affiliate of a Party or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.
   90. **Total Project Costs**. Defined in the Loan Agreement.
   91. **Transfer**. Regarding any property, right or obligation, any of the following, whether by operation of law or otherwise, whether voluntary or involuntary and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale or other transfer, whether direct or indirect, of all or any part of such property, right or obligation or of any legal, beneficial or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale or other transfer of any Equity Interest(s) in the Developer/Owner of such property, right or obligation by the holder(s) of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “(b)” or “(c)” of this Section 1.92, shall be deemed a Transfer by Developer/Owner, even though Developer/Owner is not technically the transferor.
   92. **Unavoidable Delay**. A delay in either Party performing any obligation under this Regulatory Agreement, arising from or on account of any cause whatsoever beyond the Party’s reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters, inclement weather (i.e., not typical to San Diego County), earthquakes, flood, fire, pandemic, unexpected delays in obtaining necessary permits or inspections, litigation challenging approvals for the Project, or inability to obtain required materials or labor. Unavoidable Delay shall not include delay caused by a Party’s financial condition or insolvency.
   93. **Utilities Allowance**. An allowance for utilities services costs as established from time to time by SDHC or its successor.
2. **AFFORDABLE RENTAL HOUSING COVENANTS AND RESTRICTIONS**
   1. Developer/Owner Acknowledgment of Potential Impact of Regulatory Agreement. Developer/Owner acknowledges and agrees that this Regulatory Agreement imposes certain covenants, conditions and restrictions on the use and occupancy of the Property and the Project during the Term that may result in less than all of the Dwelling Units being leased or rented and that may not constitute the highest and best use of the Property.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Initials of Authorized

Developer/Owner Representative(s)

* 1. Agreement to Record. Developer/Owner agrees that City may record this Regulatory Agreement against the Property in the official records of the County.
  2. Covenants. Developer/Owner covenants and agrees, for itself, its successors and assigns, that Developer/Owner will operate the Project and the Property, in conformity with the Loan Agreement, the terms and conditions of this Regulatory Agreement, and all applicable Laws and Approvals. The covenants of this Section 2.3 shall run with the land comprising the Property.
  3. HUD National Objective. Developer/Owner covenants and agrees that the Project and the Property meets one or more of the national objectives for use of CDBG Funds under 24 C.F.R. Section 570.208 and will continue to meet one or more of the national objectives for use of CDBG Funds under 24 C.F.R. Section 570.208 during the HUD National Objective Term(as defined in the Loan Agreement)**.**
  4. Affordable Housing Restrictive Covenants. Subject to the terms, conditions and provisions of this Regulatory Agreement, Developer/Owner covenants, to and for the benefit of City, that Developer/Owner shall develop, own, manage and operate, or cause the management and operation of, the Dwelling Units to provide multi-family residential rental housing occupied or Available for occupancy only by Qualifying Households at an Affordable Rent and for no other purposes, until the end of the Term; provided, however, \_\_\_\_\_ (\_\_) residential unit(s) within the Project may be used as a Manager Unit(s) at any given time.
  5. Multi-Family Residential Rental Property Restrictive Covenants. Developer/Owner covenants, to and for the benefit of City, that Developer/Owner shall develop, own, manage and operate, or cause the management and operation of, the Project to provide residential rental housing occupied or Available for occupancy only by Qualifying Households and for no other purposes. Developer/Owner confirms and covenants to develop the Project as an affordable housing project consisting of the Dwelling Units, which will include \_\_\_\_\_\_\_\_\_\_\_ residential units made Available for occupancy by Qualifying Households at Affordable Rent. Developer/Owner will not knowingly permit any Dwelling Unit to be used on a transient basis and will not lease or rent any Dwelling Unit for a period of less than twelve (12) months. No Dwelling Unit will, at any time, be leased or rented for use as a hotel, motel, time share, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanatorium, or rest home.
  6. Continuous Operation Covenant. Developer/Owner covenants, to and for the benefit of City, to cause the Project to be continuously operated, in accordance with the other provisions of this Section 2, throughout the Term.
  7. Abandonment. Developer/Owner shall not abandon or surrender the operation of all or any part of the Project during the Term, except due to material casualty or condemnation that reasonably justifies such abandonment or surrender.
  8. Notice of Occupancy Date. Within thirty (30) days following the occurrence of the Occupancy Date, Developer/Owner shall deliver Notice of the occurrence of the Occupancy Date to City.
  9. Affordability. Developer/Owner covenants \_\_\_\_\_\_\_\_\_\_\_ of the Dwelling Units shall be occupied, or Available for occupancy by, a Qualifying Household at an Affordable Rent on a continuous basis throughout the Term, in accordance with the following:
     1. \_\_\_\_\_\_\_\_\_\_\_\_\_ of the residential units shall be occupied or Available for occupancy by an individual or household with a household income equal to or less than sixty percent (60%) of the then current CTCAC Area Median Income, including Utilities Allowance, adjusted for family size appropriate for the Dwelling Unit, as published from time to time by CTCAC. The \_\_\_ (\_\_) residential unit(s) on the Property that may be used as a Manager Unit(s) and shall be occupied or Available for occupancy with no rental restrictions.
  10. Affordable Rent.
      1. **Monthly Rent**. The monthly rent charged to a Qualifying Household for the occupancy of a Dwelling Unit may never exceed an Affordable Rent for such Dwelling Unit in accordance with Section 2.9. No tenant qualifying as a Qualifying Household upon initial occupancy shall be denied continued occupancy of a Dwelling Unit because, after admission, the aggregate household income of all members of such Qualifying Household increases to exceed the qualifying income for such Qualifying Household. However, should the aggregate household income of tenants in a Qualifying Household as of the most recent determination thereof, exceed 140% of the applicable income limit for such Qualifying Household, the next available unit of comparable or smaller size must be rented to (or held vacant and applicable for immediate occupancy by) a Qualifying Household. The Dwelling Unit occupied by such Qualifying Household whose aggregate household income exceeds such applicable income limit shall continue to be treated as a Dwelling Unit occupied by a Qualifying Household for purposes of this Regulatory Agreement. Following the expiration or termination of this Regulatory Agreement, except in the earlier event of eminent domain or action of a federal agency preventing enforcement, Dwelling Units reserved for occupancy by Qualifying Households shall remain available to any Qualifying Household occupying a Dwelling Unit at the date of such expiration or termination, at an Affordable Rent, until the earliest of (i) such Qualifying Household’s income exceeds 140% of the maximum eligible income specified for such Qualifying Household in this Regulatory Agreement, (ii) the Qualifying Household voluntarily moves or is evicted for good cause (as defined in applicable California law), or (iii) if applicable, the Developer/Owner pays relocation assistance and benefits to households as provided in Section 7264(b) of the California Government Code.
      2. **Rent Increases**. Rent for Dwelling Units may be increased only once in any twelve (12) month period, based on changes in CTCAC Area Median Income, or changes in the income level of the Qualifying Household occupying the Dwelling Unit, consistent with Section 2.10.3; provided that the rent for each Dwelling Unit shall never exceed an Affordable Rent for the Qualifying Household occupying the Dwelling Unit and any Dwelling Unit income mix specified in Section 2.9 shall be maintained at all times.
      3. **Determination of Household Income**. Determination of Qualifying Household income shall be made by Developer/Owner at the time of initial application by an individual or family for occupancy of a Dwelling Unit. At the time of initial application, Developer/Owner shall require an applicant to complete the Income Certification Form and certify the accuracy of the information provided on such form. Also, at least once every twelve (12) months during the Term and within sixty (60) days following the expiration of the Term, Developer/Owner shall require each Qualifying Household occupying a Dwelling Unit to recertify the Qualifying Household’s income on the Income Certification Form. Additionally, on the renewal of a lease for a Dwelling Unit, Developer/Owner shall require the Qualifying Household occupying the Dwelling Unit to recertify the Qualifying Household’s income on the Income Certification Form. Developer/Owner shall make a good faith effort to verify the accuracy of income information provided in any Income Certification Form by an applicant for occupancy of a Dwelling Unit or by a recertifying the Qualifying Household occupying a Dwelling Unit, by conducting a credit reporting agency or similar search and taking at least one of the following steps, as reasonably required or indicated: (1) obtain an income tax return and copy of each W2 Wage and Earnings Statement for the most recently concluded income tax year; (2) obtain an income verification form from the applicant’s or the Qualifying Household’s current employer(s); (3) obtain an income verification form from the United States Social Security Administration or the California Department of Social Services, if the applicant or the Qualifying Household receives assistance from either of such agencies; or (4) if the applicant or an adult member of a Qualifying Household is unemployed and has no such income tax return, obtain another form of independent verification. For purposes of this Section 2.10.3, Developer/Owner may conclusively rely upon the evidence of the age of a Person as presented in a valid California Driver’s License or other form of identification issued by the State of California or the United States Government that includes a date of birth and a photograph of the subject Person. All such verification information shall only be obtained by Developer/Owner after obtaining the applicant’s or the Qualifying Household’s written consent for the release of such information to Developer/Owner. Failure to consent in writing to the release of such income verification information to Developer/Owner may disqualify an applicant for occupancy of a Dwelling Unit or be grounds for termination of a Qualifying Household’s occupancy of a Dwelling Unit.
      4. **Maintenance of Income Records**. Developer/Owner shall maintain on file all Income Certification Forms completed by applicants for occupancy of Dwelling Units and by Qualifying Households that occupied or are occupying Dwelling Units, in accordance with Section 2.14, and shall provide copies of the rent roll and Income Certification Forms to City within fifteen (15) days following Notice to Developer/Owner requesting delivery of such information.
      5. **Inspections**. Developer/Owner and each Qualifying Household occupying a Dwelling Unit shall permit City to conduct inspections of the Property, the Project and each Dwelling Unit, from time-to-time, during normal business hours, for purposes of verifying compliance with this Regulatory Agreement, upon fifteen (15) days advance Notice to Developer/Owner.
      6. **Annual Reporting**. Developer/Owner shall submit its first Annual Report to City on or before the April 30 immediately following the Occupancy Date. Thereafter, on or before each April 30 during the Term and within sixty (60) days following the expiration of the Term, Developer/Owner shall submit an Annual Report to City. The required reporting dates may be changed at City’s sole discretion, with six (6) months prior Notice to Developer/Owner; provided, however, City shall never require such reporting more often than twice in any twelve (12) calendar month time period. City shall maintain the confidentiality of all information specifically relating to any particular Qualifying Household occupying a Dwelling Unit, to the extent allowed by Law, as determined by the City Attorney.
  11. Developer/Owner Covenant Regarding Lease of Dwelling Units. Developer/Owner, for itself, its successors and assigns, covenants and agrees that, if any Dwelling Unit is rented or leased during the Term, the rental or lease of the Dwelling Unit shall be accomplished through a written lease agreement and all of the following restrictions shall apply:
      1. Developer/Owner shall provide a legible copy of this Regulatory Agreement to each prospective tenant of any Dwelling Unit, before entering into a lease with such tenant for any Dwelling Unit.
      2. The lease for each Dwelling Unit shall expressly state that the lease is subject and subordinate to this Regulatory Agreement and shall incorporate each and every provision of this Regulatory Agreement, either expressly or by reference.
      3. The lease for each Dwelling Unit shall be for a period of not less than twelve (12) months.
      4. The lease for each Dwelling Unit shall not contain any of the following provisions:
         1. An agreement by the Qualifying Household to be sued, to admit guilt or to the entry of a judgment in favor of Developer/Owner or the Management Agent in a lawsuit brought in connection with the lease;
         2. An agreement by the Qualifying Household that Developer/Owner or the Management Agent may take, hold or sell personal property of any member(s) of the Qualifying Household, without notice to the Qualifying Household and a court decision on the respective rights of the Developer/Owner or the Management Agent and the member(s) of the Qualifying Household, other than an agreement by the Qualifying Household concerning disposition of personal property remaining in the Dwelling Unit, after the Qualifying Household has moved out of the Dwelling Unit;
         3. An agreement by the Qualifying Household not to hold Developer/Owner or the Management Agent or their respective agents legally responsible for any action or failure to act, whether intentional or negligent;
         4. An agreement by the Qualifying Household that Developer/Owner or the Management Agent may institute a lawsuit, involving or affecting the Qualifying Household or any of the Qualifying Household’s members, without notice to the Qualifying Household or any affected member;
         5. An agreement by the Qualifying Household that Developer/Owner or the Management Agent may evict the Qualifying Household or any of the Qualifying Household’s members without instituting a civil court proceeding in which the Qualifying Household or any affected member of the Qualifying Household has an opportunity to present a defense, or before a court decision on the respective rights of Developer/Owner or the Management Agent and the Qualifying Household or any affected member of the Qualifying Household;
         6. An agreement by the Qualifying Household to waive any right to a trial by jury;
         7. An agreement by the Qualifying Household to waive the Qualifying Household’s right to appeal or to otherwise challenge a court decision in connection with the lease;
         8. An agreement by the Qualifying Household to pay attorney’s fees or other legal costs, even if the Qualifying Household wins in a court proceeding by Developer/Owner or the Management Agent against the Qualifying Household; provided, however, the Qualifying Household may be obligated to pay reasonable attorney’s fees and other legal costs, if the Qualifying Household loses such a legal action;
         9. An agreement by the Qualifying Household to pay one (1) or more security deposits (or the equivalent, but excluding deposits for pets) totaling in excess of the amount of one month’s rent for such Dwelling Unit.
      5. Each lease for a Dwelling Unit shall contain all of the following provisions:
         1. An agreement authorizing Developer/Owner or the Management Agent to immediately terminate the tenancy of a Qualifying Household occupying a Dwelling Unit, where one or more members of that Qualifying Household misrepresented any fact material to the qualification of such household as a Qualifying Household;
         2. An agreement providing that each Qualifying Household occupying a Dwelling Unit shall be subject to annual certification or recertification of income (including release of supporting documents to Developer/Owner) as a condition of continued occupancy of the Dwelling Unit;
         3. An agreement providing that each Qualifying Household occupying a Dwelling Unit may be subject to rental increases in accordance with this Regulatory Agreement;
         4. An agreement providing that Developer/Owner or the Management Agent will not discriminate on the basis of race, creed, color, gender, sexual orientation, national origin, ancestry, religion, marital status, age, disability or receipt of public assistance or housing assistance (including holders of certificates or vouchers under Title 24 Code of Federal Regulations Part 982-Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or comparable participation in a HOME tenant-based rental assistance program) in connection with rental of a Dwelling Unit, or in connection with the employment or application for employment of Persons for operation or management of the Project, and all contracts, applications and leases entered into for such purposes shall contain similar non-discrimination clauses to such effect; and
         5. One or more Crime Free Lease Addendums signed by each of the residents of the subject Dwelling Unit.
      6. Developer/Owner or the Management Agent shall not terminate the tenancy or refuse to renew the lease or rental agreement of a Qualifying Household, except where: (a) the Qualifying Household has committed serious or repeated violations of the terms and conditions of the lease; (b) except as otherwise provided in this Regulatory Agreement, the previously Qualifying Household is no longer a Qualifying Household; (c) the Qualifying Household is in violation of applicable Federal, State or local law; or (d) there is other good cause. Developer/Owner shall, in connection with termination of the tenancy of a Qualifying Household or a refusal to renew the lease or rental agreement of a Qualifying Household, serve written notice upon the Qualifying Household specifying the grounds for the action in accordance with all applicable Laws and at least sixty (60) days before the effective date of the termination of the tenancy.
  12. Tenant Selection Policies. Developer/Owner shall adopt written tenant selection policies and criteria that:
      1. are consistent with the purpose of providing affordable rental housing for Qualifying Households at an Affordable Rent;
      2. are reasonably related to tenant eligibility for Project occupancy and ability to perform the obligations of the lease for a Dwelling Unit;
      3. subject to applicable laws, including fair housing laws, give reasonable preference and consideration to the housing needs of individuals that are City residents or involuntarily displaced by activities of City;
      4. provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable;
      5. give prompt written notice to any rejected applicant of the grounds for rejection;
      6. provide for all of the Dwelling Units to be occupied by, or Available for occupancy on a continuous basis by, Qualifying Households at an Affordable Rent;
      7. do not give preference to any particular class or group of Persons in leasing or renting the Dwelling Units, except as provided in Section 2.12.3 and to the extent that a tenant must be a Qualifying Household;
      8. provide 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 Property or the Project, nor shall Developer/Owner or any Person claiming under or through Developer/Owner 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 Property or the Project. All deeds, leases or contracts made or entered into by Developer/Owner as to Dwelling Units, the Project or the Property shall contain covenants prohibiting discrimination, as set forth in Health and Safety Code Section 33436(b); and
      9. provide for a statement in all advertisements, notices and signs regarding the availability of Dwelling Units for lease or rent to the effect that Developer/Owner is an equal housing opportunity provider.
  13. Covenant of the Developer/Owner Regarding Resident Association. The Developer/Owner, for itself, its successors and assigns, covenants and agrees that the interest in the Property, the Project or any Dwelling Unit of any resident association or other association related to the Project or the Property shall be subject and subordinate to this Regulatory Agreement, and each and every member of such association shall be either the Developer/Owner or a member of a Qualifying Household occupying a Dwelling Unit.
  14. Project Records Retention; Audit and Examination Rights.
      1. **Retention of Project Records**. Developer/Owner shall prepare and maintain, and shall cause Developer/Owner’s Affiliates and Management Agent to prepare and maintain, complete and accurate Project Records for all periods during the Term. Developer/Owner shall, at all times during the Term and for a period of six (6) years following the end of the Term, maintain and cause Developer/Owner’s Affiliates and Management Agent to maintain, safe and intact, all of the Project Records. From time to time, upon request from City, Developer/Owner shall make all Project Records, whether in the custody or control of Developer/Owner, Developer/Owner’s Affiliates or Management Agent, available to City or City’s auditor, representative or agent for examination and copying at any reasonable time, on five (5) calendar days advance Notice. Developer/Owner shall also provide City any additional information concerning the Dwelling Units, the Project or the Property reasonably requested by City.
      2. **Audit Procedures**.
         1. City may cause an audit of any and all Project Records by an independent auditor of City’s selection and at City’s expense. City shall preserve the confidentiality of information contained in the Project Records, to the extent permitted by Law, as determined by the City Attorney.
         2. If Developer/Owner fails to submit all of the information to City as and when required under Section 2.10.6, subject to applicable notice and cure periods,, Developer/Owner shall be in Default under this Regulatory Agreement. Notwithstanding any provision of this Regulatory Agreement to the contrary, if Developer/Owner fails to submit all of the information to City as and when required under Section 2.10.6, within ten (10) business days after Notice specifying such Default, City shall have the right, in addition to any other rights or remedies City may have under this Regulatory Agreement regarding such Default, to conduct an audit of any and all Project Records to attempt to identify the information that should have been provided by Developer/Owner to City. Developer/Owner shall reimburse City for the reasonable cost of any audit conducted under this Section 2.14.2(b), on Notice of such cost from City. Developer/Owner shall pay Default Interest to City on the amount of any audit cost becoming due to City from Developer/Owner under this Section 2.14.2(b) that is not paid within fifteen (15) calendar days following Notice requesting such payment, from the date of such Notice until paid in full.
      3. **Compliance**. Developer/Owner shall, at all times during the Term and at Developer/Owner’s sole cost and expense, in all material respects: (a) comply with all Laws; and (b) procure and comply with all Approvals required by Law.

