

**COUNTY HOME LOAN AGREEMENT  
(\$2,000,000)**

**Between  
County of Santa Barbara**

**and**

**The Village Senior LP**

**Senior Village Apartments  
332 and 334 Valley Vineyard Circle  
City of Buellton**



*one*  
**COUNTY**  
*one*  
**FUTURE**

HOME Investment Partnership Program  
Federal Assistance Listing Number 14.239

## COUNTY HOME LOAN AGREEMENT

This agreement (“County HOME Loan Agreement”) is made as of this \_\_\_ day of \_\_\_\_\_, 2024, by and between the County of Santa Barbara, a political subdivision of the State of California (“Lender” or “County”), and The Village Senior LP, a California limited partnership (“Borrower”).

### RECITALS

A. Lender wishes to promote the development of affordable rental housing in Santa Barbara County communities and provide a greater choice of housing opportunities for low-income people.

B. There is a need to provide affordable rental housing to low-income persons, as documented in the County’s 2020-2024 Consolidated Plan.

C. Borrower intends to construct a 50-unit affordable rental housing development (the “Project”) at 332 and 334 Valley Vineyard Circle in the City of Buellton, California, as more particularly described in the legal description attached hereto as Exhibit A and incorporated herein by reference (the “Property”). The Project will include fifty (50) residential units, of which one (1) two-bedroom unit will serve as a manager’s unit not subject to income and rent limits. The Project’s 49 affordable rental housing apartment units (“Units” and each a “Unit”) shall be comprised of a mix of forty-four (44) one-bedroom Units, and five (5) two-bedroom Units targeted to serving households with incomes ranging between 30% and 50% of Area Median Income (as defined in Section 1.4, below).

D. Lender has been awarded Home Investment Partnerships Program funds (“HOME Funds”) from the United States Department of Housing and Urban Development (“HUD”) pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 for the purpose of expanding the supply of decent, safe, sanitary and affordable housing for low-income persons and families.

E. Borrower wishes to borrow from Lender, and Lender wishes to extend to Borrower, a loan of HOME Funds in the original principal amount of Two Million Dollars (\$2,000,000) to pay for certain development costs of the Project (the “County HOME Loan”), subject to the terms and conditions set forth in this County HOME Loan Agreement.

F. The Lender and Borrower reasonably expect that construction of the Project will commence within one year of execution of this County HOME Loan Agreement.

G. Concurrently herewith, Borrower is executing a HOME Loan Regulatory Agreement and Declaration of Restrictive Covenants (“County HOME Loan Regulatory Agreement”) restricting rents and tenant income affecting nine (9) of the forty-nine (49) Units, which nine (9) Units shall be designated by Borrower as the “HOME-Assisted Units.”

H. The County HOME Loan will be evidenced by a promissory note in the original principal amount of Two Million Dollars (\$2,000,000), executed by Borrower in favor of Lender, and secured by a deed of trust to be recorded against title to the Property.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the County HOME Loan, Borrower and Lender hereby agree as follows:

## ARTICLE 1 DEFINITIONS

The following terms have the respective meanings set forth in this Article I wherever used in this County HOME Loan Agreement, including the Exhibits attached hereto.

1.1 **“AFFIRMATIVE MARKETING”** means actions taken to provide information to and otherwise attract eligible persons in the housing market area who are not likely to apply to rent the Units without special outreach, without regard to race, color, national origin, sex, religion, familial status or disability, in conformance with 24 CFR 92.351.

1.2 **“ANNUAL FINANCIAL STATEMENT”** means the audited financial statement of Operating Expenses and Revenue, including a line item reflecting Residual Receipts, prepared, at Borrower’s expense, by an independent certified public accountant acceptable to Lender, which Borrower shall provide to Lender each year as part of Borrower’s annual reporting to Lender, in accordance with