1. **MONITORING**. City and the San Diego Housing Commission, a public agency (“SDHC”), and their respective successors and assigns, shall have the right, but not the obligation, to monitor and enforce the covenants of Developer/Owner contained in this Regulatory Agreement. Developer/Owner covenants that it shall comply with any reasonable monitoring program set up by City or SDHC to enforce the covenants of Developer/Owner contained in this Regulatory Agreement, including entering into a monitoring agreement with City or SDHC in the form then currently used by City or SDHC and paying all costs associated with the monitoring and enforcement of the covenants of Developer/Owner contained in this Regulatory Agreement, as provided in such monitoring agreement.
2. **PROJECT MANAGEMENT**
   1. Management. Developer/Owner and Management Agent shall operate the Project in a manner that will provide decent, safe and sanitary residential facilities to the occupants of the Project, and will comply with all provisions of this Regulatory Agreement, the Loan Agreement, any other applicable contract or agreement between City and Developer/Owner, and all applicable Law. Developer/Owner shall be responsible for management of the Project, including the selection of Qualifying Households, certification and recertification of household size and income for Qualifying Households occupying Dwelling Units, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. City shall have no responsibility for the management or operation of the Project or the Property. The Project shall at all times be managed by an experienced Management Agent reasonably acceptable to City, with demonstrated ability to operate residential rental facilities similar to the Project in a manner that will provide decent, safe, and sanitary housing in a self-sufficient manner. For the purposes of this Regulatory Agreement, if Developer/Owner directly performs the functions of the Management Agent with Developer/Owner’s employees or by means of a service contract with an Affiliate of Developer/Owner, Developer/Owner’s role as the Management Agent shall be deemed approved by City. If the Management Agent is a Person other than Developer/Owner or an Affiliate of Developer/Owner, Developer/Owner shall submit for City’s approval the identity of any proposed Management Agent, together with additional information relevant to the background, experience and financial condition of any proposed Management Agent, as reasonably requested by City. If the proposed Management Agent is reasonably satisfactory to City and consistent with the requirements of this Regulatory Agreement, City shall approve or disapprove the proposed Management Agent by Notice to Developer/Owner within thirty (30) days following City’s receipt of all requested information regarding such Management Agent, as provided for in the immediately preceding sentence. Unless the proposed Management Agent is approved by City within such thirty (30) day period, the Management Agent shall be deemed disapproved by City. City approves the selection of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ corporation, as the initial Management Agent for the Project.
      1. **Performance Review**. Upon Notice from City, Developer/Owner shall, with the participation of City, periodically review the management practices and financial status of the Project and the Management Agent. City shall not request such periodic review more frequently than once each calendar year. The purpose of each periodic review will be to enable City to determine whether or not the Project is being operated, maintained and managed in accordance with the requirements and standards of this Regulatory Agreement and all applicable Law.
      2. **Replacement of Management Agent**. Any contract for the operation or management of the Project entered into by Developer/Owner with a Management Agent shall provide that the contract shall have a term of no more than twelve (12) months and that the contract is subject to the provisions of this Regulatory Agreement. If the Project is not being operated and managed in accordance with the requirements and standards of this Regulatory Agreement and all applicable Law, Developer/Owner shall remove the Management Agent and replace the Management Agent with a different Management Agent reasonably approved by City, under Section 4.1. Developer/Owner’s failure to remove and replace the Management Agent in any such circumstance shall constitute a Default by Developer/Owner under this Regulatory Agreement.
   2. Capital Replacement Account. At any time on or after the seventh (7th) anniversary of the Occupancy Date, if the Tax Credit Investor does not require Developer/Owner to reserve funds for future Capital Improvements, Developer/Owner shall establish and maintain the Capital Replacement Account by depositing into an interest bearing account held by an Institutional Lender, on the first day of the calendar month following the seventh (7th) anniversary of the Occupancy Date and on the first day of each calendar month thereafter, an amount to be reasonably determined by City and reasonably agreed to by Developer/Owner, based on industry standard practices at the time. City or Developer/Owner each reserve the right, in the exercise of their respective reasonable discretion and upon Notice given to each other from time to time, to increase the annual Capital Replacement Account deposit requirement (and the corresponding monthly deposits) based upon: (a) the joint inspection of the Property or the Project by City and Developer/Owner; (b) any CNA; or (c) an analysis of historical “capital needs” expenditures at the Property or the Project. To the extent that an Institutional Lender holding a Permitted Security Instrument recorded against the Property or the Tax Credit Investor requires Developer/Owner to maintain a separate reserve fund or account for any or all of the same purposes as the Capital Replacement Account, City will not require Developer/Owner to establish or maintain a Capital Replacement Account, provided that Developer/Owner actually deposits the amounts required by such Institutional Lender or the Tax Credit Investor into such reserve fund or account with the Institutional Lender or the Tax Credit Investor and provides all information and performs all acts required under this Section 4.2 for the benefit of City regarding such separate reserve fund or account maintained in accordance with the requirements of such Institutional Lender or the Tax Credit Investor, as though such account is the Capital Replacement Account.
      1. **Use of Account**. Developer/Owner shall only withdraw funds from the Capital Replacement Account to pay for the reasonable costs of Capital Improvements that Developer/Owner may deem reasonably necessary for maintenance and repair of the Project consistent with this Regulatory Agreement.
      2. **Documentation**. Annually or more frequently at City’s request, but no more frequently than quarterly, Developer/Owner shall document the Capital Improvements made and associated costs paid from the Capital Replacement Account during the preceding period. Developer/Owner shall maintain and shall provide, as requested, documentation showing the quantity and price of items purchased, price of materials and the cost of contracted labor or other services incurred in connection with such Capital Improvements, and such other items as City may reasonably request. Unless such cost has been approved by City in accordance with Section 4.2.3, if the cost of a Capital Improvement is anticipated to exceed Ten Thousand Dollars ($10,000) per year, Developer/Owner shall inform City and supply City with reasonable documentation concerning the need for and cost of the anticipated Capital Improvement.
      3. **Withdrawals from Capital Replacement Account**. On an annual basis, Developer/Owner shall notify City of the anticipated cash requirements that will need to be withdrawn from the Capital Replacement Account. Amounts so budgeted and reasonably approved by City and Developer/Owner may be withdrawn by Developer/Owner from the Capital Replacement Account without further City approval. Other withdrawals for unbudgeted, unanticipated or emergency Project expenditures or for repairs required by an Institutional Lender holding a Permitted Security Instrument recorded against the Property (if any) or the Tax Credit Investor may be withdrawn by Developer/Owner without prior City approval, but Developer/Owner shall notify City in writing within ten (10) calendar days after each such withdrawal. All amounts so withdrawn by Developer/Owner shall be expended for Capital Improvements to the Project and in accordance with this Regulatory Agreement. Any lack of funds in the Capital Replacement Account shall not in any way relieve Developer/Owner from any obligation to undertake any necessary or advisable Capital Improvements to the Project.
      4. **Interest Earned on Funds in the Capital Replacement Account**. Any interest or other earnings from sums deposited into the Capital Replacement Account shall be retained in and added to the balance of the Capital Replacement Account.
      5. **Capital Needs Assessment**. Developer/Owner shall deliver to City a CNA for City’s approval between the eleventh (11th) and twelfth (12th) anniversaries of the Occupancy Date (or at any earlier or later time required by an Institutional Lender). Thereafter, Developer/Owner shall deliver a CNA to City for City’s approval between the fourth (4th) and fifth (5th) anniversaries of the date of the delivery of the most recent CNA (or at any earlier date required by the Institutional Lender). Each CNA shall include an analysis of Developer/Owner’s actual expenditures for Capital Improvements compared to the most recently approved CNA, Developer/Owner’s original operating budget for the Project and Developer/Owner’s then-current operating budget for the Project. Each CNA shall include a ten (10) year assessment or analysis of replacement reserve requirements for Capital Improvements for the Project prepared by a qualified Person in accordance with reasonable and customary standards for similar residential rental projects.
   3. Operating Reserve.On or before the Conversion date, but in any event no longer than nine months after the Occupancy Date, Developer/Owner shall (or shall cause the Management Agent to) establish the Operating Reserve by depositing an amount necessary to cover three months’ worth of operating expenses and debt service or such other amount agreed to by City and Developer/Owner into the Operating Reserve. Interest earned on funds in the Operating Reserve shall remain in the Operating Reserve. Developer/Owner shall replenish the balance of the Operating Reserve from available cash flow until the amount is equal to or greater than three (3) months of the current year annual operating budget for the Project (including debt service) (“Minimum Balance”). An equal, verified operating reserve requirement of the Tax Credit Investor may be used as a substitute. Developer/Owner shall provide to City, at the same times and in the same manner as required for the submittal of the Annual Report, evidence reasonably satisfactory to the Mayor of compliance with this Section 4.3. The Operating Reserve shall be used solely to cover shortfalls between Gross Income and actual Project operating expenses. Developer/Owner shall not make any disbursements from the Operating Reserve without the prior written consent of the Mayor. After making any withdrawal from the Operating Reserve, Developer/Owner shall replenish the Operating Reserve to the Minimum Balance on the immediately following January 1. In the event the Operating Reserve cannot be replenished to the Minimum Balance through a single deposit, Developer/Owner shall develop a plan for restoring the required Minimum Balance, subject to the review and approval of such plan by the Mayor. The balance of the Operating Reserve shall be transferred to the Capital Replacement Account on or after the later of: (i) the date that Project revenues achieve a minimum annual debt coverage ratio of 1.15 to 1.00 for three (3) consecutive years after the Occupancy Date; or (ii) such date as permitted by the Tax Credit Investor. Upon transfer of the balance of the Operating Reserve to the Capital Replacement Account, the requirement to maintain the Operating Reserve shall be terminated and of no further force or effect.
   4. Insurance.
      1. **Required Coverage**. Developer/Owner shall maintain, to protect the City Parties against all insurable Claims resulting from this Regulatory Agreement, the Property or the Project, at the sole cost and expense of Developer/Owner, all of the insurance coverage described in Exhibit E attached to this Regulatory Agreement (or its then reasonably available equivalent) starting on the Occupancy Date and continuing through the end of the Term. Before the Occupancy Date, Developer/Owner shall maintain, to protect the City Parties against all insurable Claims resulting from this Regulatory Agreement, the Property or the Project, at the sole cost and expense of Developer/Owner.
      2. **Insurance Review**. Once each calendar year after the fifth (5th) anniversary of the Recording Date, either Party may initiate a review of the insurance requirements of this Regulatory Agreement regarding whether or not any such insurance coverage needs to be increased to protect the interests of City or Developer/Owner. Such an insurance review may be commenced by one Party delivering Notice of the commencement of such a review to the other Party. The effective date of a Notice initiating an insurance review shall commence a sixty (60) calendar day period during which City and Developer/Owner shall negotiate in good faith regarding increasing the insurance coverage required under this Regulatory Agreement. Neither Party shall unreasonably withhold, condition or delay its consent to a requested change in the insurance coverage required under this Regulatory Agreement.
   5. Hazardous Substances.
      1. **Restrictions**. Developer/Owner shall not cause or permit to occur on, under or at the Project or the Property during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance, or transportation to or from the Project or the Property of any Hazardous Substance, unless both: (i) reasonably necessary and customary to construct, operate or maintain the Project for uses this Regulatory Agreement permits; and (ii) in compliance with all Environmental Laws.
      2. **Compliance; Clean-Up**. Developer/Owner shall, at Developer/Owner’s sole cost and expense: (a) comply with all Environmental Laws applicable to the Project and the Property and, to the extent Environmental Law requires, clean up any Hazardous Substance Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under any Environmental Law; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans; and (e) Indemnify the City Parties against any Hazardous Substance Discharge or violation of Environmental Law, in accordance with Section 4.9. Developer/Owner’s obligations under this Section 4.5 shall not limit Developer/Owner’s rights against Third Persons (exclusive of the City Parties).
   6. Restrictions on Change in Management or Control of Developer/Owner, Assignment and Transfer.
      1. **Restrictions**. Developer/Owner acknowledges and agrees that the qualifications and identity of Developer/Owner are of particular importance and concern to City. Developer/Owner further acknowledges and agrees that City has relied and is relying on the specific qualifications and identity of Developer/Owner in entering into this Regulatory Agreement with Developer/Owner and that City would not have entered into this Regulatory Agreement, but for the specific qualifications and identity of Developer/Owner. As a consequence, Transfers are permitted only as expressly provided in this Regulatory Agreement. Developer/Owner represents to City that Developer/Owner has not made and agrees that Developer/Owner will not create or permit to be made or created, any Transfer, other than a Permitted Transfer, either voluntarily, involuntarily or by operation of Law, without the prior written approval of City. City approval of any proposed Transfer may be given, withheld or conditioned in the reasonable discretion of City. Any Transfer made in contravention of this Section 4.6.1 shall be voidable at the election of City, in City’s sole and absolute discretion. Developer/Owner acknowledges and agrees that the restrictions on Transfers set forth in this Section 4.6.1 are reasonable. Notwithstanding anything in this Regulatory Agreement to the contrary, Permitted Transfers are allowed, at any time, without City consent or approval.
      2. **Delivery of Transfer Documents**. All instruments and other legal documents proposed to effect any proposed Transfer, other than a Permitted Transfer (unless otherwise required by this Regulatory Agreement or the Loan Agreement), shall be submitted to City for review, at least thirty-five (35) calendar days before the proposed date of the Transfer. The written approval, disapproval or conditions of City regarding the proposed Transfer shall be provided to Developer/Owner, within thirty (30) calendar days following City’s receipt of all proposed Transfer documents. Developer/Owner agrees to reimburse City for all reasonable costs and expenses incurred by City in connection with City’s review of each proposed Transfer, including all Legal Costs and other Third Person consultant fees and expenses, up to a maximum amount of $5,000, which reimbursement amount shall be paid at the time of the Transfer through escrow pursuant to an invoice produced by the City. [Developer confirm]
   7. Obligation to Repair.
      1. **Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance**. Subject to the rights of any senior lender, if the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Developer/Owner under this Regulatory Agreement, Developer/Owner shall promptly proceed to obtain the proceeds of such insurance and take all steps necessary to begin Restoration and, immediately upon receipt of such insurance proceeds, promptly and diligently commence the Restoration of the Project to as close as possible to the same condition as the Project was in before the casualty, to the extent of the Property Insurance proceeds available to pay the actual cost of Restoration. Developer/Owner shall complete Restoration of the Project as soon as reasonably possible thereafter, so that the Project can continue to be operated and occupied as an affordable housing project in accordance with this Regulatory Agreement. Subject to extensions of time for Unavoidable Delay, Restoration shall begin within one (1) year from the date Developer/Owner obtains the proceeds of Property Insurance covering the casualty, unless City’s Mayor, in his or her reasonable discretion, approves a longer period of time. City shall cooperate with Developer/Owner, at no expense to City, in obtaining any Government Approvals required for the Restoration. If Developer/Owner fails to obtain insurance covering casualty loss to Project improvements as required by this Regulatory Agreement (and City has not procured such insurance and charged Developer/Owner for the cost), Developer/Owner shall be obligated to Restore any partial or total damage to the Project improvements in accordance with this Section 4.7.
      2. **Continued Operations**. During any period of Restoration of the Project, Developer/Owner shall continue, or cause the continuation of, the operation of the Project to the extent reasonably practicable from the standpoint of prudent business management.
      3. **Damage or Destruction Due to Cause Not Required to be Covered by Insurance**. If the improvements comprising the Project are completely destroyed or substantially damaged by a casualty for which Developer/Owner is not required to insure (and has not insured) against, then Developer/Owner shall not be required to Restore such improvements and may elect not to Restore such improvements by delivering Notice of such election to City within ninety (90) days after such substantial damage or destruction. In such event, Developer/Owner shall remove all debris from the Property. As used in this Section 4.7.3, “substantial damage” caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction that is more than ten percent (10%) of the replacement cost of the improvements comprising the Project. This Regulatory Agreement shall not be affected by Developer/Owner’s election not to Restore any improvements.
   8. Condemnation. If any portion of the Project is taken by exercise of the power of eminent domain by a Government during the Term, then Developer/Owner shall Restore the remaining portions of the Project with reasonable promptness, to the extent practicable, and this Regulatory Agreement shall not be affected.
   9. Indemnity.
      1. **Developer/Owner Indemnity Obligations**. Developer/Owner shall Indemnify the City Parties against any Claim to the extent such Claim arises from: (a) any wrongful intentional act or negligence of Developer/Owner Parties; (b) any Application made by or at Developer/Owner’s request; (c) any agreements that Developer/Owner (or anyone claiming by or through Developer/Owner) makes with a Third Person regarding the Property or the Project; (d) any workers’ compensation claim or determination relating to any employee of the Developer/Owner Parties, the Management Agent or their contractors; or (e) any Environmental Claim attributable to any action or failure to act by Developer/Owner Parties.
      2. **No City Liability**. During the Term: (a) Developer/Owner is and shall be responsible for operation of the Property and the Project; and (b) City shall not be liable for any injury or damage to any property (of Developer/Owner or any other Person) or to any Person occurring on or about the Property or the Project, except to the extent caused by City’s wrongful intentional act or negligence.
      3. **Independent of Insurance Obligations**. Developer/Owner’s indemnification obligations under this Regulatory Agreement shall not be construed or interpreted as in any way restricting, limiting or modifying Developer/Owner’s insurance or other obligations under this Regulatory Agreement. Developer/Owner’s obligation to Indemnify the City Parties under this Regulatory Agreement is independent of Developer/Owner’s insurance and other obligations under this Regulatory Agreement. Developer/Owner’s compliance with Developer/Owner’s insurance obligations and other obligations under this Regulatory Agreement shall not in any way restrict, limit or modify Developer/Owner’s indemnification obligations under this Regulatory Agreement and are independent of Developer/Owner’s other obligations under this Regulatory Agreement.
      4. **Survival of Indemnification and Defense Obligations**. The indemnity and defense obligations of Developer/Owner under this Regulatory Agreement shall survive the expiration or earlier termination of this Regulatory Agreement, until any and all actual or prospective Claims regarding any matter subject to an indemnity obligation under this Regulatory Agreement are fully, finally, absolutely and completely barred by the applicable statutes of limitations.
      5. **Immediate Duty to Defend**. The duty to defend under this Regulatory Agreement includes Claims for which an Indemnitee may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default or other obligation on the part of the Indemnitor or the Indemnitee have been determined. The duty to defend applies immediately, regardless of whether the Indemnitee has paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that an Indemnitee be entitled to obtain summary adjudication or summary judgment regarding an Indemnitor’s duty to defend the Indemnitee at any stage of any Claim within the scope of the Indemnitor’s indemnity obligations under this Regulatory Agreement.
   10. Indemnification Procedures. Wherever this Regulatory Agreement requires any Indemnitor to Indemnify any Indemnitee:
       1. **Prompt Notice**. The Indemnitee shall promptly Notify the Indemnitor of any Claim.
       2. **Selection of Counsel**. The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor’s insurance carrier that is providing coverage for a Claim shall be deemed reasonably acceptable to the Indemnitee, except in the event of a potential or actual conflict of interest for such counsel regarding such representation, such counsel is reasonably determined by the Indemnitee to be incompetent regarding such representation or the Indemnitor provides a defense to the Indemnitee under a reservation of rights. Even though the Indemnitor shall defend the Claim, Indemnitee may, at Indemnitee’s option and Indemnitee’s own expense (except where Indemnitor provides a defense to Indemnitee under a reservation of rights, a conflict of interest between Indemnitor and Indemnitee or another Person exists that requires the Indemnitee to be represented by separate legal counsel from Indemnitor’s legal counsel or Indemnitor’s legal counsel is reasonably determined by the Indemnitee to be incompetent regarding the representation, in each case, Indemnitor shall pay the Legal Costs of Indemnitee’s separate legal counsel), engage separate legal counsel to advise Indemnitee regarding the Claim and Indemnitee’s defense. The Indemnitee’s separate legal counsel may attend all proceedings and meetings. The Indemnitor’s legal counsel shall actively consult with the Indemnitee’s separate legal counsel.
       3. **Cooperation**. The Indemnitee shall reasonably cooperate with the Indemnitor’s defense of the Indemnitee.
       4. **Settlement**. The Indemnitor may only settle a Claim with the prior written consent of the Indemnitee. All settlements shall include a complete release of the Indemnitee from the subject Claim and not require the Indemnitee to make any payment to the claimant, and neither the Indemnitee nor the Indemnitor on behalf of the Indemnitee shall admit any liability.
   11. No Limitation. Developer/Owner acknowledges and agrees that Developer/Owner’s duties, obligations and liabilities under this Regulatory Agreement, including under Section 4.5 and Section 4.9, are in no way limited or otherwise affected by any information any of the City Parties may have concerning the Project or the Property or the presence within the Project or the Property of any Hazardous Substance, whether the City Parties obtained such information from Developer/Owner, from their own investigations or from a Third Person.
   12. Maintenance. Developer/Owner covenants to and for the benefit of City and agrees with City that:
       1. **Maintenance Standard**. Developer/Owner shall operate and maintain the Property and the Project in a commercially reasonable manner and condition, including maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation and all other improvements on or to the Property, now existing or made in the future, as necessary to maintain the appearance and character of the Property as improved with the Project, including all of the following, all at Developer/Owner’s sole cost and expense: (a) maintaining surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability; (b) removing all papers, mud, sand, debris, filth and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep areas in a clean and orderly condition; (c) removing or covering graffiti with the type of surface covering originally used on the affected area, (d) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines; (e) installing, operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (f) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance and character of the landscaping; (g) properly maintaining windows, structural elements and painted exterior surface areas of structures in a clean and presentable manner; (h) keeping the common areas of the Project and the Property free of accumulated debris, appliances, inoperable motor vehicles or motor vehicle parts, or free of storage of lumber, building materials or equipment not regularly in use on the Property; (i) parking of any commercial motor vehicle in excess of 10,000 pounds gross weight anywhere on the Property on other than a temporary basis; and (j) the use of garage areas on the Property for purposes other than the parking of motor vehicles and the storage of personal possessions and mechanical equipment of Developer/Owner or persons residing in Dwelling Units on the Property; and (k) arranging and paying for all fuel, gas, light, power, water, sewage, garbage disposal, telephone and other utility charges, and the expenses of installation, maintenance, use and service in connection with all of the foregoing (collectively, “**Maintenance Standard**”). Notwithstanding the foregoing, to the extent that the Maintenance Standard applies to physical conditions of the Property, the Maintenance Standard shall not apply during any period after a fire or other casualty loss, as long as Developer/Owner is diligently taking reasonable steps to obtain available insurance proceeds and repair, Restore or remove any improvements or conditions that violate the Maintenance Standard. Notwithstanding any provision of this Regulatory Agreement to the contrary, City shall have absolutely no responsibility for any cost or performance associated with any matter that is the responsibility of Developer/Owner under the Maintenance Standard.
       2. **Maintenance Deficiency**. If there is an occurrence of an adverse condition within the Property in contravention of the Maintenance Standard (each such occurrence being a “**Maintenance Deficiency**”), then City may Notify Developer/Owner of the Maintenance Deficiency. If a Maintenance Deficiency is not cured within thirty (30) calendar days following Notice to Developer/Owner of such Maintenance Deficiency, or if not reasonably curable within 30 days, then if the cure is not commenced within 30 days and prosecuted to completion thereafter, City shall have the right, but not the obligation, to perform all acts necessary to cure the Maintenance Deficiency or take any other action at law or in equity that may then be available to City to accomplish the abatement of the Maintenance Deficiency. Any amount expended by City for the cure or abatement of a Maintenance Deficiency under this Section 4.12.2 (including Legal Costs) shall be reimbursed to City by Developer/Owner within thirty (30) calendar days after Notice to Developer/Owner of the amount expended. If any amount becoming due to City under this Section 4.12.2 is not reimbursed to City by Developer/Owner within thirty (30) calendar days after Notice to Developer/Owner of the amount owed, the amount shall accrue Default Interest from the date of delivery of the Notice of the amount owed until the entire amount and all accrued Default Interest are paid in full. Nothing in this Section 4.12.2 is intended to limit or otherwise restrict any right of City outside of this Regulatory Agreement to abate a condition that is or may be a Maintenance Deficiency.
   13. No City Responsibility for Project. City shall have no responsibility for the Construction, installation, management, operation or maintenance of the Project or the Property, financially or otherwise.
   14. Prohibited Encumbrances. Developer/Owner shall not record and shall not allow to be recorded against the Property any Security Instrument, lien, property interest or other encumbrance that is a Prohibited Encumbrance. Developer/Owner shall remove or cause to be removed any and all Prohibited Encumbrances made or recorded against the Property or shall assure the complete satisfaction of any and all such Prohibited Encumbrances to the satisfaction of City, in City’s sole and absolute discretion. Before the Occupancy Date, Refinancing shall only be allowed with City’s prior written consent, in City’s sole and absolute discretion. Following the Occupancy Date, Refinancing is allowed without City’s prior written consent. The provisions of this Section 4.14 regarding the placement of encumbrances on the Property and Refinancing shall run with the land of the Property and bind successive Developer/Owners of the Property for the duration of the Term.
   15. City Right to Discharge Prohibited Encumbrances. After sixty (60) calendar days’ Notice to Developer/Owner of a Prohibited Encumbrance and provided that Developer/Owner has not caused such Prohibited Encumbrance to be removed during such period, City shall have the right, but not the obligation, to satisfy or remove any Prohibited Encumbrance against the Property or the Project and receive reimbursement from Developer/Owner for any amounts paid or incurred by City in satisfying or removing any such Prohibited Encumbrance, upon demand. Any amount incurred or expended by City in satisfying or removing a Prohibited Encumbrance from the Property or the Project that is not reimbursed to City by Developer/Owner within thirty (30) calendar days following written demand for payment from City shall accrue Default Interest, until paid in full. Nothing in this Section 4.15 shall require Developer/Owner to pay or make provisions for the payment of any tax, assessment, lien or charge that Developer/Owner is in the process of contesting the validity or amount thereof, in good faith, so long as such contest will not subject all or any portion of the Property to forfeiture or sale.
   16. Notice of Liens. Developer/Owner shall promptly Notify City of any Security Instrument or other lien or interest asserted against or attached to all or any portion of the Project or the Property, whether by voluntary act of Developer/Owner or otherwise, including any and all filings of mechanic’s liens.
   17. No Discrimination or Segregation. Developer/Owner covenants, by and for itself and all Persons claiming under or through Developer/Owner, that there shall be no discrimination against or segregation of anyPerson 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 Property or the Project, nor shall Developer/Owner or any Person claiming under or through Developer/Owner 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 Property or the Project.
   18. Case Management and Resident Services. Developer/Owner shall provide resident services to the occupants of the Dwelling Units, as applicable, in compliance with all applicable Law and as otherwise required by the terms of any Project financing obtained under Section 12 of the Loan Agreement. City shall have no responsibility for the provision of Case Management and Resident Services at the Project Prior to the closing of Developer/Owner’s construction loan for the Project, Developer/Owner will provide an overview of the Resident Services Developer/Owner intends to the provide at the Project (including budget and proposed Service Providers). At the City’s request, Developer/Owner will provide updates on Resident Services being provided during Project operations.
3. **COVENANTS RUN WITH THE LAND**. Developer/Owner and City declare their mutual specific intent that the covenants, conditions, restrictions, reservations and agreements set forth in this Regulatory Agreement are part of a plan for the promotion and preservation of affordable multi-family rental housing and for the implementation of CDBG eligible activities pursuant to 24 C.F.R. §§ 570.1 through 570.913 within the territorial jurisdiction of City and that each shall be deemed covenants running with the land of the Property, binding upon each successor-in-interest of Developer/Owner in the Project or the Property for the duration of the Term. Regardless of classification or characterization, each of the covenants, conditions, restrictions and agreements contained in this Regulatory Agreement touch and concern the land of the Property, and each of them is expressly declared to be for the benefit and in favor of City for the duration of the Term and under the authority of 24 C.F.R. § 570.505, regardless of whether City is or remains an Developer/Owner of any land or interest in land to which such covenants, conditions, restrictions or agreements relate. In the event of any Default under this Regulatory Agreement, City has the right to exercise all of the rights and remedies and maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such Default, as provided in this Regulatory Agreement. Developer/Owner expressly assumes the duty and obligation to perform each of the agreements and covenants and to honor each of the reservations and restrictions set forth in this Regulatory Agreement. Each and every contract, deed or other instrument hereafter executed covering or conveying all or any portion of the Property or the Project or any interest in the Property or the Project or any Dwelling Unit shall incorporate all of the provisions of this Regulatory Agreement, either expressly or by reference. Each and every contract, deed or other instrument transferring any estate or interest in the Property or the Project shall conclusively be deemed to have been executed, delivered and accepted subject to the agreements, covenants, conditions, reservations and restrictions of this Regulatory Agreement, regardless of whether such agreements, covenants, conditions, reservations and restrictions are set forth in or referenced in such contract, deed or other instrument.
4. **REMEDIES**
   1. Remedies. If an Event of Default occurs, then City shall, in City’s sole and absolute discretion, have the right to exercise any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other provision of this Regulatory Agreement:
      1. **Suits Before End of Term**. City may sue Developer/Owner for damages or other relief, from time to time, without terminating this Regulatory Agreement, including action in mandamus, specific performance, or other suit, action or proceeding at law or in equity, to require Developer/Owner to perform the covenants or agreements or observe the conditions or restrictions of this Regulatory Agreement, or enjoin any acts or things that may be unlawful or in violation of the rights of City under this Regulatory Agreement, or by other action at law or in equity, as necessary or convenient to enforce the covenants, agreements, conditions or restrictions of this Regulatory Agreement. Nothing in this Section 6.1.1 shall be construed to prohibit City from suing Developer/Owner following expiration or termination of the Term, subject to applicable Laws.
      2. **Receipt of Money**. No receipt of money by City from Developer/Owner after any Notice of Default shall affect any Notice previously given to Developer/Owner, or waive City’s right to enforce payment or deposit of any amount payable or later falling due, or City’s right to enter the Property or the Project. City and Developer/Owner agree that after service of Notice of Default or the commencement of suit or proceedings, or after final order or judgment, City may demand, receive and collect any money due or thereafter falling due, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such money collected being deemed payments on account of Developer/Owner’s liability to City.
      3. **No Implied Waiver**. No failure by City to insist upon strict performance of any condition, covenant, agreement, restriction or reservation of this Regulatory Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial payment of any amount of money due or becoming due to City during the continuance of any such Default, shall waive any such Default or such condition, covenant, agreement, restriction or reservation. No obligation of Developer/Owner under this Regulatory Agreement or the Loan Agreement, and no Default, shall be modified, except by a written instrument signed by City. No waiver of any Default shall modify this Regulatory Agreement or the Loan Agreement, and each and every covenant, agreement, condition, restriction and reservation of this Regulatory Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such condition, covenant, agreement, restriction or reservation of this Regulatory Agreement.
      4. **Damages.** City may recover from Developer/Owner all damages City incurs by reason of Developer/Owner’s Default and reimbursement of City’s reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. City may recover such damages at any time after Developer/Owner’s Default, including after the expiration of the Term. Notwithstanding any Law to the contrary, City need not commence separate actions to enforce Developer/Owner’s obligations for each amount or payment not paid or each month’s accrual of damages or costs for Developer/Owner’s Default, but may bring and prosecute a single combined action for all such damages and costs.
      5. **Injunction of Breaches.** Whether or not an Event of Default has occurred, City may obtain a court order enjoining Developer/Owner from continuing any Default or from committing any threatened Default. Developer/Owner specifically and expressly acknowledges that damages would not constitute an adequate remedy to City for any Non-Monetary Default.
   2. Specific Enforcement. Developer/Owner agrees that specific enforcement of Developer/Owner’s non- monetary obligations under this Regulatory Agreement is one of the reasons that City entered into the Loan Agreement and that, if Developer/Owner breaches any such obligation, potential monetary damages to City, as well as to prospective Qualifying Households, would be difficult, if not impossible, to evaluate or quantify. Therefore, in addition to any other relief to which City may be entitled as a consequence of Developer/Owner’s Default under this Regulatory Agreement, Developer/Owner agrees to the imposition of the remedy of specific performance against Developer/Owner under this Regulatory Agreement.
   3. Enforcement. City, or any successor to all rights, powers and obligations of City, shall have the power to enforce this Regulatory Agreement, and no other Person shall have any right or power to enforce any provision of this Regulatory Agreement on behalf of City or to compel City to enforce any provision of this Regulatory Agreement against Developer/Owner, the Project, the Property or any Dwelling Unit. Further, this Regulatory Agreement shall be enforceable by City, any resident of a Dwelling Unit, any resident association with members who reside in Dwelling Units, former residents of Dwelling Units who last resided in any such Dwelling Unit, applicants for occupancy of Dwelling Units or Persons on an affordable housing waiting list, subject to the specific requirements of such law.
   4. Tax Credit Investor Cure Rights. A copy of any Notice of Default delivered to Developer shall also be delivered to the Tax Credit Investor at the address provided to the City by such Tax Credit Investor in writing. The Tax Credit Investor shall have the right, but not the obligation, to cure the Event of Default in the time periods provided to Developer, and the City will accept a cure from the Tax Credit Investor with the same force and effect as a cure by Developer.
5. **GENERAL PROVISIONS**
   1. Relationship of Parties. Nothing contained in this Regulatory Agreement shall be interpreted or understood by any of the Parties or by any Third Person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between City and Developer/Owner or Developer/Owner’s agents, employees or contractors. Developer/Owner shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which Developer/Owner or Developer/Owner’s agents, or both, perform any services required of them by the terms of this Regulatory Agreement regarding the Project or the Property. Except as otherwise expressly provided in this Regulatory Agreement, Developer/Owner has the right to exercise full control of employment, direction, compensation and discharge of all Persons assisting Developer/Owner in the development, operation or maintenance of the Project or the Property. Developer/Owner shall be solely responsible for all matters relating to payment of Developer/Owner’s employees and the Management Agent, including compliance with tax withholding and all other Laws governing such employees. Developer/Owner shall be solely responsible for Developer/Owner’s own acts and those of Developer/Owner’s agents and employees.
   2. No Subordination. Developer/Owner acknowledges and agrees that this Regulatory Agreement shall, at all times and under all circumstances, be prior, paramount, and senior to any other non-statutory lien, encumbrance, interest or estate (whether recorded or not) relating to all or any part of the Project or the Property, except any such matter affecting the Property when the Developer/Owner acquired the Property, as identified in Schedule B of the Developer/Owner’s Title Policy (“**Exceptions**”). City shall be under no obligation, under any circumstance or for any reason, to subordinate all or any part of this Regulatory Agreement to any lien, encumbrance, interest, estate or other obligation of Developer/Owner relating to all or any part of the Project or the Property, other than the Exceptions; provided, however, that this Regulatory Agreement may be subordinate to any Additional Government Financing when required by law or program regulations and such Additional Government Financing is approved by the City.
   3. No Claims. Nothing contained in this Regulatory Agreement shall create or justify any claim against City by any Person that Developer/Owner may have employed or with whom Developer/Owner 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 Construction, operation or maintenance of the Project or the Property.
   4. Approvals.
      1. **Standard**. Any approvals required from City under this Regulatory Agreement shall not be unreasonably withheld, conditioned or delayed, except where otherwise specifically provided in this Regulatory Agreement. Wherever this Regulatory Agreement states that a Party’s approval shall be “reasonable” or not unreasonably withheld: (a) such approval shall not be unreasonably withheld, delayed or conditioned; (b) no withholding of approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable (if any); and (c) if a Party grants its consent to any matter, this shall not waive its rights to require such consent for any further or similar matter.
      2. **Document Review**. Except as otherwise specifically provided in this Regulatory Agreement, whenever this Regulatory Agreement calls for approval by a Party of a proposed document to be submitted by the other Party, the receiving Party shall Notify the other Party of its approval or disapproval of such document within thirty (30) calendar days after receipt of the proposed document. Unless otherwise provided in this Regulatory Agreement, a Party’s failure to respond within such thirty (30) calendar day period shall be deemed the Party’s approval.
   5. Warranty Against Payment of Consideration for Regulatory Agreement. Developer/Owner represents and warrants to City that: (a) Developer/Owner has not employed or retained any Person to solicit or secure this Regulatory Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Developer/Owner and Third Persons to whom fees are paid for professional services related to planning, design or Construction of the Project or documentation of this Regulatory Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Developer/Owner or any of Developer/Owner’s agents, employees or representatives to any elected or appointed official or employee of City in an attempt to secure this Regulatory Agreement or favorable terms or conditions for this Regulatory Agreement. Breach of the representations or warranties of this Section 7.5 shall entitle City to terminate this Regulatory Agreement upon seven (7) days’ Notice to Developer/Owner. Upon any such termination of this Regulatory Agreement, Developer/Owner shall immediately refund any payments made to or on behalf of Developer/Owner by City under this Regulatory Agreement or otherwise related to the Property, any Approval or the Project, before the date of any such termination.
   6. Non-liability of City Officials or Employees. No City Party shall be personally liable to Developer/Owner or any successor in interest to Developer/Owner, in the event of any Default by City under this Regulatory Agreement.
   7. Governing Law. This Regulatory Agreement shall be governed by the procedural and substantive laws of the State, without application of conflicts of laws principles or statutes.
   8. Amendment. This Regulatory Agreement may be amended only by a written instrument signed by both Developer/Owner and City.
   9. Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Regulatory Agreement. The Parties have both participated substantially in the negotiation, drafting and revision of this Regulatory Agreement, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Regulatory Agreement may be used in the plural and vice versa, all in accordance with ordinary principles of English grammar, which govern all language in this Regulatory Agreement. The words “include” and “including” in this Regulatory Agreement shall be construed to be followed by the words: “without limitation.” Each collective noun in this Regulatory Agreement shall be interpreted as if followed by the words “(or any part of it),” except where the context clearly requires otherwise. Every reference to any document, including this Regulatory Agreement, refers to such document as modified from time to time (except, at City’s option, any modification that violates this Regulatory Agreement), and includes all exhibits, attachments, schedules and riders to such document. The word “or” in this Regulatory Agreement includes the word “and,” except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.
   10. Legal Costs. In the event that a Party brings an action to enforce this Regulatory Agreement or otherwise arising out of this Regulatory Agreement, the prevailing Party in such action shall be entitled to recover Legal Costs to be fixed by the court in which a judgment is entered, as well as the costs of such suit, from the other Party. For the purposes of this Regulatory Agreement, in the case of both Developer/Owner and City, Legal Costs include the salaries, costs and overhead of the lawyers employed in the Office of the City Attorney who are legal counsel to City in such an action and in-house counsel of Developer/Owner.
   11. Severability. If any term or provision of this Regulatory Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Regulatory Agreement, or the application of such term or provision to Persons or circumstances, other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity. All remaining terms and provisions of this Regulatory Agreement shall be valid and be enforced to the fullest extent Law allows.
   12. Time is of the Essence. Time is of the essence with respect to the performance of each term, provision, covenant, condition, restriction, reservation or agreement contained in this Regulatory Agreement.
   13. Unavoidable Delay: Extension of Time of Performance.
       1. **Notice**. Subject to any specific provisions of this Regulatory Agreement stating that they are not subject to Unavoidable Delay or otherwise limiting or restricting the effects of an Unavoidable Delay, performance by either Party under this Regulatory Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.
       2. **Assumption of Economic Risks**. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS REGULATORY AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY’S OBLIGATIONS AND COVENANTS ARISING UNDER THIS REGULATORY AGREEMENT. ANYTHING IN THIS REGULATORY AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS REGULATORY AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE RECORDING DATE.

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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Initials of Authorized  City Representative(s) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Initials of Authorized  Developer/Owner Representative(s) |

* 1. Titles and Headings for Reference Only. The titles and headings of the articles, paragraphs or sections of this Regulatory Agreement are for convenience of reference only and are not to be considered a part of this Regulatory Agreement and shall not in any way interpret, modify or restrict the meaning of any term, provision, covenant, condition, restriction, reservation or agreement contained in this Regulatory Agreement.
  2. Notices. Any and all Notices required or permitted under this Regulatory Agreement to be sent by either Party to the other Party shall be proper, if in writing and transmitted to the address of City or Developer/Owner, as applicable, as designated below in this Section 7.15, by one or more of the following methods: (a) messenger for immediate personal delivery, (b) a nationally recognized overnight (one business day) delivery service (i.e., Federal Express, United Parcel Service, etc.) or (c) registered or certified mail, postage prepaid, return receipt requested, through the United States Postal Service. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice, in accordance with this Section 7.15. A Notice shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day the Notice is delivered by personal delivery, on the date the Notice is delivered (or the date of the second attempted delivery, as set forth in a written statement of the delivery service) by a nationally recognized overnight delivery service or three (3) calendar days after the Notice is deposited with the United States Postal Service as provided in this Section 7.15. Rejection, other refusal to accept or the inability to deliver a Notice because of a changed address of which no Notice was given, shall be deemed receipt of the Notice. Any attorney representing a Party may give any Notice on behalf of such Party. The following are the authorized addresses for the submission of Notices to the Parties, as of the date of this Regulatory Agreement:

|  |  |
| --- | --- |
| If to Developer/Owner: |  |
| With a copy to:  With a courtesy copy to: |  |
| If to City: | City of San Diego  Economic Development Department  1200 Third Avenue, 14th floor  San Diego, CA 92101  Attn: CDBG Loan – (Project Title) |
| With a courtesy copy to: | San Diego City Attorney’s Office  1200 Third Avenue, Suite 1620  San Diego, CA 92101 |

* 1. Counterparts. This Regulatory Agreement may be signed in multiple counterpart originals, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. This Regulatory Agreement includes thirty-seven (37) pages and five (5) attachments.
  2. Integration. This Regulatory Agreement and the other Loan Documents constitute the entire understanding and integrate all of the terms, conditions, covenants, restrictions, reservations, terms, provisions and agreements of City and Developer/Owner regarding the Property and the Project, and supersede all negotiations or previous agreements between City and Developer/Owner with respect to all or any part of the Property or the Project.
  3. No Merger. None of the terms, conditions, covenants, restrictions, reservations, terms, provisions or agreements set forth in this Regulatory Agreement shall be deemed to be merged with any deed conveying title to any estate or interest in the Property or the Project.
  4. Facsimile or Electronic Signatures. Signatures delivered by facsimile or electronic transmission shall be binding as originals upon the Party so signing and delivering; provided, however, that original signature(s) shall be required for documents to be recorded.

[**Remainder of page intentionally blank. Signatures appear on following page.**]

**SIGNATURE PAGE**

**TO**

**REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,**

**CONDITIONS AND RESTRICTIONS RESTRICTING USE OF**

**PROPERTY FOR AFFORDABLE HOUSING**

IN WITNESS WHEREOF, the Parties have signed and entered into this Regulatory Agreement by and through the signatures of their respective authorized representative(s), as set forth below:

|  |  |
| --- | --- |
| **CITY:** | DEVELOPER/OWNER: |
| CITY OF SAN DIEGO,  a municipal corporation  By:  Approved as to form:  City Attorney  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Deputy City Attorney | , |
|  |  |

**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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public in and for said State, 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 forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public in and for said State, 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 forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**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.**

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| --- | --- |
| STATE OF CALIFORNIA  COUNTY OF SAN DIEGO |  |

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public in and for said State, 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 forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**TO**

**REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,**

**CONDITIONS AND RESTRICTIONS RESTRICTING USE OF**

**PROPERTY FOR AFFORDABLE HOUSING**

**Property Legal Description**

**EXHIBIT B**

**TO**

**REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,**

**CONDITIONS AND RESTRICTIONS RESTRICTING USE OF**

**PROPERTY FOR AFFORDABLE HOUSING**

**Income Certification Form**

**[Attached behind this cover page]**

**Income Certification (Project Title)**

NOTE TO APARTMENT RESIDENT: This form is designed to assist you in computing “Adjusted Income” in accordance with the method set forth in the United States Department of Housing and Urban Development (“HUD”) Regulations at United States Code of Federal Regulations, Title 24, Part 5, Section 5.611. You should make certain that this form is at all times up-to-date with the HUD Regulations.

Re: [Address of Dwelling Unit]

1. Members of Household. I/We, the undersigned, state that I/we have read and answered fully, frankly and personally each of the following questions for all persons who are to occupy the unit being applied for in the above apartment project. Listed below are the names of all persons who intend to reside in the unit:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Names of Members of Household** | **Relationship to Head of Household** | **Age** | **Social Security Number** | **Place of Employment** |
| \_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_ |

1. Adjusted Income Computation. The total anticipated annual income, calculated in accordance with the provisions of this Section 2, of all persons over the age of 18 years listed in Section 1 for the 12-month period beginning the date that (i) I/we plan to move into a unit or (ii) the date of this Certification, whichever is later, is $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
   1. Annual income means all amounts, monetary or not, that:
      1. Are paid to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
      2. Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
      3. Are not specifically excluded in paragraph (c) of this Section 2.
      4. Are derived (during the 12-month period) from assets to which any member of the family has access.
   2. Annual income includes, but is not limited to:
      1. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
      2. The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
      3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this Section 2. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
      4. The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this Section 2);
      5. Payments in lieu of earnings, such as unemployment and disability compensation, worker’s compensation and severance pay (except as provided in paragraph (c)(3) of this Section 2);
      6. Welfare assistance payments.
         1. Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:
            1. Qualify as assistance under the TANF program definition at 45 C.F.R. Section 260.31; and
            2. Are not otherwise excluded under paragraph (c) of this Section 2.
         2. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
            1. The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
            2. The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family’s welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
      7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;
      8. All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this Section 2).
   3. Annual income does not include the following:
      1. Income from employment of children (including foster children) under the age of 18 years;
      2. Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
      3. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker’s compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this Section 2);
      4. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
      5. Income of a live-in aide, as defined in 24 C.F.R. Section 5.403;
      6. The full amount of student financial assistance paid directly to the student or to the educational institution;
      7. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
      8. All of the following amounts:
         1. Amounts received under training programs funded by HUD;
         2. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
         3. Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
         4. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for Developer/Owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time;
         5. Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
      9. Temporary, nonrecurring or sporadic income (including gifts);
      10. Reparation payments paid by a foreign government in relation to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
      11. Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);
      12. Adoption assistance payments in excess of $480 per adopted child;
      13. Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;
      14. Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
      15. Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
      16. Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 C.F.R. Section 5.609(c) apply.
2. Capital Asset and Savings Information. Do the persons whose income or contributions are included in Section 2 above:
   1. have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles and interests in Indian trust land)? Yes \_\_\_\_ No\_\_\_\_
   2. have they disposed of any assets (other than at a foreclosure or bankruptcy sale) during the last two years at less than fair market value? Yes \_\_\_\_ No \_\_\_\_
   3. If the answer to (a) or (b) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than $5,000? Yes \_\_\_\_ No\_\_\_\_
   4. If the answer to (c) is yes, state:
      1. the amount of income expected to be derived from such assets in the 12-month period beginning on the date of initial occupancy in the unit that you propose to rent: $\_\_\_\_\_; and
      2. the amount of such income, if any, that was included in Section 2 above:

$ \_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Full-Time Student Information.
   1. Are all of the individuals who propose to reside in the unit full-time students\*?

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

\*A full-time student is an individual enrolled as a full-time student during each of five calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance and is not an individual pursuing a full-time course of institutional or farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

* 1. If the answer to (a) is yes, is at least one of the proposed occupants of the unit a husband and wife entitled to file a joint federal income tax return? Yes \_\_\_\_ No\_\_\_\_

1. No Relationship with Developer/Owner. Neither myself nor any other occupant of the unit I/we propose to rent is the Developer/Owner of the rental housing project in which the unit is located (“Developer/Owner”), has any family relationship to Developer/Owner or owns, directly or indirectly, any interest in Developer/Owner or the Developer/Ownership of such rental housing project. For purposes of this Section 5, indirect Developer/Ownership by an individual shall mean Developer/Ownership by a family member, Developer/Ownership by a corporation, partnership, estate or trust in proportion to the Developer/Ownership or beneficial interest in such corporation, partnership, estate or trust held by the individual or a family member, and Developer/Ownership, direct or indirect, by a partner of the individual.
2. Certification of Accuracy of Information. This Certificate is made with the knowledge that it will be relied upon by Developer/Owner to determine maximum income for eligibility to occupy the unit; and I/we declare that all information set forth in this Certificate is true, correct and complete and, based upon information I/we deem reliable and that the statement of total anticipated income contained in Section 2 is reasonable and based upon such investigation as the undersigned deemed necessary. I/we acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this Regulatory Agreement will constitute a material breach of my/our agreement with Developer/Owner to lease the unit and will entitle Developer/Owner to prevent or terminate my/our occupancy of the unit by institution of an action for eviction or other appropriate action or proceedings. I/we will assist Developer/Owner in obtaining any information or documents required to verify the statements made in this Certificate, including either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding calendar year.
3. Housing Issuer Statistical Information (Optional--will be used for reporting purposes only):

Marital Status:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Race (Head of Household)

White \_\_\_\_\_ Asian \_\_\_\_\_\_ Hispanic \_\_\_\_\_\_\_

African-American \_\_\_\_\_ Native American \_\_\_\_ Other \_\_\_\_\_\_\_

Physical Disability: Yes \_\_\_\_\_ No \_\_\_\_\_

I/we declare under penalty of perjury under the laws of the United States of America and the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_, \_\_\_\_in the County of San Diego,

California.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Applicant

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Applicant

[Signature of all persons over the age of 18 years listed in Section 1 above required]

FOR COMPLETION BY DEVELOPER/OWNER ONLY:

1. Calculation of eligible income:
   1. Enter amount entered for entire household in Section 2: $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
      1. If answer to Section 3(c) is “yes,” enter the total amount entered in paragraph 3(d)(1), subtract from that figure the amount entered in 3(d)(2) and enter the remaining balance ($\_\_\_\_\_\_\_\_\_\_\_\_);
      2. Multiply the amount entered in Section 8(b)(1) times the current passbook savings rate to determine what the total annual earnings on the amount in Section 8(b)(1) would be if invested in passbook savings ($ \_\_\_\_\_\_\_\_\_\_\_\_\_), subtract from that figure the amount entered in Section 8(b)(1) and enter the remaining balance;
      3. Enter at right the greater of the amount calculated under 8(b)(1) or 8(b)(2) above $\_\_\_\_\_\_\_\_;
   2. TOTAL ELIGIBLE INCOME

(Line 8(a) plus line 8(b)(3)): $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. The amount entered in Line 8(c):

\_\_\_\_\_\_Qualifies the applicant(s) as a Qualifying Household.

\_\_\_\_\_\_\_Does not qualify the applicant(s) as a Qualifying Household.

1. Number of unit assigned: \_\_\_\_\_\_\_\_\_

Bedroom Size: \_\_\_\_\_\_Rent: $\_\_\_\_\_\_\_monthly/annually

1. The unit specified in Section 10 above [was/was not] last occupied for a period of, at least, 31 consecutive days by persons whose aggregate anticipated annual income, as certified in the above manner upon their initial occupancy of the unit, qualified them as a Qualifying Household that was an Extremely Low Income Household.
2. Method used to verify applicant(s) income:

\_\_\_\_Employer income verification.

\_\_\_\_Copies of tax returns.

\_\_\_\_Other (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Management Agent

The undersigned employee has applied for a rental unit located in a project restricted by the [TO BE DETERMINED] for persons of low income. Every income statement of a prospective tenant must be stringently verified. Please indicate below the employee’s current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual wages\_\_\_\_\_\_\_\_\_ Overtime \_\_\_\_\_\_ Bonuses \_\_\_\_\_\_\_\_\_\_\_

Commissions \_\_\_\_\_\_\_\_\_\_

Total current income \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I certify under penalty of perjury under the laws of the United States of America and the laws of the State of California that the statements above are true and complete to the best of my knowledge.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date Title

I grant you permission to disclose my income to [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] in order that they may determine my income eligibility for rental of an apartment at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date

Please send to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I have attached copies of my individual federal and state income tax returns for the immediately preceding calendar year and certify under penalty of perjury under the laws of the United States of America and the laws of the State of California that the information shown in such income tax returns is true and complete to the best of my knowledge.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date

**EXHIBIT C**

**TO**

**REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,**

**CONDITIONS AND RESTRICTIONS RESTRICTING USE OF**

**PROPERTY FOR AFFORDABLE HOUSING**

**Annual Report**

**[Attached behind this cover page]**

**Annual Report (Project Title)**

The undersigned, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as the authorized representative of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Developer/Owner”), has read and is thoroughly familiar with the provisions of the various documents associated with the financial assistance provided by the City of San Diego, a California municipal corporation (“City”), as established in numerous documents, including that certain Regulatory Agreement and Declaration of Covenants, Conditions, and Restrictions Restricting Use of Property for Affordable Housing (Project Title), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_ (Regulatory Agreement), between Developer/Owner and City. All terms indicated to be defined terms by initial capitalization in this report that are not specifically defined in this report shall have the meanings given to the same terms, respectively, in the Regulatory Agreement.

As of the date of this Annual Report, the following percentage of completed Dwelling Units in the Project are (i) occupied by Qualifying Households or (ii) are currently vacant and are Available for such occupancy and have been held continuously Available for such occupancy since the later of: (y) the date a Certificate of Occupancy was issued for the Dwelling Unit or (z) a Qualifying Household vacated such Dwelling Unit, as indicated:

Number of Dwelling Units occupied by Qualifying Households: \_\_\_\_\_\_\_\_\_\_\_\_

Number of Vacant Dwelling Units: \_\_\_\_\_\_\_\_\_\_\_\_

Number of Qualifying Households who commenced occupancy of Dwelling Units during the preceding reporting period: \_\_\_\_\_\_\_\_\_\_\_\_

Attached is a separate sheet (“Occupancy Summary”) listing, among other items, the identities of all occupants of each Dwelling Unit, the rent paid for each Dwelling Unit and the income level of the household occupying each Dwelling Unit. The information contained in the Occupancy Summary is true and accurate based on information submitted to Developer/Owner and is certified in writing as true and accurate under penalty of perjury under the laws of the United States of America and the laws of the State of California by each tenant.

The undersigned certifies that: (1) a review of the activities of Developer/Owner during such reporting period and of Developer/Owner’s performance under the Regulatory Agreement has been made under the supervision of the undersigned; and (2) to the best knowledge of the undersigned, based on the review described in clause (1), Developer/Owner is not in default under any of the terms or provisions of the Regulatory Agreement.

**Signature Page**

**To**

**Annual Report**

|  |  |
| --- | --- |
|  | DEVELOPER/OWNER: |
| Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | [insert signature line for Developer/Owner’s  authorized representative] |

**OCCUPANCY SUMMARY**

Total Number of Dwelling Units in the Project: \_\_\_\_\_\_\_\_

Total Number of Dwelling Units occupied by Qualifying Households: \_\_\_\_\_\_\_\_

Total Number of Dwelling Units Available for rent to   
Qualifying Households: \_\_\_\_\_\_\_\_

ATTACHED IS THE FOLLOWING INFORMATION:

A. Resident and rental information for each occupied Dwelling Unit in the Project.

B. An Income Certification Form for all new Qualifying Households who have moved into a Dwelling Unit in the Project since the filing of the last Occupancy Summary.

**EXHIBIT D**

**TO**

**REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,**

**CONDITIONS AND RESTRICTIONS RESTRICTING USE OF**

**PROPERTY FOR AFFORDABLE HOUSING**

**Crime Free Lease Addendum**

**[Attached behind this cover page]**

**CRIME FREE LEASE ADDENDUM**

In consideration of the signature or renewal of a lease of the dwelling unit identified in the lease, Developer/Owner and Resident agree as follows:

1. Resident, any members of the resident’s household or a guest or other person under the resident’s control shall not engage in criminal activity, including drug-related criminal activity, on or near the dwelling unit premises. “Drug-related criminal activity” means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use of a controlled substance (as defined in Section 102 of the Controlled Substance Act [21 U.S.C. Section 802]).

2. Resident, any member of the resident’s household or a guest or other person under the resident’s control shall not engage in any act intended to facilitate criminal activity, including drug-related criminal activity, on or near the dwelling unit premises.

3. Resident or members of the household will not permit the dwelling unit to be used for, or to facilitate, criminal activity, including drug-related criminal activity, regardless of whether the individual engaging in such activity is a member of the household, or a guest.

4. Resident, any member of the resident’s household or a guest, or another person under the resident’s control shall not engage in the unlawful manufacturing, selling, using, storing, keeping, or giving of a controlled substance as defined in Health & Safety Code Section 11350, et seq., at any locations, whether on or near the dwelling unit premises or otherwise.

5. Resident, any member of the resident’s household, or a guest or another person under the resident’s control shall not engage in any illegal activity, including: prostitution, as defined in Penal Code Section 647(b); criminal street gang activity, as defined in Penal Code Section 186.20 et seq.; assault and battery, as prohibited in Penal Code Section 240; burglary, as prohibited in Penal Code Section 4\_\_\_\_\_\_\_\_\_\_\_; the unlawful use and discharge of firearms, as prohibited in Penal Code Section 245; sexual offenses, as prohibited in Penal Code Sections 269 and 288, or any breach of the lease agreement that otherwise jeopardizes the health, safety and welfare of the landlord, landlord’s agent or other tenant or involving imminent or actual serious property damage.

6. VIOLATION OF THE ABOVE PROVISIONS SHALL BE A MATERIAL AND IRREPARABLE VIOLATION OF THE LEASE AND GOOD CAUSE FOR IMMEDIATE TERMINATION OF TENANCY. A single violation of any of the provisions of this addendum shall be deemed a serious violation and a material and irreparable non-compliance. It is understood that a single violation shall be good cause for termination of the lease. Unless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be by a preponderance of the evidence.

7. In case of conflict between the provisions of this addendum and any other provisions of the lease, the provisions of this addendum shall govern.

This CRIME FREE LEASE ADDENDUM is incorporated into the lease executed or renewed this day between Developer/Owner and Resident.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Resident

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Resident

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Resident

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Resident

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Property: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Property Manager’s Signature:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT E  
TO  
REGULATORY AGREEMENT AND DECLARATION OF COVENANTS,**

**CONDITIONS AND RESTRICTIONS RESTRICTING USE OF**

**PROPERTY FOR AFFORDABLE HOUSING**

Insurance Requirements

1. **Automobile Liability Insurance**. Insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by Developer/Owner regarding the Project, with minimum limits for bodily injury and property damage of TWO MILLION DOLLARS ($2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by City, which pre-approval shall not be unreasonably withheld.
2. **Builder’s Risk Insurance**. During any Construction on the Property, Builder’s risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the subject construction, including cost of debris removal, but excluding foundation and excavations. Such insurance shall also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Property.
3. **Liability Insurance**. Commercial general liability insurance against claims for bodily injury, personal injury, death or property damage occurring upon, in or about the Property, the Project or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Five Million Dollars ($5,000,000) for any one occurrence and Ten Million Dollars ($10,000,000) aggregate and which may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Project and the Property, collectively, or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.
4. **Property Insurance**. Insurance providing coverage for the Property and all improvements on or to the Property against loss, damage or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements comprising the Project (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with “ordinance or law” coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Property, an “increased cost of construction” endorsement and an endorsement covering demolition and cost of debris removal. Property Insurance shall also include rental or business interruption insurance in an amount, at least, equal to the average annual Gross Income of the Project for the preceding three (3) calendar years and providing for a 12-month extended period of indemnity.
5. **Waiver of Subrogation.** A provision in, or endorsement to, any insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either Party to this Agreement for any loss such insurance policy covers.
6. **Workers Compensation Insurance**. Workers compensation insurance complying with the provisions of State law and an employer’s liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars ($1,000,000) per accident for bodily injury or disease, covering all employees of Developer/Owner.
7. **Nature of Insurance**. All Liability Insurance, Automobile Liability Insurance, Builder’s Risk Insurance and Workers Compensation Insurance policies this Agreement requires shall be issued by carriers that: (a) are listed in the then current “Best’s Key Rating Guide—Property/Casualty—United States & Canada” publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of “A-” and a minimum financial size category of “VII” (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Developer/Owner may provide any insurance under a “blanket” or “umbrella” insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Property and the Project, which amount(s) shall equal or exceed the amount(s) required by this Agreement; and (ii) such policy otherwise complies with the requirements of this Agreement.
8. **Policy Requirements and Endorsements**. All insurance policies required by this Agreement shall contain (by endorsement or otherwise) the following provisions:
   1. *Insured*. Liability Insurance policies shall name the City Parties as “additional insured.” Builder’s Risk Insurance policies shall name City as a “loss payee.” The coverage afforded to the City Parties shall be at least as broad as that afforded to Developer/Owner regarding the Property and the Project and may not contain any terms, conditions, exclusions or limitations applicable to the City Parties that do not apply to Developer/Owner.
   2. *Primary Coverage*. Any insurance or self-insurance maintained by the City Parties shall be excess of all insurance required to be maintained by Developer/Owner under this Agreement and shall not contribute with any insurance required to be maintained by Developer/Owner under this Agreement.
   3. *Contractual Liability*. Liability Insurance policies shall contain contractual liability coverage for Developer/Owner’s indemnity obligations under this Agreement. Developer/Owner’s obtaining or failure to obtain such contractual liability coverage shall not relieve Developer/Owner from nor satisfy any indemnity obligation of Developer/Owner under this Agreement.
   4. *Deliveries to City*. Evidence of Developer/Owner’s maintenance of all insurance policies required by this Agreement shall be delivered to City before the Close of Escrow. Builder’s Risk Insurance coverage shall commence at the time of Builder mobilization for the Project. No later than three (3) days before any insurance required by this Agreement expires, is cancelled or its liability limits are reduced or exhausted, Developer/Owner shall deliver to City evidence of Developer/Owner’s maintenance of all insurance required by this Agreement. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days’ advance written notice of such action has been given to City by certified mail, return receipt requested; provided; however, that only ten (10) days’ advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as “endeavor to” and “but failure to mail such Notice shall impose no obligation or liability of any kind upon the company” shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties under this Agreement.
   5. *Waiver of Certain Claims*. Developer/Owner shall cause each insurance carrier providing any Liability Insurance, Builder’s Risk Insurance, Worker’s Compensation Insurance or Automobile Liability Insurance coverage under this Agreement to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to the City Parties, if not originally in the policy. To the extent that Developer/Owner obtains an insurance policy covering both the Developer Parties (as defined in the Loan Agreement) and the City Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by such insurance policy.
   6. *No Representation*. No Party makes any representation that the limits, scope, or forms of insurance coverage this Agreement requires are adequate or sufficient.
   7. *No Claims Made Coverage*. None of the insurance coverage required under this Agreement may be written on a claims-made basis.
   8. *Fully Paid and Non-Assessable*. All insurance obtained and maintained by Developer/Owner in satisfaction of the requirements of this Agreement shall be fully paid for and non-assessable.
   9. *City Option to Obtain Coverage*. During the continuance of an Event of Default arising from the failure of Developer/Owner to carry any insurance required by this Agreement, City may, in City’s sole and absolute discretion, purchase any such required insurance coverage. City shall be entitled to immediate payment from Developer/Owner of any premiums and associated reasonable costs paid by City to obtain such insurance coverage. Any amount becoming due and payable to City under this Section 8.9 that is not paid within fifteen (15) calendar days after written demand from City for payment of such amount with an explanation of the amounts demanded, will accrue Default Interest from the date of the demand. Any election by City to purchase or not to purchase insurance otherwise required by the terms of this Agreement to be carried by Developer/Owner shall not relieve the Developer/Owner of any Default or Developer/Owner’s obligation to obtain and maintain any insurance coverage required by this Agreement.
   10. *Separation of Insured*. All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Developer/Owner and the City Parties. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Agreement may provide a cross-suits exclusion for suits between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons.
   11. *Deductibles and Self-Insured Retentions*. Any deductibles or self-insured retentions under insurance policies required by this Agreement shall be declared to and approved by City. Developer/Owner shall pay all such deductibles or self-insured retentions regarding the City Parties. Each insurance policy issued in satisfaction of the requirements of this Agreement shall provide that, to the extent that Developer/Owner fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, City may pay the unpaid portion of such deductible or self-insured retention, in City’s sole and absolute discretion. All amounts paid by City toward self-insured retentions regarding insurance policies covering the City Parties under this Agreement shall be reimbursable to City by Developer/Owner in the same manner that insurance costs are reimbursable to City from Developer/Owner under Section 8.9.
   12. *No Separate Insurance*. Developer/Owner shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with insurance coverage required by this Agreement, unless the City Parties are made additional insured under such insurance coverage.
   13. *Insurance Independent of Indemnification*. The insurance requirements of this Agreement are independent of the Parties’ indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties’ indemnification or other obligations or to limit the Parties’ liability under this Agreement, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage, nor shall the provision of such insurance preclude City from taking such other actions as are available to City under any other provision of this Agreement or otherwise at law or in equity.

**Exhibit D**

**to**

**CDBG LOAN AGREEMENT**

**(Project TiTle)**

Developer Note

[Attached behind this cover page]

PROMISSORY NOTE SECURED BY DEED OF TRUST

(Project Title)

|  |  |  |
| --- | --- | --- |
| **Principal Amount:** Not to exceed \_\_\_\_\_\_\_\_\_\_ |  | **Date of Note:** \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ |
| **Borrower: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a California \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |  | **Lender:** City of San Diego, a California municipal corporation |
| **Maturity Date:** As stated in Section 6 (below) |  | **Interest Rate:** As stated in Section 4 (below) |

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a California (nonprofit/limited partnership/liability company) (“**Borrower**”), whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, promises to pay, at the times stated in this Note, to the order of the City of San Diego, a California municipal corporation (“**Lender**”), a principal amount not to exceed \_\_\_\_\_\_\_\_\_\_\_, together with interest on the unpaid principal balance of this Note from time to time outstanding at the annual rate set forth in Section 4 from the date of advance until fully paid to City of San Diego, 1200 Third Avenue, Suite 1400 , San Diego, California 92101, or at such other place as Lender may designate to Borrower in writing.

1. **Reference to Loan Documents**. This Note is made by Borrower to the order of Lender in accordance with that certain CDBG Loan Agreement (Project Title), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, by and between Borrower and Lender (“**Loan** **Agreement**”). Additionally, Borrower and Lender entered into that certain Regulatory Agreement and Declaration of Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing (Project Title), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ (“**Regulatory Agreement**”).
2. **Definitions**. For the purposes of this Note, the following terms shall be defined as follows:
   1. Asset Management Fees. Annual fees not to exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ subject to annual adjustments equal to three percent (3%);
   2. Borrower’s Share of Residual Receipts. Fifty percent (50%) of Residual Receipts.
   3. Borrower Partnership Agreement. The Agreement of Limited Partnership organizing and establishing Borrower as a legal entity, as such agreement may be amended from time to time..
   4. City Deed of Trust. That certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, made by Borrower, as trustor, to \_\_\_\_\_\_\_\_\_\_\_\_\_\_, as trustee, for the benefit of Lender, as beneficiary.
   5. Debt Service. Payments made in a calendar year towards obligations secured by Permitted Security Instruments, exclusive of payments made or to be made under this Note and exclusive of payments made toward Additional Government Financing to be paid from Residual Receipts.
   6. Default. Any of the following shall constitute a “Default” under this Note: (a) Borrower’s failure to pay any installment or other sum due under this Note as and when due and payable (whether by extension, acceleration or otherwise) following thirty (30) calendar days’ written notice from Lender to Borrower of such failure to pay; or (b) any breach of any other promise or obligation in this Note, the City Deed of Trust, the Regulatory Agreement, or the Loan Agreement or in any other instrument now or hereafter securing the indebtedness evidenced by this Note, subject to applicable notice and opportunity to cure provisions in the subject instrument or agreement. If the cure of any Default under this Note that is not based on a default under any other document cannot reasonably be made within thirty (30) days and Borrower promptly and diligently commences to cure such default within thirty (30) days, then the period to cure shall be deemed extended for up to an additional thirty (30) days after Lender’s Default notice, as long as Borrower diligently and continuously proceeds to cure such Default to Lender’s satisfaction.
   7. Default Rate. An annual interest rate (instead of the rate specified in Section 4) equal to the lesser of: (a) eight percent (8%); or (b) the maximum interest rate allowed by law.
   8. Gross Consideration. The sum of all of the following: (1) the gross amount of cash paid, or to be paid, (2) the fair market value of other property transferred, or to be transferred, (3) the outstanding amount of any liability assumed, or to be assumed, by the transferee or to which the property interest is subject immediately before and after the Transfer or, (4) in the case of a Transfer without any of the previously described forms of consideration, the fair market value of the estate or interest in the property transferred. Any fair market value determination shall be as of the date of the subject Transfer.
   9. Loan Documents. Collectively, this Note, the Loan Agreement, the Regulatory Agreement and the City Deed of Trust.
   10. Net Refinancing Proceeds. The proceeds of any Refinancing that are actually disbursed to or for the benefit of Borrower, other than to pay off the Deferred Developer Fee, all or part of a pre-existing loan to Borrower regarding the Project that is secured by a Permitted Security Instrument or to pay any reasonable and customary fees or costs associated with obtaining the new Refinancing loan that are actually paid by Borrower and not rebated or refunded to Borrower, amounts due under Borrower’s Partnership Agreement and funding of reserves.
   11. Occupancy Date. The date on which the City issues a final Certificate of Occupancy (defined in the Loan Agreement) for the Project.
   12. Operating Expenses. Actual, reasonable and customary (for comparable affordable rental housing developments in the County of San Diego, California) costs, fees and expenses directly incurred, paid and attributable to the operation, maintenance and management of the Project in a calendar year, including, without limitation: (1) the cost of utilities supplied to and used for the Property and not paid by the tenants of the Property, including trash removal, electricity, water, sewer and gas; (2) the cost of all insurance required for the Property; (3) ad valorem tax and assessment payments, Community Facilities District special tax payments and landscape and lighting maintenance district payments applicable to the Property; (4) maintenance and repair expenses for services, material and labor, including painting, cleaning, pest control, gardening, rubbish removal and graffiti removal; (5) charges for public services such as sewer charges, license and permit fees; (6) advertising, marketing and promotion costs; (7) leasing commissions; (8) accounting, audit and legal expenses incurred in operation of the Property; (9) the allocable share of expenses of the Property for maintenance of roads and use of shared facilities; (10) salaries, wages, rent payments or allocation, and other compensation due and payable to the employees or agents of Borrower employed on-site in connection with the maintenance, administration or operation of the Property, along with all withholding taxes, insurance premiums, social security payments and other payroll taxes or payments required in connection with such employees; (11) the Property Management Fee; (12) costs of security services supplied to the Property, if any; (13) the cost of social support services and programs offered and available to tenants of the Property provided by service providers approved by Lender; (14) office, janitorial, cleaning and building supplies; (15) cable television, satellite and similar facilities; (16) recreational amenities, supplies and services; (17) affordable unit monitoring fees as required by City or the San Diego Housing Commission not to exceed $157.50 per unit in Year 1, subject to reasonable annual adjustment; (18) reasonable and customary payments necessary to maintain an operating reserve account to cover the greater of three (3) months of Operating Expenses and Debt Service for the Project or the amounts required by an Institutional Lender or the Tax Credit Investor; (19) reasonable and customary payments necessary to maintain a replacement reserve account for the Project, or greater amounts required by an Institutional Lender or Tax Credit Investor; (20) Asset Management Fees and Partnership Management Fees; (21) purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings (other than from reserves); (22) fees and expenses of accountants, attorneys, consultants and other professionals not included in the Asset Management Fees and Partnership Management Fees; and (23) all other fees and expenses authorized in the annual budget for the Property approved by Lender. Operating Expenses shall not include the following: (i) repairs or replacements paid out of insurance proceeds received by Borrower; (ii) fees, costs or expenses of refinancing of any loan; (iii) depreciation of buildings or other similar non-cash items of expense; or (iv) any legal fees or other expenses, fees or costs incurred by Borrower in connection with obtaining the Agreement or in obtaining any loan. To the extent that any expense is paid out of reserves maintained by the Capital Replacement Account or Operating Reserve to be established and maintained by Borrower under the Regulatory Agreement, such expense shall not be part of “Operating Expenses.” To the extent that all or any portion of the Property or Project is leased by Borrower and the lessee, sublessee or occupant pays any items described as Operating Expenses in this Section 2(k), then such items that are paid by such lessee, sublessee or occupant shall not be Operating Expenses. No expense item shall be counted twice in determining Operating Expenses, regardless of whether or not such expense item is applicable to two or more categories of expenses described in this Section 2(k). Borrower shall be required to pay Operating Expenses for materials or services upon receipt of such materials or services and, to the extent services are not billed on a monthly basis, the bill for such services shall be prorated over the period during which such services were received. Real estate taxes and insurance premiums shall be prorated on a monthly basis based on the latest information available. If the actual cost of real estate taxes or insurance premiums is different from the information used to make such prorations, then an adjustment in the next month’s Operating Expenses shall be made based upon the correct information. Under no circumstances shall Operating Expenses include expenses not directly related to the Project’s operations, including depreciation, amortization or accrued principal or interest expense on deferred payment debt. Operating Expenses shall be determined on a cash basis.
   13. Partnership Management Fee. Annual fees not to exceed $25,000 paid prior to Residual Receipts calculation and subject to annual adjustments equal to three percent (3%).
   14. Project Revenue. All amounts received by Borrower from the use or occupancy of or the right to use or occupy all or any portion of the Property or the Project, including all revenue from vending machines, laundry facilities or other amenities of the Project (if any), and all other revenue, income or receipts of every kind that accrue or are accounted for on an accrual or other basis in conformity with generally accepted accounting principles, exclusive of: (i) any security deposits (unless and until such deposits are payable to Borrower); (ii) interest earned on security deposits; (iii) insurance or condemnation proceeds (except as paid to Borrower for loss of rents); (iv) the proceeds from the refinancing of any obligation secured by the Property or Project that do not exceed the payoff amount of the obligation being refinanced or (v) the proceeds of capital contributions. Project Revenue shall be determined on a cash basis.
   15. Property Management Fee. A monthly fee in an amount not to exceed $\_\_70\_\_ per unit per month, subject to annual adjustments equal to the increase in CPI with a minimum of 2% per annum.
   16. Refinancing. Any loan secured by a Permitted Security Instrument that Borrower obtains from an Institutional Lender for any of the following purposes: (1) to pay off all or a portion of an existing loan secured by a Permitted Security Instrument where the lender providing the new loan will disburse loan proceeds to or on behalf of Borrower exceeding the amount of principal and interest under the existing loan being paid, plus the amount of any reasonable and customary fees and costs associated with obtaining such new loan that are actually paid by Borrower and not rebated or refunded to Borrower; or (2) any loan extension, modification or equivalent regarding an existing loan to Borrower secured by a Permitted Security Instrument that results in the lender of the existing loan disbursing additional loan proceeds to or on behalf of Borrower in excess of the original principal amount of the loan.
   17. Residual Receipts. Project Revenue less the sum of: (1) Operating Expenses; (2) Debt Service; (3) Reserve Deposits; and (4) payment of any Deferred Developer Fee; provided, however, that if such calculation results in a negative number, Residual Receipts shall be zero for the subject calendar year.
   18. Reserve Deposits. Annual reserve deposits required by this agreement to maintain reserve accounts, including Capital Replacement Reserves, Operating Reserves and any other annual reserve deposit accounts required by other financing sources.
3. **Loan Disbursement**. All amounts of principal to be disbursed under this Note shall be disbursed in accordance with the terms and conditions of the Loan Agreement. Lender shall have no obligation to fund any disbursement, deposit, advance or otherwise fund any principal under this Note, if a Default of Borrower exists under this Note.
4. **Interest**. Simple interest on the unpaid principal balance of this Note will accrue from the date of advance of principal at the rate of three percent (3%) per annum.
5. **Method of Calculating Interest**. Interest shall be computed based on a 365-day year and the actual number of days elapsed.
6. **Payment of Principal and Interest**. All principal and interest under this Note shall be due and payable on or before the Maturity Date (defined below in this Section 6). All principal and interest under this Note shall be paid by Borrower in annual payments to Lender as provided in the following two sentences. The payments to Lender shall be in an amount equal to Lender’s portion of fifty percent (50%) of the Residual Receipts from operation of the Project each calendar year, determined by dividing the original principal amount of this Note by the sum total of the original principal amounts of this Note and Additional Government Financing (defined in the Loan Agreement) until the Maturity Date. Each annual Residual Receipts payment becoming due to Lender under this Note shall be paid to Lender on or before the last day of June, beginning with the year following the year in which the Occupancy Date occurs. Calculation of annual Residual Receipts payments shall commence with the first calendar year in which the Occupancy Date has occurred (regardless of whether or not the Project is in service for the entirety of such calendar year). Residual Receipts payments under this Note shall continue until the principal amount of this Note and all accrued and unpaid interest on such principal amount have been paid in full or until the Maturity Date, whichever is earlier. Any unpaid principal amount and all accrued and unpaid interest on such principal amount shall be due and payable on the fifty-fifth (55th) anniversary of the Occupancy Date, but in no event later than December 31, 2085 (“**Maturity Date**”), regardless of whether or not Residual Receipts prior to the Maturity Date are sufficient to pay such principal and interest. Nothing in this Note is intended to limit repayment of this Note to the amount of available Residual Receipts. All sums due under this Note are payable in lawful money of the United States.
7. **Reporting**. With each annual payment of Residual Receipts in accordance with Section 6, Borrower shall provide Lender an annual Residual Receipts report in form and substance reasonably acceptable to Lender. On or before June 30 of each calendar year, commencing with the calendar year following the calendar year in which the Occupancy Date occurs, Borrower shall provide Lender an annual financial statement with respect to the operation of the Project during the preceding calendar year that has been reviewed by an independent certified public accountant, together with an expressed written opinion of such independent certified public accountant that such financial statements present the financial position, results of operations and cash flows of the Project fairly and in accordance with generally accepted accounting principles, all at Borrower’s expense.
8. **Sale and Refinancing**. In addition to and separate from any payments made to Lender under Section 6, Lender shall be entitled to receive the following payments:
   1. Sale. Upon the Transfer of all or any portion of the Property (other than Transfers or Permitted Encumbrances allowed under the Loan Agreement or leases to Qualifying Households in accordance with the Regulatory Agreement), all outstanding principal and interest under this Note shall be immediately due and payable to Lender.
   2. Refinancing Revenue. At the closing of a Refinancing (other than any Refinancing resulting in complete payoff of this Note), a payment shall be made to Lender to reduce the amounts of principal then any interest outstanding under this Note in an amount equal to the lesser of: (1) equal to Lender’s portion of fifty percent (50%) determined by dividing the original principal amount of this Note by the sum total of the original principal amounts of this Note and Additional Government Financing (defined in the Loan Agreement) of the Net Refinancing Proceeds; or (2) the outstanding balance of this Note.
9. **Application of Payments**. Each payment under this Note shall be credited in the following order: (a) costs, fees, charges and advances paid or incurred by Lender under this Note or the City Deed of Trust or otherwise payable to Lender by Borrower under this Note or the City Deed of Trust, in such order as Lender, in Lender’s sole and absolute discretion, elects; (b) accrued interest; and then (c) principal due under this Note.
10. **Prepayment**. The principal and interest under this Note may be prepaid at any time, without premium or penalty; provided, however, that any such prepayment shall have no effect on the application of the Regulatory Agreement to the Property.
11. **Secured by Deed of Trust**. On and after the “Close of Escrow” under the Loan Agreement, this Note shall be secured by the City Deed of Trust.
12. **Interest on Default**. From and after a Default or the Maturity Date (either as defined in this Note or as the result of an acceleration of the then unpaid principal balance under the terms of this Note), the entire unpaid principal balance of this Note shall automatically accrue interest at the Default Rate.
13. **Default**. On and following any Default, Lender may, in Lender’s sole and absolute discretion, declare this Note (including all accrued interest) due and payable immediately, regardless of the Maturity Date.
14. **Collection Costs**. Borrower agrees to pay the following costs, expenses, and attorney fees paid or incurred by Lender, or adjudged by a court: (a) reasonable costs of collection and costs, expenses and attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; (b) reasonable costs, expenses and attorney fees paid or incurred in connection with representing Lender in any bankruptcy, reorganization, receivership or other proceedings affecting creditors’ rights and involving a claim regarding this Note; and (c) costs of suit and such sum as the court may adjudge as attorney fees in any action to enforce or collect payment of all or any part of any amount due under this Note.
15. **Nonrecourse**. Notwithstanding anything to the contrary contained in this Note, in the event of any Default under this Note, Lender’s monetary remedies under this Note and the City Deed of Trust shall be limited to realizing upon the assets provided by Borrower to secure repayment of the indebtedness evidenced by this Note or secured by the City Deed of Trust, and neither Borrower nor any of Borrower’s members, managers, partners, stockholders, trustees, beneficiaries or principals shall be personally liable for the payment of any portion of the indebtedness evidenced by this Note, except to the extent of: (a) all losses sustained by Lender arising from or related to waste, fraud or misrepresentation by Borrower or Borrower’s members, managers, partners, stockholders, trustees, beneficiaries or principals; (b) all rental income or other income arising with respect to the Property, insurance proceeds or condemnation awards received by Borrower or Borrower’s members, managers, partners, stockholders, trustees, beneficiaries or principals and not applied in accordance with the provisions of this Note or the City Deed of Trust, except to the extent that Borrower is so authorized by Lender in writing, or subject to an involuntary bankruptcy, receivership or other similar judicial proceeding that legally prevents Borrower from applying such income in accordance with the provisions of this Note or the City Deed of Trust; (c) the fair market value, as of the date of a Default, of any personalty or fixtures wrongfully removed from the Property by Borrower after such date; (d) all legal costs and expenses reasonably incurred by Lender regarding Borrower’s Default after giving Notice to Borrower of such Default, other than those customarily incurred by a lender in realizing upon such lender’s lien in an uncontested foreclosure sale after an undisputed Default or where Borrower successfully contests the Default in a court of law; (e) the full amount (including penalties and interest) of any and all taxes, assessments or other charges that Borrower fails to pay and are or may become a lien or liens on all or any portion of the Property with priority over the lien of the City Deed of Trust, except to the extent that Borrower is subject to an involuntary bankruptcy, receivership or other similar judicial proceeding that legally prevents Borrower from paying such taxes, assessments or other charges; (f) all amounts owing to Lender under indemnity or other provisions contained in the Loan Documents (other than the payment of principal, accrued interest or late charges evidenced by this Note); (g) the amount, if any, by which the sum of all amounts realized by Lender through the sale (or other reasonable disposition) of all assets pledged or assigned to Lender under the City Deed of Trust is exceeded by the obligations secured by the City Deed of Trust, but only to the extent that any such deficiency is directly attributable to Borrower’s failure to insure any such asset(s) in accordance with the requirements of the Loan Documents, except to the extent that Borrower is subject to an involuntary bankruptcy, receivership or other similar judicial proceeding that legally prevents Borrower from paying the premiums for such insurance; (h) all losses sustained by Lender arising from or related to the violation or alleged violation of any criminal or environmental laws by Borrower, including the Fraud Enforcement and Recovery Act of 2009; or (i) all losses sustained by Lender arising from or related to any breach by Borrower of the terms or conditions of the Loan Documents pertaining to Transfers. All action(s) as may be necessary at law or in equity for Lender to realize upon the assets of Borrower in the event of any Default under this Note, including any collateral security provided by Borrower to secure repayment of the indebtedness evidenced by this Note or secured by the City Deed of Trust, may be instituted or pursued by Lender without violating this Section 15.
16. **Waiver**. Borrower, endorsers and all other Persons liable or to become liable on this Note waive presentment, protest, demand, notice of protest, demand and dishonor, and all other notices or matters of a like nature. No extension of time for payment of this Note made by agreement between Lender and any Person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part. The provisions of this Note and the obligations of Borrower under this Note shall be 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.
17. **Notice**. Any and all Notices and communications required or permitted by this Note must be in writing and may be sent by (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, as designated in this Note or (iv) electronic transmission, including email (which shall be followed by a hard copy delivered in accordance with one of the preceding clauses (i) through (iii) or via regular U.S. mail, unless the hard copy is waived by reply email from a named recipient representing the recipient Party in response to a Notice email). To conserve resources and reduce administrative burden, the Parties intend to deliver Notices and communications via email, and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. Any Notice shall be deemed received by the addressee, on the Business Day that the Notice is sent by messenger for immediate personal delivery and received at the notice address before 5:30 p.m. Pacific Time, on the Business Day the notice is transmitted electronically and received at the Notice address before 5:30 p.m. Pacific Time, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or two (2) Business Days after the Notice is placed in the United States mail (regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt). Any attorney representing a Party may give any Notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to any Notices or communications delivered via email.
18. **Assignment**. This Note inures to and binds the heirs, legal representatives, successors and assigns of Borrower and Lender; provided, however, that Borrower may not assign this Note nor any proceeds of this Note, nor assign or delegate any of Borrower’s rights or obligations under this Note, without Lender’s prior written consent in each instance, which consent may be given, withheld, delayed or conditioned in Lender’s sole and absolute discretion. Lender, in Lender’s sole and absolute discretion, may transfer this Note, and may sell or assign participations or other interests in all or any part of this Note, all without notice to or the consent of Borrower.
19. **Governing Law**. This Note shall be construed and enforceable according to the laws of the State of California for all purposes, without application of conflicts of laws principles.
20. **Usury**. To the extent that the indebtedness evidenced by this Note is determined not to be exempt from the usury laws of the State of California, all agreements between Borrower and Lender are expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of this Note, acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance, or retention of the money to be advanced under this Note exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances, fulfillment of any provision of this Note or any other agreement pertaining to this Note, after timely performance of such provision is due, shall involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled shall be reduced to the limit of such validity. If, under any circumstances, Lender shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under this Note and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under this Note, such excess shall be refunded to Borrower. This provision shall control every other provision of all agreements between Borrower and Lender.
21. **Non-Revolving Credit**. This Note evidences a non-revolving loan from Lender to Borrower. The accrued and unpaid interest and principal balance owing on this Note at any time may be evidenced by an unpaid balance acknowledgment of Lender on this Note or by the internal accounting records of Lender regarding this Note or the Loan Agreement.
22. **Waiver of Statute of Limitations**. The pleading of any statute of limitations as a defense to the obligations or enforcement of the obligations evidenced by this Note is waived by Borrower to the fullest extent permissible by law.
23. **Time Is of the Essence**. Time is of the essence with respect to all obligations of Borrower under this Note.
24. **Joint and Several Liability**. If more than one Person signs this Note as Borrower, their liability under this Note shall be joint and several.
25. **Cross-Default**. Any Default by Borrower as to any other agreement between or among Lender and Borrower in connection with the Loan or Project shall, in Lender’s sole and absolute discretion, constitute a Default under this Note.
26. **Principles of Interpretation**. No inference in favor of or against either Lender or Borrower shall be drawn from the fact that such Person has drafted any part of this Note. Both Lender and Borrower have participated substantially in the negotiation, drafting, and revision of this Note, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Note may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Note. The words “include” and “including” in this Note shall be construed to be followed by the words: “without limitation.” Each collective noun in this Note shall be interpreted as if followed by the words “(or any part of it),” except where the context clearly requires otherwise. Every reference to any document, including this Note, refers to such document, as modified from time to time (excepting any modification that violates this Note), and includes all exhibits, schedules, addenda and riders to such document. The word “or” in this Note includes the word “and,” except where the content clearly requires otherwise. Every reference in this Note to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.
27. **Severability**. If any provision of this Note, or the application of it to any Person or circumstance, is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Note, and the application of such provision to other Persons or circumstances, shall not be affected thereby, the provisions of this Note being severable in any such instance.
28. **Acknowledgment**. Before signing this Note, Borrower has read and understands all of the provisions of this Note and has consulted with legal counsel of Borrower’s independent selection regarding Borrower’s obligations under this Note. Borrower agrees to the terms and conditions of this Note and acknowledges receipt of a copy of this Note.
29. **Incorporation of Defined Terms**. All terms, phrases and words indicated to be defined terms by initial capitalization in this Note that are not specifically defined in this Note shall have the meaning ascribed to the same term, phrase or word, respectively, in the Loan Agreement and the Regulatory Agreement, or, if not defined therein, the meaning ascribed to the same term, phrase or word, respectively, in the City Deed of Trust.

**[Remainder of page intentionally blank. Signatures appear on following page]**

Made and entered into in San Diego, California, on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

**Borrower:**

**Exhibit E**

**to**

**CDBG LOAN AGREEMENT**

**(Project TiTle)**

**deed of Trust**

[Attached behind this cover page]

|  |  |
| --- | --- |
| RECORDING REQUESTED BY:  AND WHEN RECORDED MAIL TO:  City of San Diego  1200 Third Avenue, 14th floor  San Diego, CA 92101  Attention: CDBG Loan – (Project Title) |  |

**Space above line for Recorder’s use only**

**DEED OF TRUST,**

**ASSIGNMENT OF LEASES AND RENTS,**

**SECURITY AGREEMENT AND FIXTURE FILING**

This DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the “**Security Instrument**”), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, is made by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (non/profit/limited partnership/liability corporation) as grantor (“**Borrower**”), \_\_\_\_\_\_\_\_\_\_\_, as trustee (“**Trustee**”), for the benefit of the CITY OF SAN DIEGO, a California municipal corporation, as beneficiary (“**Lender**”).

Borrower, in consideration of (i) the loan in the original principal amount of \_\_\_\_\_\_\_\_\_\_\_\_ (“**Mortgage Loan**”) evidenced by that certain Promissory Note Secured by Deed of Trust, dated as of the date of this Security Instrument, signed by Borrower and made payable to the order of Lender (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the “**Note**”), (ii) that certain CDBG Loan Agreement (Project Title), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, by and between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), and (iii) the trust created by this Security Instrument, and to secure to Lender the repayment of the Indebtedness (as defined in this Security Instrument), and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents (as defined in this Security Instrument), irrevocably and unconditionally mortgages, grants, warrants, conveys, bargains, sells, and assigns to Trustee, in trust, for benefit of Lender, with power of sale and right of entry and possession, the Mortgaged Property (as defined in this Security Instrument), including the real property located in the County of San Diego, State of California, and described in Exhibit A attached to this Security Instrument and incorporated into this Security Instrument by reference (“**Land**”), to have and to hold such Mortgaged Property unto Trustee and Trustee’s successors and assigns, forever; Borrower releasing, relinquishing, and waiving, to the fullest extent allowed by law, all rights and benefits, if any, under and by virtue of the homestead exemption laws of the Property Jurisdiction (as defined in this Security Instrument), if applicable.

Borrower represents and warrants that Borrower is the lawful Developer/Owner of the Mortgaged Property and has the right, power and authority to mortgage, grant, warrant, convey, bargain, sell, and assign the Mortgaged Property, and that the Mortgaged Property is not encumbered by any Lien (as defined in this Security Instrument) other than Permitted Encumbrances (as defined in this Security Instrument). Borrower covenants that Borrower will warrant and defend the title to the Mortgaged Property against all claims and demands other than Permitted Encumbrances.

Borrower, and by their acceptance of this Security Instrument, each of Trustee and Lender, covenants and agrees as follows:

# Defined Terms. Capitalized terms used and not specifically defined in this Security Instrument have the meanings given to such terms in the Loan Agreement. All terms used and not specifically defined in this Security Instrument, but which are otherwise defined by the UCC (defined in this Security Instrument), shall have the meanings assigned to them by the UCC. The following terms, when used in this Security Instrument, shall have the following meanings:

# “Condemnation Action” means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

* 1. “Default Rate” is defined in the Note.

# “Enforcement Costs” means all expenses and costs, including reasonable attorneys’ fees and expenses, fees and out-of-pocket expenses of expert witnesses and costs of investigation, incurred by Lender as a result of any Event of Default under the Loan Agreement or in connection with efforts to collect any amount due under the Loan Documents, or to enforce the provisions of the Loan Agreement or any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any Bankruptcy Proceeding (including any action for relief from the automatic stay of any Bankruptcy Proceeding or foreclosure) or judicial or non-judicial foreclosure proceeding, to the extent permitted by law.

# “Environmental Laws” has the meaning set forth in the Loan Agreement.

# “Event of Default” has the meaning set forth in the Regulatory Agreement.

# “Fixtures” means all Goods that are so attached or affixed to the Land or the Improvements as to constitute a fixture under the laws of the Property Jurisdiction.

# “Goods” means all of Borrower’s present and hereafter acquired right, title and interest in all goods that are used now or in the future in connection with the Developer/Ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements, including inventory; furniture; furnishings; machinery, equipment, engines, boilers, incinerators, and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring, and conduits used in connection with radio, television, security, fire prevention, or fire detection, or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers, and other appliances; light fixtures, awnings, storm windows, and storm doors; pictures, screens, blinds, shades, curtains, and curtain rods; mirrors, cabinets, paneling, rugs, and floor and wall coverings; fences, trees, and plants; swimming pools; exercise equipment; supplies; tools; books and records (whether in written or electronic form); websites, URLs, blogs, and social network pages; computer equipment (hardware and software); and other tangible personal property that is used now or in the future in connection with the Developer/Ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements.

# “Imposition Deposits” means deposits in an amount sufficient to accumulate with Lender the entire sum required to pay the Impositions when due.

# “Impositions” means:

# any water and sewer charges that, if not paid, may result in a lien on all or any part of the Mortgaged Property;

# the premiums for fire and other casualty insurance, liability insurance, rent loss insurance and such other insurance as Lender may require under the Loan Documents;

# Taxes; and

# amounts for other charges and expenses assessed against the Mortgaged Property that Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender’s interests, all as reasonably determined from time to time by Lender.

# “Improvements” means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements, facilities, and additions and other construction on the Land.

# “Indebtedness” means the principal of, interest on, and all other amounts due at any time under the Note, the Loan Agreement, this Security Instrument or any other Loan Document, including prepayment premiums, late charges, interest charged at the Default Rate, and accrued interest as provided in the Loan Documents and this Security Instrument, advances, costs and expenses to perform the obligations of Borrower or to protect the Mortgaged Property or the security of this Security Instrument, all other monetary obligations of Borrower under the Loan Documents, including amounts due as a result of any indemnification obligations, and any Enforcement Costs.

# “Intended Use” has the meaning set forth in the Regulatory Agreement.

# “Land” means the real property described in Exhibit A.

# “Leases” means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements, if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals thereof.

# “Lien” means any claim or charge against property for payment of a debt or an amount owed for services rendered, including any mortgage, deed of trust, deed to secure debt, security interest, tax lien, any materialman’s or mechanic’s lien, or any lien of a Government, including any lien in connection with the payment of utilities, or any other encumbrance.

* 1. “Loan Documents” means the Loan Agreement, the Note, this Security Instrument, the Regulatory Agreement (defined in the Loan Agreement) and any and all other documents evidencing, securing or relating to the Indebtedness.

# “Mortgaged Property” means all of Borrower’s present and hereafter acquired right, title and interest, if any, in and to all of the following:

# the Land;

# the Improvements;

# the Personalty;

# current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights‑of‑way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefitting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads that may have been or may in the future be vacated;

# insurance policies relating to the Mortgaged Property (and any unearned premiums) and all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance in accordance with Lender’s requirements;

# awards, payments and other compensation made or to be made by any Government with respect to the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property, including any awards or settlements resulting from (1) Condemnation Actions, (2) any damage to the Mortgaged Property caused by Government action that does not result in a Condemnation Action, or (3) the total or partial taking of the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

# contracts, options and other agreements for the sale of the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

# Leases and Lease guaranties, letters of credit and any other supporting obligation for any of the Leases given in connection with any of the Leases, and all Rents;

# earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Mortgage Loan and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

# Imposition Deposits;

# refunds or rebates of Impositions by any Government or insurance company (other than refunds applicable to periods before the real property tax year in which this Security Instrument is dated);

# tenant security deposits;

# names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;

# Collateral accounts and all collateral account funds;

# products, and all cash and non-cash proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds; and

# all of Borrower’s right, title and interest in the oil, gas, minerals, mineral interests, royalties, overriding royalties, production payments, net profit interests and other interests and estates in, under and on the Mortgaged Property and other oil, gas and mineral interests with which any of the foregoing interests or estates are pooled or unitized.

# “Permitted Encumbrance” is defined in the Loan Agreement.

* 1. “Permitted Transfer” means any of the following: (a) Transfer of Borrower’s title to the Property in trust under a Permitted Security Instrument; (b) a mere change in form of Developer/Ownership with no material change in beneficial Developer/Ownership that is a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (c) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (d) a conveyance only to a Person that, as of the date the Regulatory Agreement is recorded, holds an Equity Interest in the entity whose Equity Interest is being transferred; (e) a collateral pledge of the Equity Interests in Borrower to the institutional lender providing the senior project loan for the Project; (f) Transfer(s) of the outstanding Equity Interests in Borrower that, in the aggregate, result in transfer of less than forty percent (40%) of the outstanding Equity Interests in Borrower; (g) issuance of previously unissued or new, Equity Interests in Borrower that increase the amount of outstanding Equity Interests in Borrower by less than ten percent (10%); (h) the admission of a non-profit public benefit corporation, or a limited liability company in which the non-profit corporation is the sole member and manager, as a managing general partner or manager or member of Borrower in order for Borrower to qualify for the welfare exemption from property taxation provided under California Revenue and Taxation Code Section 214(g); (i) actions taken to comply with any Approvals for the Project; (j) a transfer by the Tax Credit Investor of its limited partnership interest in Borrower to an Affiliate, including, without limitation, a syndicated equity fund Controlled by the Tax Credit Investor for purposes of syndication (or re-syndication) of the Tax Credit Equity; (k) the removal of the general partner of Borrower by the Tax Credit Investor in accordance with the Loan Agreement and replacement of such general partner with a Person approved by the Mayor, which approval shall not be unreasonably withheld; or (l) the grant and exercise of an option and/or right of first refusal from the Tax Credit Investor given to the general partner of Borrower in accordance with the Loan Agreement upon the anticipated exit of the Tax Credit Investor from the partnership on or around the expiration of the Tax Credit compliance period.

# “Personalty” means all of Borrower’s present and hereafter acquired right, title and interest in all Goods, accounts, choses of action, chattel paper, documents, general intangibles (including Software), payment intangibles, instruments, investment property, letter of credit rights, supporting obligations, computer information, source codes, object codes, records and data, all telephone numbers or listings, claims (including claims for indemnity or breach of warranty), deposit accounts and other property or assets of any kind or nature related to the Land or the Improvements now or in the future, including operating agreements, surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all Government permits relating to any activities on the Land.

# “Property Jurisdiction” means the State of California.

# “Rents” means all rents (whether from residential or non-residential space), revenues and other income from the Land or the Improvements, including subsidy payments received from any sources, including payments under any “Housing Assistance Payments Contract” or other rental subsidy agreement (if any), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and tenant security deposits.

# “Software**”** means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include any computer program that is included in the definition of Goods.

# “Tax Credit Investor” means the Person that provides the Tax Credit Equity. The Tax Credit Investor shall be subject to the reasonable approval of City. In no event may the Tax Credit Investor be an Affiliate of Developer.

# “Taxes” means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including assessments for schools, public betterments and general or local improvements, that are levied, assessed or imposed by any public authority or quasi-public authority, and that, if not paid, may become a lien, on the Land or the Improvements or any taxes upon any Loan Document.

# “UCC” means the Uniform Commercial Code in effect in the Property Jurisdiction, as amended from time to time.

# “UCC Collateral” means any or all of that portion of the Mortgaged Property in which a security interest may be granted under the UCC and in which Borrower has any present or hereafter acquired right, title or interest.

# Security Agreement; Fixture Filing.

* 1. To secure, for Lender’s benefit, the repayment of the Indebtedness, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents, Borrower pledges, assigns, and grants to Lender a continuing security interest in the UCC Collateral. This Security Instrument constitutes a security agreement and a financing statement under the UCC. This Security Instrument also constitutes a financing statement under the terms of the UCC with respect to any part of the Mortgaged Property that is or may become a Fixture under applicable law, and will be recorded as a “fixture filing” in accordance with the UCC. Borrower authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest, without the signature of Borrower. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the UCC or otherwise provided at law or in equity, in addition to all remedies provided by this Security Instrument and in any Loan Document. Lender may exercise any or all of its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability or validity of Lender’s other remedies. For purposes of the UCC, the debtor is Borrower and the secured party is Lender. The name and address of the debtor and secured party are set forth after Borrower’s signature below and are the addresses from which information on the security interest may be obtained.
  2. Borrower represents and warrants that: (1) Borrower maintains its chief executive office at the location set forth after Borrower’s signature below, and Borrower will notify Lender in writing of any change in its chief executive office within five (5) days of such change; (2) Borrower is the record Developer/Owner of the Mortgaged Property; (3) Borrower’s state of incorporation, organization, or formation, if applicable, is as set forth on the signature page of this Security Instrument; (4) Borrower’s exact legal name is as set forth on the signature page of this Security Instrument; (5) Borrower’s organizational identification number, if applicable, is as set forth after Borrower’s signature below; (6) Borrower is the Developer/Owner of the UCC Collateral subject to no liens, charges or encumbrances other than the lien of this Security Instrument; (7) the UCC Collateral will not be removed from the Mortgaged Property without the prior written consent of Lender; and (8) no financing statement covering any of the UCC Collateral or any proceeds thereof is on file in any public office, except under this Security Instrument.
  3. All property of every kind acquired by Borrower after the date of this Security Instrument, which by the terms of this Security Instrument, shall be subject to the lien and the security interest created by this Security Instrument, shall immediately upon the acquisition thereof by Borrower, and without further conveyance or assignment, become subject to the lien and security interest created by this Security Instrument. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further deeds of trust, mortgages, deeds to secure debt, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Security Instrument and to comply with the rerecording requirements of the UCC.

# Assignment of Leases and Rents; Appointment of Receiver; Lender in Possession.

* 1. As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Leases and Rents. It is Borrower’s intention to establish present, absolute and irrevocable transfers and assignments to Lender of all Leases and Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Borrower and Lender intend the assignments of Leases and Rents to be effective immediately and to constitute absolute present assignments, and not assignments for additional security only. Only for purposes of giving effect to these absolute assignments of Leases and Rents, and for no other purpose, the Leases and Rents shall not be deemed to be a part of the Mortgaged Property. However, if these present, absolute and unconditional assignments of Leases and Rents are not enforceable by their terms under the laws of the Property Jurisdiction, then each of the Leases and Rents shall be included as part of the Mortgaged Property, and it is Borrower’s intention, in such circumstance, that this Security Instrument create and perfect a lien on each of the Leases and Rents in favor of Lender, which liens shall be effective as of the date of this Security Instrument.
  2. Until an Event of Default has occurred and is continuing, but subject to the limitations set forth in the Loan Documents, Borrower shall have a revocable license to exercise all rights, power and authority granted to Borrower under the Leases (including the right, power and authority to modify the terms of any Lease, extend or terminate any Lease, or enter into new Leases, subject to the limitations set forth in the Loan Documents), and to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender, and to apply all Rents to pay the amounts then due and payable under the Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities and Impositions (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing (and no event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing), the Rents remaining after application under the preceding sentence may be retained and distributed by Borrower free and clear of, and released from, Lender’s rights with respect to Rents under this Security Instrument.
  3. If an Event of Default has occurred and is continuing, without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, the revocable license granted to Borrower under Section 3(b) shall automatically terminate, and Lender shall immediately have all rights, powers and authority granted to Borrower under any Lease (including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease) and, without notice, Lender shall be entitled to all Rents as they become due and payable, including Rents then due and unpaid. During the continuance of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender, and Borrower shall, upon Borrower’s receipt of any Rents from any sources, pay the total amount of such receipts to Lender. Although the foregoing rights of Lender are self-effecting, at any time during the continuance of an Event of Default, Lender may make demand for all Rents, and Lender may give, and Borrower irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts that are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit.
  4. If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender’s security or the solvency of Borrower, and even in the absence of waste, enter upon, take and maintain full control of the Mortgaged Property, and may exclude Borrower and its agents and employees therefrom, in order to perform all acts that Lender, in its discretion, determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents (including through use of a lockbox, at Lender’s election), the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing this assignment of Rents, protecting the Mortgaged Property or the security of this Security Instrument and the Mortgage Loan, or for such other purposes as Lender in its discretion may deem necessary or desirable.
  5. Notwithstanding any other right provided Lender under this Security Instrument or any other Loan Document, if an Event of Default has occurred and is continuing, and regardless of the adequacy of Lender’s security or Borrower’s solvency, and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in this Section 3. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte*, if permitted by applicable law. Borrower consents to shortened time consideration of a motion to appoint a receiver. Lender or the receiver, as applicable, shall be entitled to receive a reasonable fee for managing the Mortgaged Property and such fee shall become an additional part of the Indebtedness. Immediately upon appointment of a receiver or Lender’s entry upon and taking possession and control of the Mortgaged Property, possession of the Mortgaged Property and all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property, and all security deposits and prepaid Rents, shall be surrendered to Lender or the receiver, as applicable. If Lender or receiver takes possession and control of the Mortgaged Property, Lender or receiver may exclude Borrower and its representatives from the Mortgaged Property.
  6. The acceptance by Lender of the assignments of the Leases and Rents under this Section 3 shall not at any time or in any event obligate Lender to take any action under any Loan Document or to expend any money or to incur any expense. Lender shall not be liable in any way for any injury or damage to person or property sustained by any Person in, on or about the Mortgaged Property. Prior to Lender’s actual entry upon and taking possession and control of the Land and Improvements, Lender shall not be:
     1. obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease);
     2. obligated to appear in or defend any action or proceeding relating to any Lease or the Mortgaged Property; or
     3. responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property.

The making of this Security Instrument shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to actual entry and taking possession and control by Lender of the Land and the Improvements.

* 1. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property by reason of any act or omission of Lender under this Section 3, and Borrower releases and discharges Lender from any such liability to the fullest extent permitted by law, provided that Lender shall not be released from liability that occurs as a result of Lender’s gross negligence or willful misconduct, as determined by a court of competent jurisdiction under a final, non-appealable court order. If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall be added to, and become a part of, the principal balance of the Indebtedness, be immediately due and payable, and bear interest at the Default Rate from the date of disbursement until fully paid. Any entering upon and taking control of the Mortgaged Property by Lender or the receiver, and any application of Rents as provided in this Security Instrument, shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Security Instrument or any Loan Document.

# Protection of Lender’s Security. If Borrower fails to perform any of its obligations under this Security Instrument or any other Loan Document, or any action or proceeding is commenced that purports to affect the Mortgaged Property, Lender’s security, rights or interests under this Security Instrument or any Loan Document (including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Environmental Laws, fraudulent conveyance or reorganizations or proceedings involving a debtor or decedent), Lender may, at its option, make such appearances, disburse or pay such sums and take such actions, whether before or after an Event of Default or whether directly or to any receiver for the Mortgaged Property, as Lender reasonably deems necessary to perform such obligations of Borrower and to protect the Mortgaged Property or Lender’s security, rights or interests in the Mortgaged Property or the Mortgage Loan, including:

* 1. paying fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants;
  2. entering upon the Mortgaged Property to make repairs or secure the Mortgaged Property;
  3. obtaining (or force-placing) the insurance required by the Loan Documents; and
  4. paying any amounts required under any of the Loan Documents that Borrower has failed to pay.

Any amounts so disbursed or paid by Lender shall be added to, and become part of, the principal balance of the Indebtedness, be immediately due and payable and bear interest at the Default Rate from the date of disbursement until fully paid. The provisions of this Section 4 shall not be deemed to obligate or require Lender to incur any expense or take any action.

# Default; Acceleration; Remedies.

* 1. If an Event of Default has occurred and is continuing, Lender, at its option, may declare the Indebtedness to be immediately due and payable, without further demand, and may either, with or without entry or taking possession as provided in this Security Instrument or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy to enforce payment of the Mortgage Loan; to foreclose this Security Instrument judicially or non-judicially by the power of sale granted in this Security Instrument; to enforce or exercise any right under any Loan Document; and to pursue any one or more other remedies provided in this Security Instrument or in any other Loan Document or otherwise afforded by applicable law. Each right and remedy provided in this Security Instrument or any other Loan Document is distinct from all other rights or remedies under this Security Instrument or any other Loan Document or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.
  2. Borrower acknowledges that the power of sale granted in this Security Instrument may be exercised or directed by Lender, without prior judicial hearing. In the event Lender invokes the power of sale:
     1. Lender shall send to Borrower, and any other Person required to receive such notice, written notice of Lender’s election to cause the Mortgaged Property to be sold. In connection therewith, Borrower authorizes and empowers Trustee to take possession of the Mortgaged Property, or any part thereof, and grants to Trustee a power of sale and authorizes and empowers Trustee to sell (or, in the case of the default of any purchaser, to resell) the Mortgaged Property or any part thereof, in compliance with applicable law, including compliance with any and all notice and timing requirements for such sale;
     2. Trustee shall have the authority to determine the terms of the sale, subject to applicable law. In connection with any such sale, the whole of the Mortgaged Property may be sold in one (1) parcel as an entirety or in separate lots or parcels at the same or different times. Lender shall have the right to become the purchaser at any such sale. Trustee shall be entitled to receive fees and expenses from such sale not to exceed the amount permitted by applicable law;
     3. Trustee shall deliver to the purchaser of the Mortgaged Property a deed or such other appropriate conveyance document conveying the Mortgaged Property so sold, without any express or implied covenant or warranty. The recitals in such deed or document shall be prima facie evidence of the truth of the statements made in those recitals; and
     4. the outstanding principal amount of the Mortgage Loan and the other Indebtedness, if not previously due, shall be and become immediately due and payable, without demand or notice of any kind. If the Mortgaged Property is sold for an amount less than the amount outstanding under the Indebtedness, the deficiency shall be determined by the purchase price at the sale or sales.
  3. Borrower acknowledges and agrees that the proceeds of any sale shall be applied as determined by Lender, unless otherwise required by applicable law.
  4. In connection with the exercise of Lender’s rights and remedies under this Security Instrument and any other Loan Document, there shall be allowed and included as Indebtedness: all expenditures and expenses authorized by applicable law and all other expenditures and expenses that may be paid or incurred by or on behalf of Lender for reasonable legal fees, appraisal fees, outlays for documentary and expert evidence, stenographic charges and publication costs; all expenses of any environmental site assessments, environmental audits, environmental remediation costs, appraisals, surveys, engineering studies, wetlands delineations, flood plain studies, and any other similar testing or investigation deemed necessary or advisable by Lender incurred in preparation for, contemplation of or in connection with the exercise of Lender’s rights and remedies under the Loan Documents; and costs (which may be reasonably estimated as to items to be expended in connection with the exercise of Lender’s rights and remedies under the Loan Documents) of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Lender may deem reasonably necessary either to prosecute any suit or to evidence the true conditions of the title to or the value of the Mortgaged Property to bidders at any sale that may be held in connection with the exercise of Lender’s rights and remedies under the Loan Documents. All expenditures and expenses of the nature mentioned in this Section 5, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and Rents and income therefrom and the maintenance of the lien of this Security Instrument, including the fees of any attorney employed by Lender in any litigation or proceedings affecting this Security Instrument, the Note, the other Loan Documents, or the Mortgaged Property, including Bankruptcy Proceedings, any foreclosure, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be additional Indebtedness and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid, subject to the effect of Section 15 of the Note.
  5. Any action taken by Trustee or Lender under the provisions of this Section 5 shall comply with the laws of the Property Jurisdiction. Such applicable laws shall take precedence over the provisions of this Section 5, but shall not invalidate or render unenforceable any other provision of any Loan Document that can be construed in a manner consistent with any applicable law. If any provision of this Security Instrument shall grant to Lender (including Lender acting as a mortgagee-in-possession), Trustee or a receiver appointed under the provisions of this Security Instrument, any powers, rights or remedies prior to, upon, during the continuance of or following an Event of Default that are more limited than the powers, rights, or remedies that would otherwise be vested in such party under any applicable law in the absence of said provision, such party shall be vested with the powers, rights, and remedies granted in such applicable law, to the full extent permitted by law.

# Waiver of Statute of Limitations and Marshaling. To the extent permitted by law, Borrower waives: (a) the benefit of all present or future laws providing for any appraisement before sale of any portion of the Mortgaged Property; (b) all rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the Indebtedness and marshaling in the event of foreclosure of the lien created by this Security Instrument; (c) all rights and remedies that Borrower may have or be able to assert by reason of the laws of the Property Jurisdiction pertaining to the rights and remedies of sureties; (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce the Note or any other obligation secured by this Security Instrument; and (e) any rights, legal or equitable, to require marshaling of assets or to require foreclosure sales in a particular order, including any rights under California Civil Code Sections 2899 and 3433. Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided by this Security Instrument. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of the remedies provided by this Security Instrument.

# Waiver of Redemption; Rights of Tenants.

# Borrower covenants and agrees that Borrower will not at any time apply for, insist upon, plead, avail itself, or in any manner claim or take any advantage of, any appraisement, stay, exemption or extension law or any so-called “Moratorium Law” now or at any time hereafter enacted or in force in order to prevent or hinder the enforcement or foreclosure of this Security Instrument. Without limiting the foregoing:

* + 1. Borrower for itself and all Persons who may claim by, through, or under Borrower, expressly waives any so-called “Moratorium Law” and any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, it being the intent of Borrower that any and all such “Moratorium Laws,” and all rights of reinstatement and redemption of Borrower and of all other Persons claiming by, through, or under Borrower are and shall be deemed to be waived to the fullest extent permitted by applicable law;
    2. Borrower shall not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy in this Security Instrument or otherwise granted or delegated to Lender, but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and
    3. if Borrower is a trust, Borrower represents that the provisions of this Section 7 (including the waiver of reinstatement and redemption rights) were made at the express direction of Borrower’s beneficiaries and the Persons having the power of direction over Borrower, and are made on behalf of the trust estate of Borrower and all beneficiaries of Borrower, as well as all other Persons mentioned above.
  1. Lender shall have the right to foreclose, subject to the rights of any tenant or tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Lender. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the Indebtedness, or any part thereof, or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

1. Nonrecourse. Notwithstanding anything to the contrary contained in the Note, in the event of any Default under the Note or this Security Instrument, Lender’s monetary remedies under the Note and this Security Instrument shall be limited to realizing upon the assets provided by Borrower to secure repayment of the indebtedness evidenced by the Note or secured by this Security Instrument, and neither Borrower nor any of Borrower’s members, managers, partners, stockholders, trustees, beneficiaries or principals shall be personally liable for the payment of any portion of the indebtedness evidenced by the Note, except to the extent of: (a) all losses sustained by Lender arising from or related to waste, fraud or misrepresentation by Borrower or Borrower’s members, managers, partners, stockholders, trustees, beneficiaries or principals; (b) all rental income or other income arising with respect to the Property, insurance proceeds or condemnation awards received by Borrower or Borrower’s members, managers, partners, stockholders, trustees, beneficiaries or principals and not applied in accordance with the provisions of the Note or this Security Instrument, except to the extent that Borrower is so authorized by Lender in writing, or subject to an involuntary bankruptcy, receivership or other similar judicial proceeding that legally prevents Borrower from applying such income in accordance with the provisions of the Note or this Security Instrument; (c) the fair market value, as of the date of a Default, of any personalty or fixtures wrongfully removed from the Property by Borrower after such date; (d) all legal costs and expenses reasonably incurred by Lender regarding Borrower’s Default after giving Notice to Borrower of such Default, other than those customarily incurred by a lender in realizing upon such lender’s lien in an uncontested foreclosure sale after an undisputed Default or where Borrower successfully contests the Default in a court of law; (e) the full amount (including penalties and interest) of any and all taxes, assessments or other charges that Borrower fails to pay and are or may become a lien or liens on all or any portion of the Property with priority over the lien of this Security Instrument, except to the extent that Borrower is subject to an involuntary bankruptcy, receivership or other similar judicial proceeding that legally prevents Borrower from paying such taxes, assessments or other charges; (f) all amounts owing to Lender under indemnity or other provisions contained in the Loan Documents (other than the payment of principal, accrued interest or late charges evidenced by the Note); (g) the amount, if any, by which the sum of all amounts realized by Lender through the sale (or other reasonable disposition) of all assets pledged or assigned to Lender under this Security Instrument is exceeded by the obligations secured by this Security Instrument, but only to the extent that any such deficiency is directly attributable to Borrower’s failure to insure any such asset(s) in accordance with the requirements of the Loan Documents, except to the extent that Borrower is subject to an involuntary bankruptcy, receivership or other similar judicial proceeding that legally prevents Borrower from paying the premiums for such insurance; (h) all losses sustained by Lender arising from or related to the violation or alleged violation of any criminal or environmental laws by Borrower, including the Fraud Enforcement and Recovery Act of 2009; or (i) all losses sustained by Lender arising from or related to Borrower’s breach of any provisions of the Loan Documents pertaining to Transfers. All action(s) as may be necessary at law or in equity for Lender to realize upon the assets of Borrower in the event of any Default under the Note, including any collateral security provided by Borrower to secure repayment of the indebtedness evidenced by the Note or secured by this Security Instrument, may be instituted or pursued by Lender without violating this Section 8.
2. Notice. Any and all Notices and communications required or permitted by this Security Instrument must be in writing and may be sent by (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, as designated at the end of this Security Instrument; or (iv) electronic transmission, including email (which shall be followed by a hard copy delivered in accordance with one of the preceding clauses (i) through (iii) or via regular U.S. mail, unless the hard copy is waived by reply email from a named recipient representing the recipient Party in response to a Notice email). To conserve resources and reduce administrative burden, the Parties intend to deliver Notices and communications via email, and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. Any Notice shall be deemed received by the addressee, on the Business Day that the Notice is sent by messenger for immediate personal delivery and received at the notice address before 5:30 p.m. Pacific Time, on the Business Day the notice is transmitted electronically and received at the Notice address before 5:30 p.m. Pacific Time, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or two (2) Business Days after the Notice is placed in the United States mail (regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt). Any attorney representing a Party may give any Notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to any Notices or communications delivered via email.

# Mortgagee-in-Possession. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred in this Security Instrument shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property, so long as Lender has not itself entered into actual possession of the Land and the Improvements.

# Reconveyance. Upon payment in full of the Indebtedness, Lender shall cause the reconveyance of this Security Instrument, and Borrower shall pay Lender’s costs incurred in connection with such reconveyance.

# Substitute Trustee. Lender, at Lender’s option, may from time to time, by a written instrument, appoint a successor trustee, which instrument, when executed and acknowledged by Lender and recorded in the office of the Recorder of the county or counties where the Mortgaged Property is situated, shall be conclusive proof of proper substitution of the successor trustee. The successor trustee shall, without conveyance of the Mortgaged Property, succeed to all the title, power and duties conferred upon the Trustee in this Security Instrument and by the law of the Property Jurisdiction.

# California State Specific Provisions.

* 1. In addition to the provisions of the Loan Agreement, Borrower further agrees that, if Lender accepts a guaranty of only a portion of the Indebtedness, Borrower waives its right under California Civil Code Section 2822(a) to designate the portion of the Indebtedness that shall be satisfied by a guarantor’s partial payment.
  2. Borrower shall not cause or permit any lien (whether or not such lien has priority over the lien created by this Security Instrument) upon the Mortgaged Property imposed under any Environmental Laws. Any such lien shall be considered a Prohibited Encumbrance.
  3. Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing:
     1. at the time of acquiring the Mortgaged Property, Borrower undertook all appropriate inquiry into the previous Developer/Ownership and uses of the Mortgaged Property consistent with good commercial or customary practice and no evidence or indication came to light that would suggest that the Mortgaged Property has been or is now being used in violation of any Law, including any Environmental Laws; and
     2. the Mortgaged Property has not been designated as “hazardous waste property” or “border zone property” under Section 25220, et seq., of the California Health and Safety Code.

The representations and warranties in this Section 13 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the Mortgage Loan, until the Indebtedness has been paid in full.

* 1. Without limiting any of the remedies provided in this Security Instrument, Borrower acknowledges and agrees that each of the provisions in this Section 13 is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Borrower relating to the real property security (the “**Environmental Provisions**”), and to the extent applicable, Borrower’s failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Lender to pursue the remedies provided by Section 736 of the California Code of Civil Procedure for the recovery of damages and for the enforcement of the Environmental Provisions.

# Governing Law; Consent to Jurisdiction and Venue. This Security Instrument shall be governed by the laws of the Property Jurisdiction, without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Borrower agrees that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the County of San Diego, State of California. The state and federal courts and authorities with jurisdiction in the County of San Diego, State of California, shall have exclusive jurisdiction over all controversies that arise under or in relation to any security for the Indebtedness. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which Borrower might be entitled by virtue of domicile, habitual residence or otherwise.

# Miscellaneous Provisions.

* 1. This Security Instrument shall bind, and the rights granted by this Security Instrument shall benefit, the successors and assigns of Lender. This Security Instrument shall bind, and the obligations granted by this Security Instrument shall inure to, any permitted successors and assigns of Borrower under the Loan Documents. If more than one (1) Person signs this Security Instrument as Borrower, the obligations of such Persons shall be joint and several. The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Security Instrument shall create any other relationship between Lender and Borrower. No creditor of any party to this Security Instrument and no other Person shall be a third party beneficiary of this Security Instrument or any other Loan Document.
  2. The invalidity or unenforceability of any provision of this Security Instrument or any other Loan Document shall not affect the validity or enforceability of any other provision of this Security Instrument or of any other Loan Document, all of which shall remain in full force and effect. This Security Instrument contains the complete and entire agreement among the parties as to the matters covered, rights granted and the obligations assumed in this Security Instrument. This Security Instrument may not be amended or modified except by written agreement signed by the parties to this Security Instrument.
  3. The following rules of construction shall apply to this Security Instrument:
     1. The captions and headings of the sections of this Security Instrument are for convenience only and shall be disregarded in construing this Security Instrument.
     2. Any reference in this Security Instrument to an “Exhibit” or “Schedule” or a “Section” or an “Article” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Security Instrument or to a Section or Article of this Security Instrument.
     3. Any reference in this Security Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.
     4. Use of the singular in this Security Instrument includes the plural and use of the plural includes the singular.
     5. As used in this Security Instrument, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only, and not a limitation.
     6. Whenever Borrower’s knowledge is implicated in this Security Instrument or the phrase “to Borrower’s knowledge” or a similar phrase is used in this Security Instrument, Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower’s knowledge after reasonable and diligent inquiry and investigation.
     7. Unless otherwise provided in this Security Instrument, if Lender’s approval, designation, determination, selection, estimate, action or decision is required, permitted or contemplated under this Security Instrument, such approval, designation, determination, selection, estimate, action or decision shall be made in Lender’s sole and absolute discretion.
     8. All references in this Security Instrument to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time under the applicable provisions of such separate instrument or agreement.
     9. “Lender may” shall mean at Lender’s discretion but shall not be an obligation.

# Time is of the Essence. Borrower agrees that, with respect to each and every obligation and covenant contained in this Security Instrument and the other Loan Documents, time is of the essence.

# Attached Exhibits. The following Exhibits are attached to this Security Instrument and incorporated into this Security Instrument by reference:

Exhibit A: Property Legal Description

**[Remainder of page intentionally blank. Signatures appear on following page]**

**IN WITNESS WHEREOF**, Borrower has signed and delivered this Security Instrument or has caused this Security Instrument to be signed and delivered by its duly authorized representative(s).

|  |
| --- |
| BORROWER:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, |

Borrower Notice Address:

|  |  |  |
| --- | --- | --- |
|  |  | Lender Notice Address:  City of San Diego  1200 Third Avenue, 14th floor  San Diego, CA 92101  Attention:  Tax Credit Investor Notice Address:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Trustee Notice Address: |

**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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public in and for said State, 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 forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public in and for said State, 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 forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**TO**

**DEED OF TRUST,**

**ASSIGNMENT OF LEASES AND RENTS,**

**SECURITY AGREEMENT AND FIXTURE FILING**

**PROPERTY LEGAL DESCRIPTION**

***[NOTE: PRESENT THIS CERTIFICATE TO BORROWER FOR SIGNATURE IMMEDIATELY PRIOR TO SIGNING AND DELIVERING THE SECURITY INSTRUMENT. DO NOT RECORD THIS CERTIFICATE – RETAIN A SIGNED COPY]***

**Notice Regarding HAZARD Insurance Requirements**

You have applied for a loan that will be secured by real property. The following notice is provided in accordance with the provisions of California Civil Code Section 2955.5.

**Under California law, 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.**

Your signature below acknowledges receipt of a copy of this notice.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

**Exhibit F**

**to**

**CDBG LOAN AGREEMENT**

**(Project Title)**

**Developer Official Action**

[Attached behind this cover page]

CERTIFICATION OF LIMITED PARTNERSHIP AUTHORITY

**(Project Title)**

The undersigned general partners of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Partnership”), certify that we are all of the general partners of the Partnership, there are no other general partners and no consent or approval of any other person is required for the undersigned to make the certifications set forth in this Certificate.

We further certify that the following named person:

1.

2.

is, without any additional or further consent of any person, authorized and empowered for and on behalf of and in the name of the Partnership to: (1) execute and deliver that certain CDBG Loan Agreement (Project Title), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, for reference purposes only (“Agreement”), for the Partnership to obtain a loan from the City of San Diego, a California municipal corporation (“City”), for construction upon the real property owned by the Partnership and, generally, located at (Site Address) and performance of other Partnership obligations set forth in the Agreement; (2) execute and deliver all other documents to be executed in connection with the transactions contemplated in the Agreement; and (3) take all actions that may be considered necessary to conclude the transactions and complete the development contemplated in the Agreement.

The authority conferred and certified to in this Certificate shall be considered retroactive, and any and all acts authorized in this Certificate that were performed before the execution of this Certificate are approved and ratified. The authority conferred and certified to in this Certificate shall continue in full force and effect until the Mayor of the Cityreceives written notice from all of the general partners of the Partnership of the revocation of this Certificate.

We further certify that the activities covered by the authorities certified to in this Certificate and the foregoing certifications constitute duly authorized activities of the Partnership; that these authorities and certifications are now in full force and effect; and that there is no provision in any document under which the Partnership is organized or that governs the Partnership’s continued existence limiting the power of the undersigned to grant such authority or make the certifications set forth in this Certificate, and that the same conform with the provisions of all such documents.

**[Remainder of page intentionally blank. Signatures appear on following page]**

**SIGNATURE PAGE**

**TO**

CERTIFICATION OF LIMITED PARTNERSHIP AUTHORITY

**(Project Title)**

signature block: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

**Exhibit G**

**to**

**CDBG LOAN AGREEMENT**

**(Project Title)**

**Project Scope**

[Attached behind this cover page]

**EXHIBIT G**

**TO**

**CDBG LOAN AGREEMENT**

**(Project Tile)**

**Project Scope**

**Exhibit H**

**to**

**CDBG LOAN AGREEMENT**

**(Project Title)**

**Insurance Requirements**

[Attached behind this cover page]

EXHIBIT H

TO

CDBG LOAN AGREEMENT

**(Project Title)**

**Insurance Requirements**

1. **Automobile Liability Insurance**. Insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by Developer regarding the Project, with minimum limits for bodily injury and property damage of TWO MILLION DOLLARS ($2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by City, which pre-approval shall not be unreasonably withheld.
2. **Builder’s Risk Insurance**. During any Construction on the Property, Builder’s risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the subject construction, including cost of debris removal, but excluding foundation and excavations. Such insurance shall also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Property.
3. **Liability Insurance**. Commercial general liability insurance against claims for bodily injury, personal injury, death or property damage occurring upon, in or about the Property, the Project or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Five Million Dollars ($5,000,000) for any one occurrence and Ten Million Dollars ($10,000,000) aggregate and which may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Project and the Property, collectively, or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.
4. **Property Insurance**. Insurance providing coverage for the Property and all improvements on or to the Property against loss, damage or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements comprising the Project (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with “ordinance or law” coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Property, an “increased cost of construction” endorsement and an endorsement covering demolition and cost of debris removal. Property Insurance shall also include rental or business interruption insurance in an amount, at least, equal to the average annual Gross Income of the Project for the preceding three (3) calendar years and providing for a 12-month extended period of indemnity.
5. **Waiver of Subrogation.** A provision in, or endorsement to, any insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either Party to this Agreement for any loss such insurance policy covers.
6. **Workers Compensation Insurance**. Workers compensation insurance complying with the provisions of State law and an employer’s liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars ($1,000,000) per accident for bodily injury or disease, covering all employees of Developer.
7. **Nature of Insurance**. All Liability Insurance, Automobile Liability Insurance, Builder’s Risk Insurance and Workers Compensation Insurance policies this Agreement requires shall be issued by carriers that: (a) are listed in the then current “Best’s Key Rating Guide—Property/Casualty—United States & Canada” publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of “A-” and a minimum financial size category of “VII” (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Developer may provide any insurance under a “blanket” or “umbrella” insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Property and the Project, which amount(s) shall equal or exceed the amount(s) required by this Agreement; and (ii) such policy otherwise complies with the requirements of this Agreement.
8. **Policy Requirements and Endorsements**. All insurance policies required by this Agreement shall contain (by endorsement or otherwise) the following provisions:
   1. *Insured*. Liability Insurance policies shall name the City Parties as “additional insured.” Builder’s Risk Insurance policies shall name City as a “loss payee.” The coverage afforded to the City Parties shall be at least as broad as that afforded to Developer regarding the Property and the Project and may not contain any terms, conditions, exclusions or limitations applicable to the City Parties that do not apply to Developer.
   2. *Primary Coverage*. Any insurance or self-insurance maintained by the City Parties shall be excess of all insurance required to be maintained by Developer under this Agreement and shall not contribute with any insurance required to be maintained by Developer under this Agreement.
   3. *Contractual Liability*. Liability Insurance policies shall contain contractual liability coverage for Developer’s indemnity obligations under this Agreement. Developer’s obtaining or failure to obtain such contractual liability coverage shall not relieve Developer from nor satisfy any indemnity obligation of Developer under this Agreement.
   4. *Deliveries to City*. Evidence of Developer’s maintenance of all insurance policies required by this Agreement shall be delivered to City prior to the Close of Escrow. Builder’s Risk Insurance coverage shall commence at the time of Builder mobilization for the Project. No later than three (3) days before any insurance required by this Agreement expires, is cancelled or its liability limits are reduced or exhausted, Developer shall deliver to City evidence of Developer’s maintenance of all insurance required by this Agreement. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days’ advance written notice of such action has been given to City by certified mail, return receipt requested; provided; however, that only ten (10) days’ advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as “endeavor to” and “but failure to mail such Notice shall impose no obligation or liability of any kind upon the company” shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties under this Agreement.
   5. *Waiver of Certain Claims*. Developer shall cause each insurance carrier providing any Liability Insurance, Builder’s Risk Insurance, Worker’s Compensation Insurance or Automobile Liability Insurance coverage under this Agreement to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to the City Parties, if not originally in the policy. To the extent that Developer obtains an insurance policy covering both the Developer Parties and the City Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by such insurance policy.
   6. *No Representation*. No Party makes any representation that the limits, scope, or forms of insurance coverage this Agreement requires are adequate or sufficient.
   7. *No Claims Made Coverage*. None of the insurance coverage required under this Agreement may be written on a claims-made basis.
   8. *Fully Paid and Non-Assessable*. All insurance obtained and maintained by Developer in satisfaction of the requirements of this Agreement shall be fully paid for and non-assessable.
   9. *City Option to Obtain Coverage*. During the continuance of an Event of Default arising from the failure of Developer to carry any insurance required by this Agreement, City may, in City’s sole and absolute discretion, purchase any such required insurance coverage. City shall be entitled to immediate payment from Developer of any premiums and associated reasonable costs paid by City to obtain such insurance coverage. Any amount becoming due and payable to City under this Section 8.9 that is not paid within fifteen (15) calendar days after written demand from City for payment of such amount with an explanation of the amounts demanded, will accrue Default Interest from the date of the demand. Any election by City to purchase or not to purchase insurance otherwise required by the terms of this Agreement to be carried by Developer shall not relieve the Developer of any Developer Default or Developer’s obligation to obtain and maintain any insurance coverage required by this Agreement.
   10. *Separation of Insured*. All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Developer and the City Parties. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Agreement may provide a cross-suits exclusion for suits between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons.
   11. *Deductibles and Self-Insured Retentions*. Any deductibles or self-insured retentions under insurance policies required by this Agreement shall be declared to and approved by City. Developer shall pay all such deductibles or self-insured retentions regarding the City Parties. Each insurance policy issued in satisfaction of the requirements of this Agreement shall provide that, to the extent that Developer fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, City may pay the unpaid portion of such deductible or self-insured retention, in City’s sole and absolute discretion. All amounts paid by City toward self-insured retentions regarding insurance policies covering the City Parties under this Agreement shall be reimbursable to City by Developer in the same manner that insurance costs are reimbursable to City from Developer under Section 8.9.
   12. *No Separate Insurance*. Developer shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with insurance coverage required by this Agreement, unless the City Parties are made additional insured under such insurance coverage.
   13. *Insurance Independent of Indemnification*. The insurance requirements of this Agreement are independent of the Parties’ indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties’ indemnification or other obligations or to limit the Parties’ liability under this Agreement, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage, nor shall the provision of such insurance preclude City from taking such other actions as are available to City under any other provision of this Agreement or otherwise at law or in equity.

**Exhibit I**

**to**

**CDBG LOAN AGREEMENT**

(Project Title)

**City Contract Provisions**

[Attached behind this cover page]

EXHIBIT I

TO

CDBG LOAN AGREEMENT

(Project Title)

**City Contract Provisions**

1. Developer Certifications of Compliance. By signing this Agreement, Developer certifies that Developer is aware of, and will comply with, all of the following City requirements in performance of this Agreement:
   1. Drug-Free Workplace Certification. Developer shall comply with City’s Drug‑Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into this Agreement by reference.
   2. Developer Certification for Americans with Disabilities Act (“ADA”) and State Access Laws and Regulations. Developer shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Developer shall comply with the most restrictive requirement (i.e., that which provides the most access). Developer also shall comply with the City’s ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Agreement by reference. Developer warrants and certifies compliance with all Federal and State access laws and regulations and further certifies that any subcontract agreement relating to this Agreement contains language which indicates the subcontractor’s agreement to abide by the provisions of the City Council Policy 100-04 and any applicable Federal and State access laws and regulations.
   3. Non-Discrimination Requirements.
      1. *Compliance with City’s Equal Opportunity Contracting Program (“EOCP”)*. Developer shall comply with City’s EOCP requirements. Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall ensure that its subcontractors comply with the EOCP. Nothing in this Section 1.3.1 shall be interpreted to hold Developer liable for any discriminatory practice of its subcontractors. Prior to commencing construction and in accordance with the Schedule of Performance, Developer shall contact the City’s Equal Opportunity Contracting Program to determine compliance with all applicable rules and regulations.
      2. *Non-Discrimination Ordinance*. Developer shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Developer shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Developer understands and agrees that violation of this clause

shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, or other sanctions. Developer shall ensure that this language is included in contracts between Developer and any subcontractors, vendors and suppliers.

* + 1. *Compliance Investigations*. Upon City’s request, Developer agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Developer has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Developer for each subcontract or supply contract. Developer further agrees to fully cooperate in any investigation conducted by City under City's Nondiscrimination in Contracting Ordinance.
  1. Equal Benefits Ordinance Certification. Unless an exception applies, Developer shall comply with the Equal Benefits Ordinance codified in San Diego Municipal Code (“SDMC”) section 22.4308.
  2. Contractor Standards. Developer shall comply with the Contractor Standards provisions codified in SDMC section 22.3004.
  3. Noise Abatement. Developer shall operate, conduct, or construct without violating the City’s Noise Abatement Ordinance codified in the SDMC.
  4. Storm Water Pollution Prevention Program. Developer shall comply with the City’s Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.
     1. Developer shall comply with the City’s Jurisdictional Urban Runoff Management Plan encompassing City-wide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.
     2. Developer shall comply with each City facility or work site’s Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.
  5. Service Worker Retention Ordinance. If applicable, Developer shall comply with the Service Worker Retention Ordinance codified in the SDMC.
  6. Product Endorsement. Developer shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.
  7. Business Tax Certificate. Unless the City Treasurer determines in writing that Developer is exempt from the payment of business tax, Developer is required to obtain a Business Tax Certificate and provide a copy of its Business Tax Certificate to City before this Agreement is signed.

**Exhibit J**

**to**

**CDBG LOAN AGREEMENT**

(Project Title)

**Federal Contract Provisions**

[Attached behind this cover page]

**EXHIBIT J**

**TO**

**CDBG LOAN AGREEMENT**

**(Project Title)**

**FEDERAL CONTRACT PROVISIONS**

1. **UNIFORM ADMINISTRATIVE REQUIREMENTS**. Developer shall comply with 2

C.F.R. Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” as modified by 24 C.F.R. § 570.502.

1. **GENERAL FEDERAL CDBG PROGRAM REQUIREMENTS**. Developer shall comply with all Federal laws and regulations described in 24 C.F.R. § 570, including subpart K (sections 570.600-570.614), except that: (a) Developer does not assume City’s environmental responsibilities described at 24 C.F.R. § 570.604; and (b) Developer does not assume City’s responsibility for initiating the review process under the provisions of 24 C.F.R. Part 52.
2. **LOBBYING AND POLITICAL ACTIVITIES**. Developer shall not use any of the CDBG Funds provided to it under this Agreement (including any Program Income) to pay any Person for influencing or attempting to influence any decision or election by any electorate, legislative body, government agency, grantee, bureau, board, commission, district, or any other instrument of Federal, state, city or other local government. The phrase “influencing or attempting to influence” means making, with the intent to influence, any communication to, or appearance before, a board, body, officer, or employee of a governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election. Developer shall comply with 31 USC 1352 and 24 C.F.R. Part 87. Developer shall sign and deliver to City the certification set forth in 24 C.F.R. Part 87, Appendix A, prior to entering into this Agreement, which certification shall be a condition precedent to this Agreement. Developer shall also require this same certification to be included in all subcontracts paid for with money advanced to Developer under the City Loan. Additionally, Developer shall disclose to City any funds from any other source paid by Developer (or their respective principals or agents) to any Person, within the last year, for influencing or attempting to influence decisions of the Federal government, by completing, signing, and submitting to City, Standard Form LLL, “Disclosure of Lobbying Activities,” found at 24 C.F.R. Part 87, Appendix B. Developer understands that the duty to disclose lobbying activities is a continuing requirement and, therefore, shall make such disclosures at the end of each calendar quarter during the Term in which any activity requiring disclosure occurs or more often, if required by applicable Law.
3. **RECOGNITION OF FUNDING SOURCE**. Developer shall ensure recognition of the role of the CDBG Funds in financing the Project. All publications relating to the Project shall include the following statement: “This development is funded in whole or in part with Community Development Block Grant program funds provided by the U.S. Department of Housing and Urban Development to the City of San Diego.”
4. **PLAYING BY THE RULES HANDBOOK**. By entering into this Agreement, Developer acknowledges that Developer has received, read, and understood the contents of the Playing by the Rules Handbook and shall fully comply with all of the administrative recommendations set forth in such handbook.
5. **NO DISCRIMINATION**. Developer shall comply with Title VI of the Civil Rights Act of

1964 and the implementing regulations in 24 C.F.R. Part 1, Executive Order 11063, as amended by Executive Order 122\_\_\_\_\_\_\_\_\_\_\_, and the implementing regulations in 24 C.F.R. Part 107, the California Fair Employment Practices Act, and any other applicable Federal or State law or regulation prohibiting discrimination on any basis enacted before or after the Effective Date. Developer shall not discriminate on the basis of race, color, gender, religion, national origin, sexual orientation, age, familial status, or disability, in performing this Agreement, including in employment opportunities, the provision of labor, services, privileges, facilities, advantages, or accommodations. Developer’s failure to comply with the requirements of this EXHIBIT J, Section 6, shall be an Event of Default by Developer.

1. **COPELAND “ANTI-KICKBACK” ACT**. As applicable, Developer shall comply with the Copeland “Anti-Kickback” Act (18 USC 874), as supplemented by the Department of Labor regulations at 29 C.F.R. Part 3.
2. **ENERGY POLICY AND CONSERVATION ACT**. As applicable, Developer shall comply with the mandatory standards and policies relating to energy efficiency, contained in the State’s energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).
3. **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**. As applicable, Developer shall comply with all applicable standards, orders or regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387), for contracts in excess of $150,000.
4. **RELIGIOUS ACTIVITIES**. Developer shall comply with all applicable HUD requirements governing the use of CDBG Funds by religious organizations, including 24 C.F.R. § 570.200(j), referring to 24 C.F.R. § 5.109, and Executive Order 11245, as amended by Executive Order 13279.
5. **SECTION 3 CLAUSE**. If applicable under 24 C.F.R. §75.3, then under 24 C.F.R. §75.27, Developer (and, if indicated below, City) shall comply with the following “Section 3 Clause”:
   1. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u (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 Agreement agree to comply with HUD’s regulations in 24 C.F.R. Part 75, which implement Section 3. As evidenced by their execution of this Agreement, the Parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
   3. Developer agrees to send to each labor organization or representative of workers with which Developer has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of Developer’s commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, the name and location of the Person(s) taking applications for each of the positions and the anticipated date the work shall begin.
   4. Developer agrees to include this Section 3 Clause in every subcontract subject to compliance with the regulations in 24 C.F.R. Part 75, 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 75. Developer will not subcontract with any subcontractor where Developer has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 75.
   5. Developer will certify that any vacant employment positions, including training positions, that are filled (1) after Developer is selected, but before this Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 75 require employment opportunities to be directed, were not filled to circumvent Developer’s obligations under 24 C.F.R. Part 75.
   6. Noncompliance with HUD’s regulations in 24 C.F.R. Part 75 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted agreements.
   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 USC 450e) also applies to the work to be performed under this Agreement. 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 Agreement 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).
   8. Developer shall document its good faith efforts to comply with the terms and conditions of the above Section 3 Clause and furnish such documentation to City, upon request.
6. **REVERSION OF ASSETS**. Upon the expiration or termination of this Agreement, Developer shall transfer to City any CDBG Funds (including Program Income) on hand at the time of such expiration or termination and relating to the City Loan. As applicable, Developer shall comply with the requirements of 24 C.F.R. § 570.503(b)(7) regarding the use or disposition of any real property acquired or improved with CDBG Funds in excess of $25,000. If Developer does not use the real property to meet one of the national objectives in 24 C.F.R. § 570.208 for at least the HUD National Objective Term, Developer shall pay City an amount equal to the current market value of the property, less any portion of the value attributable to expenditures of funds other than CDBG Funds for the acquisition of, or improvement to, the property.
7. **FAIR HOUSING ACT**. As applicable, Developer shall comply with Title VIII of the Civil Rights Act of 1968, as amended, which prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), age or disability. Developer shall post in a prominent place at its offices the Equal Housing Opportunity Logo provided by City, which may be obtained through the City’s Economic Development Department, and any other fair housing materials provided by City during the Term.
8. **SECTION 504**. As applicable, Developer shall comply with any and all Federal regulations issued under Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against persons with disabilities in any Federally assisted program. City shall provide Developer with any guidelines necessary for compliance with that portion of the regulations applicable during the Term.
9. **LIMITED ENGLISH PROFICIENCY**. As applicable, Developer shall comply with Executive Order 12166, enacted on August 11, 2000, mandating that any recipient of HUD assistance funds reduce barriers to access for limited English proficiency (“LEP”) persons. Developer shall comply with and make good faith and reasonable efforts to carry out the purposes of Executive Order 12166 relating to “Improving Access to Services by Persons with Limited English Proficiency.” Developer acknowledges that failure to ensure LEP access to HUD benefits may violate Title VI of the Civil Rights Act of 1964.
10. **LEAD-BASED PAINT**. As applicable, Developer shall comply with 24 C.F.R. § 570.608 relating to the Lead-Based Paint Poisoning Prevention Act (42 USC 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC 4851-4856), and implementing regulations at part 35, subparts A, B, J, K

**Exhibit K**

**to**

**CDBG LOAN AGREEMENT**

(Project Title)

**Prevailing Wage**

[Attached behind this cover page]

EXHIBIT K

TO

CDBG LOAN AGREEMENT

(Project Title)

Prevailing and Living Wage Requirements

1. **PREVAILING WAGES**. Under San Diego Municipal Code section 22.3019 (“**PWO**”), construction work performed or funded under this Agreement cumulatively exceeding $25,000 and alteration, demolition, repair and maintenance work performed or funded under this Agreement cumulatively exceeding $15,000 is subject to the State of California prevailing wage law set forth in California Labor Code sections 1720 through 1861 (“**Prevailing Wage Law**”) and in undertaking any and all such work, Developer, Builder and any and all subcontractors of either of them shall comply with Prevailing Wage Law, including the requirements set forth in this **Exhibit K**. This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay “living wage” under San Diego Municipal Code sections 22.4201 through 22.4245 (“**LWO**”). If both Prevailing Wage Law and the LWO are applicable to particular work, Developer, Builder and any and all subcontractors of either of them must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate, and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.
   1. Compliance with Prevailing Wage Requirements. Under Prevailing Wage Law, Developer, Builder and any and all subcontractors of either of them shall ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations (DIR), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.
      1. Copies of the prevailing rate of per diem wages are on file at City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Developer, Builder and any and all subcontractors of either of them shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to any interested party upon request. Developer, Builder and any and all subcontractors of either of them shall deliver evidence of the required job site posting to City, within 5 calendar days after such posting.
      2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the term of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the term of this Agreement, such wage rate shall apply to the balance of the term of this Agreement.
   2. Penalties for Violations. Developer, Builder and any and all subcontractors of either of them shall comply with California Labor Code section 1775, in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with California Labor Code section 1775 shall be in addition to any other applicable penalties allowed under California Labor Code sections 1720-1861.
   3. Payroll Records. Developer, Builder and any and all subcontractors of either of them shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Developer, Builder and any and all subcontractors of either of them shall comply with California Labor Code section 1776, including having provisions requiring such compliance in all contracts with subcontractors. Any requirement to submit certified payroll records to DIR shall include, without limitation, submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR. Further, Developer, Builder and any and all subcontractors of either of them shall furnish the records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required in California Labor Code section 1771.4. Developer is responsible for ensuring that Builder and any of their subcontractors submit certified payroll records to City, the Labor Commissioner and DIR.
   4. Apprentices. Developer, Builder and any and all subcontractors of either of them shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Developer shall be held responsible for its compliance and the compliance of Builder and any of their subcontractors with California Labor Code sections 1777.5, 1777.6 and 1777.7.
   5. Working Hours. Developer, Builder and any and all subcontractors of either of them shall comply with California Labor Code sections 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of $25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
   6. Required Provisions for Subcontracts. Developer shall include, at a minimum, a copy of the following provisions in any contract it enters into with Builder or any subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
   7. Labor Code Section 1861 Certification. In accordance with California Labor Code section 3700, Developer, Builder and any and all subcontractors of either of them are required to secure the payment of compensation of their respective employees and by signing this Agreement or any subcontract, respectively, Developer, Builder and any and all subcontractors of either of them certifies that “I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.” Developer shall include this certification in all contracts with Builder and each subcontractor.
   8. Registration Requirements. All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of Public Contract Code section 4104, or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work under California Labor Code section 1725.5. In accordance with California Labor Code section 1771.1(a), “[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the Business and Professions Code or by section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work under section 1725.5 at the time the contract is awarded.”
      1. A contractor’s inadvertent error in listing a subcontractor who is not registered under California Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under Public Contract Code section 4107.
      2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Labor Code section 1725.5.
      3. By entering into this Agreement, Developer is certifying that it has verified or will verify that Builder and all subcontractors used on work subject to Prevailing Wage Law are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and shall provide proof of such registration to City.
   9. Filing of Form PWC-100. Developer shall timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed form to City.
   10. Filing of Notice of Completion. Developer shall record a notice of completion in accordance with California Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to City.

**Exhibit L**

**to**

**CDBG LOAN AGREEMENT**

(Project Title)

**Acquisition Budget**

[Attached behind this cover page]

**Acquisition Budget**

**(Project Title)**

**Item**  **Costs**

**Exhibit M**

**to**

**CDBG LOAN AGREEMENT**

(Project Title)

**Monitoring Agreement**

[Attached behind this cover page]

EXHIBIT M

TO

CDBG LOAN AGREEMENT

(Project Title)

REPORTING AND MONITORING AGREEMENT

This Reporting and Monitoring Agreement (“Monitoring Agreement”) is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, by and among the City of San Diego, a municipal corporation (“City”), the San Diego Housing Commission, a public agency (“Administrator”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a California \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Participant”), which shall collectively be referred to as the “Parties.”

## **RECITALS**

A. Participant owns that certain real property generally located at (Site Address) in the City of San Diego, California (“Property”). Participant will undertake the construction of \_\_\_\_\_\_ residential apartments on the Property with appropriate landscaping, site improvements, and parking (“Project”). Upon completion of the Project, \_\_\_\_\_\_\_\_\_\_\_ of the units will be income-restricted rental units at affordable rent (“Affordable Units”).

B. Participant and City entered into that certain CDBG Loan Agreement (Project Title) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_ (“Loan Agreement”), and that certain Regulatory Agreement of Covenants, Conditions and Restrictions Restricting Use of Property for Affordable Housing (Project Title) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_, and recorded against the Property on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_ (“Regulatory Agreement”). The Loan Agreement and the Regulatory Agreement are incorporated by reference into this Monitoring Agreement. The terms “Loan Agreement” and “Regulatory Agreement” as used in this Monitoring Agreement shall mean, refer to and include the Loan Agreement and the Regulatory Agreement, respectively, as well as any riders, exhibits, addenda, implementation agreements, amendments, and attachments thereto (which are incorporated by reference into this Monitoring Agreement). Any capitalized term not defined in this Monitoring Agreement shall have the meaning ascribed to such term in the Loan Agreement or the Regulatory Agreement, as applicable.

C. The Loan Agreement and the Regulatory Agreement (collectively, “Project Agreements”) require Participant to construct the Affordable Units on the Property, to be made available for occupancy by Low Income households, \_\_\_\_\_\_ of the residential units shall be occupied or Available for occupancy by an individual or household with a household income equal to or less than sixty percent (60%) of the then current CTCAC Area Median Income, including Utilities Allowance, adjusted for family size appropriate for the Dwelling Unit, as published from time to time by CTCAC, for a period of not less than fifty-five (55) years from Completion (as defined in the Loan Agreement and as further described in the Regulatory Agreement).

D. Based on City’s Federal CDBG funding source used to assist with the cost of property acquisition for the Affordable Units, City is charged with enforcing the affordable housing obligations of Participant contained in the Project Agreements, including, without limitation, determining the eligibility of renters and rental restrictions of the Affordable Units.

E. City desires to use the staff, skills, and facilities of Administrator to provide monitoring and reporting requirements on the Project, as regulated by the Project Agreements.

F. The Parties have the capability and the legal right to enter into this Monitoring Agreement.

G. The Parties desire to enter into this Monitoring Agreement to, among other things, provide that i) Participant shall pay a fee to Administrator in consideration for monitoring the Affordable Units for the period of affordability; and (ii) Administrator will administer and perform all monitoring and reporting requirements on the Project as regulated by the Project Agreements, and provide the reports set forth in Section 7 of this Monitoring Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

## **AGREEMENT**

**1. Purpose of Agreement**

### The purpose of this Monitoring Agreement is to provide for the administration of Participant’s affordable housing obligations arising under the Project Agreements.

**2. Scope of Work**

A. Services. In addition to the reporting requirements set forth in Section 7 below, Administrator shall monitor Participant’s compliance with the affordable housing requirements of the Project as set forth in the Project Agreements, including, without limitation: (i) establishing the eligibility criteria for renters of the Affordable Units in accordance with the requirements of the Project Agreements; and (ii) monitoring ongoing compliance with the terms of the Project Agreements as applicable, including an annual certification that the Affordable Units remain occupied by eligible tenants. City will notify Administrator of any amendments to the governing law or regulations that would affect the affordable housing requirements of the Project as set forth in the Project Agreements.

B. City Rights and Obligations. All rights, obligations, and duties of City under the Project Agreements, not otherwise the subject of this Agreement, shall remain the rights, obligations, and duties of City.

**3. Parties to Monitoring Agreement**

The Parties to this Monitoring Agreement are City, Administrator, and Participant. In addition to the provision of Section 4.A below, a copy of all formal notices, demands, and communications directed to City shall be given as follows.

City of San Diego

1200 Third Avenue, 14th floor

San Diego, CA 92101

Attention: CDBG – (Project Title)

#### **4. Representatives of the Parties**

The representatives of the respective Parties who are authorized to administer this Monitoring Agreement and to whom formal notices, demands and communications shall be given are as follows:

A. The representative of the City shall be:

City of San Diego

1200 Third Avenue, 14th floor

San Diego, CA 92101

Attention: Community Development Division, Economic Development Department

B. The representative of Administrator shall be:

San Diego Housing Commission

1122 Broadway, Suite 300

San Diego, California 92101

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

C. The representative of Participant shall be:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Any Party may designate another representative by providing written notice to the other Parties.

**5. Time of Performance**

Services under this Monitoring Agreement shall commence as of the date of signature of this Monitoring Agreement by all of the Parties and shall terminate upon the earlier of: (i) expiration of the affordable rental restriction requirements affecting the Affordable Units, as described in the Project Agreements; or (ii) termination of this Agreement under Sections 12 or 15 below.

**6. Monitoring of Administrator by City**

City may monitor Administrator’s performance of its duties under this Monitoring Agreement. Administrator shall reasonably cooperate with City in connection with such monitoring.

**7. Monitoring and Reporting Requirements**

Administrator Requirements.

1. Administrator shall determine whether proposed applicants are income eligible to qualify as tenants for the Affordable Units.
2. Administrator shall monitor the following:

(1) Each Affordable Unit’s occupancy by eligible residents; and

(2) The period of each Affordable Unit’s affordability (i.e., not less than 55 years for rental units).

1. Administrator shall submit to City annual reports of its monitoring activities under this Monitoring Agreement, which may include the most recent Certification of Continuing Program Compliance report, no later than July 31 for the prior fiscal year (July 1 - June 30).
2. Administrator shall re-certify the household income of tenants annually. Notwithstanding anything to the contrary contained in this Monitoring Agreement, Participant shall not be required to terminate tenancies to the extent it would violate Section 42 of the Internal Revenue Code of 1986, as amended, while such section is applicable to the Project. Participant shall be solely responsible for any eviction of tenants; Administrator shall have no obligation to evict any persons.

City Requirements. Annually, upon request from Administrator, provide an updated rent chart based upon the Area Median Income for San Diego County, and applicable laws.

Participant Requirements.

1. Provide complete and accurate information required by Administrator with regard to the affordable housing obligations of Participant contained in the Project Agreements, immediately upon request.
2. Provide the tenants with a written notice from Participant, one (1) year before the expiration of an affordability restriction.
3. Participant shall timely pay all fees to Administrator as required by this Monitoring Agreement.

**8. Books and Records**

A. Complete Books. Administrator shall maintain or cause to be maintained complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Monitoring Agreement and the Project Agreements. Participant shall maintain or cause to be maintained complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Monitoring Agreement and the Project Agreements.

B. Availability. All records prepared in accordance with this Monitoring Agreement shall be made available to City for copying and inspection at any time without notice during normal business hours.

**9. Access to Records**

A. City shall have full and free access to all books, papers, documents, and records of Administrator and Participant that are pertinent to the obligations of all Parties under this Monitoring Agreement.

B. Administrator shall have full and free access to all books, papers, documents and records of the City and Participant that are pertinent to Administrator’s obligations under this Monitoring Agreement.

**10. Developer/Ownership, Use and Distribution of Documents**

A. All records, reports, books, papers, documents, computer discs or other information prepared or developed by Administrator or Participant on behalf of City in connection with services rendered under this Monitoring Agreement, are and shall remain the exclusive property of City.

B. City and Administrator may use and distribute, in each of their sole discretions, any records, reports, books, papers, documents, computer discs or other information prepared by Administrator and/or Participant under this Monitoring Agreement. Such purposes include, but are not limited to, annual reports, reports required by applicable law, and responses to public information requests. City shall identify Administrator as the author of any such reports prepared by Administrator that are distributed by City. Neither City nor Administrator shall be required to secure any prior authorization, written or otherwise, from one another before any such distribution.

C. Upon expiration of this Monitoring Agreement or in the event of termination of this Monitoring Agreement by the City or Administrator as provided in Sections 12 or 15 below, Administrator agrees to provide to City and Participant copies of all records, reports, books, papers, documents, computer discs or other information prepared as a result of this Monitoring Agreement not previously provided to City or Participant.

**11. Payment of Compensation**

A. Amount. In consideration for the services provided by Administrator with respect to the Affordable Units as referenced in this Monitoring Agreement, Administrator may establish and collect an annual fee (“Annual Monitoring Fee”) from Participant for services rendered pursuant to this Monitoring Agreement to monitor and enforce the affordability covenants of the Project contained in the Project Agreements. The Annual Monitoring Fee shall be charged pursuant to the current Monitoring Fee Schedule attached hereto as Exhibit A, which Exhibit is subject to revision annually.

B. Time of Payment. Administrator’s right to the Annual Monitoring Fee referenced in Exhibit A shall commence concurrently with the activities referenced in Section 8 above. Participant shall pay to Administrator the Annual Monitoring Fee in accordance with Exhibit A, and as calculated by, Section 11.A above. Participant shall pay such other fees set forth in Exhibit A as required hereunder. Participant’s failure to timely pay the initial set up fee, Annual Monitoring Fee or any other fees required hereunder shall constitute a material default under this Agreement. Such breach shall entitle Administrator, in addition to all other rights that it has at law, equity and under the terms of this Agreement, to terminate this Agreement in accordance with Section 10 above or Section 15 below.

C. Administrator Entitled to All Fees. Participant agrees to pay additional fees as necessary to reasonably compensate Administrator in the event Administrator’s monitoring results in a need to take additional steps to enforce the covenants and conditions contained in the Regulatory Agreement and referenced in this Monitoring Agreement (see the underlined text only in Exhibit A attached hereto). Participant further agrees that failure to pay all such fees within fifteen (15) business days after receipt of a billing statement for such fees shall constitute a material breach of the covenants and conditions of this Monitoring Agreement. Such breach shall entitle Administrator, in addition to all other rights that it has at law, equity and under the terms of this Monitoring Agreement, to terminate this Agreement in accordance with Section 10 above or Section 15 below. In the event that City directs Administrator to take legal steps, including the initiation of litigation, to enforce any provisions of the Project Agreements, then Administrator shall be entitled to the legal costs and fees and other court costs associated with such enforcement actions, in addition to the fees set forth in this Monitoring Agreement. City shall compensate Administrator for such fees and costs as incurred, and Administrator shall seek reimbursement of such fees and costs in any litigation against the Participant. City may, in lieu of requesting Administrator to enforce any applicable provisions of the Project Agreements, enforce the obligations itself.

**12. Default**

In the event of any breach or default hereunder, which the defaulting or breaching Party fails to satisfactorily cure within ten (10) calendar days of receiving written notice from a non-defaulting Party specifying the nature of the default or breach, the non-defaulting Party may immediately cancel or terminate this Monitoring Agreement upon written notice to all other Parties and maintain any and all legally permissible actions at law or in equity against the defaulting Party to enforce the correction of any such default or breach or to enjoin any such default or breach.

**13. No Partnership**

The Parties are entering into this Monitoring Agreement independently from one another and shall not be deemed officers, officials, agents, partners, or employees of one another.

**14. Amendment or Assignment of Agreement**

All amendments to this Monitoring Agreement must be in writing and signed with mutual consent of Administrator, City and Participant. This Monitoring Agreement may not be assigned by any Party without the written approval of the remaining Parties, and such approval shall not be unreasonably withheld.

**15. Termination**

This Monitoring Agreement may be terminated with or without cause by City or Administrator upon thirty (30) calendar days’ written prior notice to all other Parties.

**16. Complete Agreement**

This Monitoring Agreement contains the full and complete agreement between the parties concerning the matters contained in this Monitoring Agreement. No verbal agreements or conversation with any officer, official, agent or employee of any Party shall affect or modify any of the terms and conditions of this Monitoring Agreement.

**17. Limitations on Agreement**

Notwithstanding anything in this Monitoring Agreement to the contrary, in no event shall the obligations of Participant under this Monitoring Agreement be any greater than the obligations of Participant as the “Developer” under the Project Agreements. The Parties agree that this Monitoring Agreement is not in any way intended to, and does not, revise, amend or otherwise affect any of the terms, conditions or priority of the Project Agreements, nor the enforcement thereof, except as specifically set forth in this Monitoring Agreement. The Parties agree that, except as expressly provided in this Monitoring Agreement, the provisions of the Project Agreements shall be and remain unmodified and in full force and effect.

**18. Counterparts**

This Monitoring Agreement may be signed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Monitoring Agreement, which, with all attached signature pages, shall be deemed to be an original Monitoring Agreement.

**19.** **Time of Essence**

Time is expressly declared to be of the essence in this Monitoring Agreement, and of each and every provision in which time is an element.

**20.** **Captions**

Section or paragraph titles and captions contained in this Monitoring Agreement are inserted as a matter of convenience and for reference, and are not a substantive part of this Monitoring Agreement.

**21.** **Additional Documents**

The Parties each agree to sign any additional documents, which are reasonably necessary to carry out this Monitoring Agreement or to accomplish its intent.

**22. Benefit and Burden**

This Monitoring Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns. This Monitoring Agreement is not intended to benefit any person other than the Parties.

**23. Governing Law**

This Monitoring Agreement has been entered into in the State of California and shall be interpreted and enforced under California law.

**24. Venue**

Any action that may be filed to enforce or interpret the terms of this Monitoring Agreement shall be filed in a court located within the City of San Diego, California.

**25. Attorneys’ Fees**

The prevailing party in any action including, but not limited to, arbitration, a petition for writ of mandate, or an action for declaratory relief, brought to enforce, interpret or reform the provisions of this Monitoring Agreement shall be entitled to reasonable attorneys’ fees and costs (including, but not limited to, experts’ fees and costs, and including “costs” regardless of whether recoverable as such under statute) incurred in such action.

**26. Waiver**

No breach of any provision of this Monitoring Agreement may be waived unless in writing by all Parties. Waiver of any one breach of any provision of this Monitoring Agreement shall not be deemed to be a waiver of any other breach of the same or any other provision of this Monitoring Agreement.

**27. Signing Authority**

The representative signing on behalf of each Party to this Monitoring Agreement represents that authority has been obtained to sign on behalf of such Party.

**28. Exhibits and Recitals Incorporated**

All exhibits referred to in this Monitoring Agreement are incorporated by reference into this Monitoring Agreement, regardless of whether or not the exhibits are actually attached to this Monitoring Agreement. The recitals to this Monitoring Agreement are incorporated by reference into this Monitoring Agreement.

**29. Severability of Provisions**

If any term or provision of this Monitoring Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party under this Monitoring Agreement, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Monitoring Agreement shall not be affected thereby, and each other term and provision of this Monitoring Agreement shall be valid and enforceable to the fullest extent permitted by law.

**30. Successors and Assigns**

This Monitoring Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal and personal representatives, successors, and assigns.

**[Remainder of page intentionally blank. Signatures appear on following page.]**

IN WITNESS WHEREOF, the Parties have signed this Monitoring Agreement as of the dates set opposite their signatures.

|  |  |  |
| --- | --- | --- |
| CITY: | | |
| Dated: |  | CITY OF SAN DIEGO,  a municipal corporation  By: |
| Dated: |  | Approved as to form:  City Attorney  By:  Deputy City Attorney |
| ADMINISTRATOR: | | |
| Dated: |  | SAN DIEGO HOUSING COMMISSION  By: |
| Approved as to Form:  By:  Administrator General Counsel |  |  |

**PARTICIPANT:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

**EXHIBIT A**

**TO MONITORING AGREEMENT**

**MONITORING FEE SCHEDULE**

**(Project Title)**

The Annual Monitoring Fee is an annual charge to cover costs of monitoring compliance with the Regulatory Agreement. Compliance monitoring includes developing a compliance monitoring plan, computer database program and reporting system for the project, 1-2 trainings per year and technical assistance provided by Administrator to property Developer/Owner/manager and/or representatives.

**Annual Monitoring Fee**

The Annual Monitoring Fee is $157.50 per monitored unit. The number of monitored units is equal to the total number of units being monitored under the Regulatory Agreement. If the Property utilizes a high volume of monitoring (for example, due to repeated trainings and/or frequent contact to address inaccurate or incomplete reports), then Administrator, in its sole discretion, may elect to charge an additional fee based on an hourly rate of $100.

**Adjustment of Annual Fee**

Administrator reserves the right to revise the Annual Monitoring Fee annually based on the Administrator’s costs for monitoring functions. In no event shall the monitoring fee decrease.

**Exhibit N**

**to**

**CDBG LOAN AGREEMENT**

(Project Title)

**Project Budget**

[Attached behind this cover page]

**Exhibit O**

**to**

**CDBG LOAN AGREEMENT**

(Project Title)

**Performance Schedule**

[Attached behind this cover page]

**EXHIBIT O**

**TO**

**CDBG LOAN AGREEMENT**

**(Project Title)**

**Performance Schedule**

**PERFORMANCE SCHEDULE[[1]](#endnote-1)**

(Project Title)

| Activity | Due Date[[2]](#endnote-2) |
| --- | --- |
| 1. Submittal – Approval Applications. Developer submits all required Applications to each necessary Government to obtain all Approvals (Section 4 of the Loan Agreement (LA)) | As necessary to have all Approvals Permit Ready at least 10 days before the Commencement of Construction. |
| 1. Obtain Approvals. All Approvals from each Government required for construction of the Project on the Property, on terms and conditions reasonably satisfactory to Developer shall be Permit Ready (Sections 4 of the LA) | At least 10 days before the Commencement of Construction |
| 1. Submittal – Final Acquisition Budget. Developer submits to City the final Acquisition Budget. (Section 8.3.2 of the LA) | At least 30 days before the Escrow Closing Date. |
| 1. Review – Final Acquisition Budget. City approves or disapproves the final Acquisition Budget. | Within 14 days after receipt from Developer. |
| 1. Submittal – Final Purchase and Sale Agreement and/or Grant Deed for acquisition of the Property (Section 8.3.2 of the LA) | At least 30 days before the Escrow Closing Date. |
| 1. Review – Final Purchase and Sale Agreement and/or Grant Deed for acquisition of the Property. City approves or disapproves the final Purchase and Sale Agreement and/or Grant Deed for acquisition of the Property. | Within 5 days after receipt from Developer. |
| 1. Submittal – Final Developer Partnership Agreement. Developer submits to City the final Developer Partnership Agreement. (Section 8.3.2 of the LA) | At least 30 days before the Escrow Closing Date. |
| 1. Review – Final Developer Partnership Agreement. City approves or disapproves the final Developer Partnership Agreement. | Within 5 days after receipt from Developer. |
| 1. Submittal – Insurance Documents. Developer submits to City all Insurance Documents. (Section 8.3. of the LA) | At least 30 days before the Escrow Closing Date with the exception of Builder’s Risk Insurance, which shall be provided on or before the construction loan closing. |
| 1. Review – Insurance Documents. City approves or disapproves the Insurance Documents. | Within 15 days after receipt from Developer. |
| 1. Escrow Deposits. Developer and City make required Escrow deposits. (Sections 8.5 and 8.6 of the LA) | At least 1 Business Day before the Escrow Closing Date. |
| 1. Conditions Precedent to Close of Escrow. Developer and City fulfill or waive conditions precedent to Close of Escrow. (Section 8.2 and 8.3 of the LA) | On or before the Escrow Closing Date. |
| 1. Close of Escrow. The Close of Escrow occurs. (Sections 8.7 and 8.8 of the LA) | On or before the Escrow Closing Date.3 [[3]](#endnote-3) |
| 1. Submittal – Final Project Budget. Developer submits to City the final Project Budget. (Exhibit N of the LA) | At least 30 days before the Construction Commencement Date. |
| 1. Review – Final Project Budget. City approves or disapproves the final Project Budget. | Within 14 days after receipt from Developer. |
| 1. Construction Commencement. Developer commences construction of the Project. (Section 2.93, and 9.2.1) | No later than the Project Commencement Date (36 months after Close of Escrow). |
| 1. Construction Completion. Developer (a) records a Notice of Completion, (b) requests each applicable Government to inspect the Project, (c) addresses any defects disclosed pursuant to any inspection to the satisfaction of the applicable Government, and (d) requests each applicable Government to issue all final Certificates of Occupancy and other Approvals and obtains such Certificates of Occupancy or other Approvals required for occupancy of the completed Project. (Section 2.94 and 9.2.2 of LA) | On or before the Project Completion Date (24 months after Construction Commencement)3, [[4]](#endnote-4) |
| 1. Release of Construction Covenants. City issues Release of Construction Covenants. (Section 9.7 of LA) | After issuance of a final Certificate of Occupancy for the Project by City and request for issuance from Developer and in accordance with all of the requirements and time frames of Section 9.7 of LA. |
| 1. 2 C.F.R Subpart F Audit (“HUD Audit”). Developer shall submit a copy of the HUD Audit to the Federal Audit Clearinghouse (Section 10.3 of Loan Agreement) | If Developer expends $750.000 or more from all Federal funding sources in a year, Developer shall conduct HUD Audit within 9 months of Developer’s fiscal year and |

**Exhibit P**

**to**

**CDBG LOAN AGREEMENT**

(Project Title)

**Notice of Affordability Restrictions**

[Attached behind this cover page]

|  |  |
| --- | --- |
| **RECORDING REQUESTED BY**  **WHEN RECORDED MAIL TO:**  **City of San Diego**  **1200 Third Avenue, 14th Floor**  **San Diego, CA 92101**  **Attention:** |  |

APN: 417-242-38-00 SPACE ABOVE LINE FOR RECORDER’S USE ONLY

**NOTICE OF AFFORDABILITY RESTRICTIONS**

**ON TRANSFER OF PROPERTY**

**(Project Title)**

THIS NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY (Project Title) (this **“Notice”**) is dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, and is made by and between the City of San Diego, a municipal corporation (**“City”**), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (**“Developer/Owner”**).

NOTICE: Restrictions have been recorded restricting the rents at which \_\_\_\_\_\_\_\_\_\_\_ residential dwelling units (“**Dwelling Units**”) on the real property described below in this Notice (**“Property”**)may be rented. These affordability restrictions may limit the rents of the Dwelling Units to an amount that is less than the fair market value of such amounts for the Dwelling Units and limit the persons and households who are permitted to rent the Dwelling Units to persons or households with certain income levels. These affordability restrictions do not apply to \_\_\_\_\_ on-site manager’s unit(s).

**Recorded Document Containing Affordability Restrictions:** Regulatory Agreement of Covenants, Conditions and Restrictions Restricting Use of Property (Project Title), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, between Developer/Owner and City (**“Affordability Restrictions”**)recorded concurrently with this Notice, in the official records of the County of San Diego, California. Unless otherwise specified, all capitalized terms in this Notice shall have the same meaning ascribed to them in the Affordability Restrictions.

**Property Legal Description:** See Exhibit “A” attached to this Notice.

**Property Street Address(es):** (Site Address), San Diego, California

**Property Assessor’s Parcel Number(s): -------------------------**

1-

**Affordability Restrictions Summary:**

The Affordability Restrictions restrict the income level of tenants of the Dwelling Units on the Property, as follows:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_\_\_\_\_\_\_) of the Dwelling Units shall be occupied or Available for occupancy by an individual or household with a household income equal to or less than sixty percent (60%) of the then current CTCAC Area Median Income, including Utilities Allowance, adjusted for family size appropriate for the Dwelling Unit, as published from time to time by CTCAC.

The \_\_\_- (--) residential unit(s) on the Property that may be used as a Manager Unit(s) and shall be occupied or Available for occupancy with no rental restrictions.

The time period for the Affordability Restrictions commences on the Recording Date and ends on the fifty-fifth (55th) anniversary of the Occupancy Date.

*[remainder of this page intentionally left blank]*

This Notice may not contain all of the terms and conditions of the Affordability Restrictions affecting the Property. Interested persons should obtain and read a copy of the Affordability Restrictions to determine the extent of the Affordability Restrictions applicable to the Property.

|  |  |
| --- | --- |
|  | CITY:  CITY OF SAN DIEGO,  a municipal corporation  By:  Dated: |

|  |  |  |
| --- | --- | --- |
|  |  | DEVELOPER/OWNER:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Dated |

**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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public in and for said State, 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 forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public in and for said State, 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 forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public in and for said State, 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 forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

TO

NOTICE OF AFFORDABILITY RESTRICTIONS

**ON TRANSFER OF PROPERTY**

**(Project Title)**

Property Legal Description

**Exhibit Q**

**to**

**CDBG LOAN AGREEMENT**

(Project Title)

**HUD National Objective Report**

[Attached behind this cover page]

**LMH-CDBG LOW TO MODERATE INCOME HOUSING**

**HUD NATIONAL OBJECTIVE REPORT**

The purpose of this form is to report accomplishment data for the project named below. The narrative section of this report shall summarize the project’s goals and objectives accomplished. This form must be completed for projects providing eligible CDBG activities to Low to Moderate Household residents of the City of San Diego.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Organization Name: |  | | | | | |
| Project Name: |  | | | | | |
| Agreement Period: |  | | Reporting Period: | | |  |
|  |  | |  | | |  |
| Report Prepared by |  | | | | | |
|  | PRINT NAME/TITLE | | | | | |
| Date completed: |  | |  | |  | |
| PROJECT STATUS: | Pending | | Active | | Complete | |
| cONSTRUCTION sTART dATE: | |  | |  |  | |
| SCHEDULED CONSTRUCTION END DATE: | |  | |  |  | |
| CONSTRUCTION END DATE: | |  | |  |  | |

**Check all that apply:**

1. Installing Security Device

2. Installing Smoke Detector

3. Performing Emergency Housing Repairs

**For Multi-Unit Residential Units, complete table:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Total Units | Occupied | Occupied  Low/Mod | Percent  Low/Mod |
| Units at Start of Construction |  |  |  |  |
| Units at End of Construction |  |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  | | Total Number of Units | |
|  | | |  |
| Of total: | | |  |
|  | Number made Section 504 accessible (i.e. unit is 100% accessible as applicable and no additional ADA barriers exist) | | |
|  | Number brought from substandard to standard condition (HQS or local code), based on substandard code violations identified | | |
|  | Number qualified as Energy Star (i.e. certified energy audit obtained) | | |
|  | Number of units brought into compliance with lead safe housing rule (24 CFR part 35) | | |
|  | Number of units created through conversion of nonresidential buildings to residential buildings | | |
|  | Number affordable | | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Of those affordable: | | | |  |
|  | Number occupied by elderly | | |
|  | Number of years of affordability guaranteed | | |
|  | Number subsidized with project-based rental assistance by another federal, state or local program | | |
|  | Number of units designated for persons with HIV/AIDS, including those units receiving assistance for operations | | |
|  |  | Of those, the number of units for the chronically homeless | |
|  |  |  | |
|  | Number of permanent housing units for homeless persons and families, including those units receiving assistance for operations | | |
|  |  | Of those, the number of units for the chronically homeless | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **LEAD PAINT** |  |  | **LEAD HAZARD REMEDIATION ACTIONS** | |
|  | **# UNITS** |  |  | **# UNITS** |
| Housing constructed before 1978 |  |  | Lead Safe Work Practices  24 CFR 35.930(b)  Hard costs >=$5,000 |  |
| Exempt: Housing constructed 1978 or later |  |  |
| Exempt: Hard costs <=$5,000 |  |  | Interim Controls or Standard Practices  24 CFR 35.930(c)  Hard costs $5,000 - $25,000 |  |
| Otherwise exempt: 1) 0 bedroom;  2) Elderly/disabled with no children under 6 years; 3) Lead-based paint free; and/or  4) used no more than 100 days in a year |  |  |
| Abatement 24 CFR 35.930(d)  Hard costs > $25,000 |  |
| **TOTAL** |  |  | **TOTAL** |  |

**YEAR-END NARRATIVE:**

|  |
| --- |
|  |

**YEAR-END NARRATIVE (continued):**

|  |
| --- |
|  |

**I hereby certify that: 1) the actual activities listed in this report were completed in accordance with CDBG contract terms; 2) all required programmatic reports pertaining to the CDBG activities completed have been submitted as required and that the information reported were truthful and accurate based on project records that are available for review; and 3) this year-end summary report pertaining to the CDBG activities completed during the Reporting Period listed is being submitted by the designated deadline and that the information reported has been confirmed by Organization staff to be truthful and accurate based on project records that are available for review.**

**Organization also acknowledges and understands that they are required to ensure that: 1) the improvements completed with CDBG funds are maintained for a minimum of five (5) years after closeout; 2) the City reserves the right to inspect such improvements during the 5-year period to substantiate compliance; and 3) if it is determined that the use of the facility, low/moderate individual benefit and/or improvements were not maintained as required, Organization is subject to return the CDBG funds expended back to the City's CDBG Program.**

|  |  |  |
| --- | --- | --- |
|  | |  |
| Signature (Head of Organization) | | Date |
|  |  | |
| Print Name & Title (Head of Organization |  | |
|  |  | |
|  |  | |

**HOUSEHOLD DEMOGRAPHICS**

**LMH-CDBG LOW TO MODERATE INCOME HOUSEHOLDS – RENTERS**

**FISCAL YEAR 2022 YEAR-END REPORT**

The purpose of this form is to report client demographics for the project named below to comply with the Low- to Moderate-Income Household Benefit National Objective. Only report on City of San Diego residents. **Numbers for Households, Ethnicity/Race, & Income Level section must match**.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Organization:** |  | |  | **Project:** |  | |
|  |  | |  |  |  | |
| **Report Certified by** | |  |  | **Reporting Period:** | |  |
|  | | **(Head of Organization Signature)** |  |  | |  |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Jul-21** | **Aug-21** | **Sep-21** | **Oct-21** | **Nov-21** | **Dec-21** | **Jan-22** | **Feb-22** | **Mar-22** | **Apr-22** | **May-22** | **Jun-22** | **Total** |
| Total No. of New Households: |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Female Head of Household: |  |  |  |  |  |  |  |  |  |  |  |  |  |

Ethnicity/Race

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Non-Hispanic** | | Non-Hispanic Subtotal | | | | | | | | | | | |  |
| 11 White | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 12 Black/African American | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 13 Asian | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 14 American Indian/Alaskan Native | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 15 Native Hawaiian/Other Pacific Islander | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 16 American Indian/Alaskan Native & White | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 17 Asian & White | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 18 Black/African American & White | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 19 American Indian/Alaskan Native & Black/  African American | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 20 Other Multi-Racial | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Hispanic** | Hispanic Subtotal | | | | | | | | | | | | |  |
| 11 White | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 12 Black/African American | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 13 Asian | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 14 American Indian/Alaskan Native | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 15 Native Hawaiian/Other Pacific  Islander | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 16 American Indian/Alaskan Native  & White | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 17 Asian & White | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 18 Black/African American & White | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 19 American Indian/Alaskan Native & Black/  African American | |  |  |  |  |  |  |  |  |  |  |  |  |  |
| 20 Other Multi-Racial | |  |  |  |  |  |  |  |  |  |  |  |  |  |

Income Level

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Extremely Low Income Level |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Low Income Level |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Moderate Income Level |  |  |  |  |  |  |  |  |  |  |  |  |  |

**2 CFR PART 200 SUBPART F-AUDIT CERTIFICATE OF COMPLIANCE**

**AUDITS OF NON-FEDERAL ENTITIES EXPENDING FEDERAL FUNDS**

**FISCAL YEAR 202\_\_\_**

|  |  |
| --- | --- |
| **ORGANIZATION NAME:** |  |

Non-Federal entities that expend $750,000 or more during the non-Federal entity's fiscal year must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR Part 200 Subpart F-Audit Requirements. The calculation of the total federal awards expensed by the entire agency should include the parent company and any subsidiaries. For purposes of determining the amount of total federal awards expended, all federal awards should be included, such as those that were received directly from a federal agency, or passed through a state or local government, or through non-profit organizations, or any combination of these sources.

Select the appropriate check box below to identify the Organization’s most recent fiscal year end date completed.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Section A | | 6/30/20\_ | | 12/31/20\_\_ | Other: |  |
|  | | | | | | |
| Section B1 |  | | The undersigned attest that the listed Organization expended $750,000 or more in federal awards during the Agency's fiscal year of calendar year 20\_\_ and therefore a Single Audit was required. | | | |
| Section B2 |  | | The undersigned attest that the listed Organization will submit the completed Single Audit report to the Federal Audit Clearinghouse (FAC) within the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of the audit period. | | | |
|  | | | | | | |

If an agency expends less than $750,000 per year in federal awards, it is exempt from the federal audit requirements. However, the agency must still have records available for review by HUD or the City or other required auditor.

|  |  |  |
| --- | --- | --- |
| Section C |  | The undersigned attest that the listed Organization expended less than $750,000 in federal awards during the most recent fiscal year end date completed as defined above, and therefore a Single Audit is not required. |

I HEREBY CERTIFY I have the authority to sign for the above named organization and that the organization will comply with the provisions of 2 CFR Part 200 Subpart F-Audit Requirements and any other applicable Federal and State laws and regulations hereinafter enacted.

|  |  |
| --- | --- |
| By: |  |
|  | Signature |
|  |  |
|  | Print Name |
| Title: |  |
| Date: |  |

**Exhibit R**

**to**

**CDBG LOAN AGREEMENT**

(Project Title)

**UCC-1**

[Attached behind this cover page]

1. Descriptions of performance activities and deadlines in this Performance Schedule are not intended to supersede more complete descriptions in the text of the Agreement and in the event of any conflict between the text of the Agreement and this Performance Schedule, the text of the Agreement shall govern. [↑](#endnote-ref-1)
2. All references to days shall be to calendar days unless stated otherwise. [↑](#endnote-ref-2)
3. [↑](#endnote-ref-3)
4. 3 The Escrow Closing Date may be extended up to 180 days pursuant to Section 8.8 of the Agreement.

   4 In the event of an Unavoidable Delay, Project Completion Date may be extended for a reasonable time in accordance with Section 2.110 of Agreement. [↑](#endnote-ref-4)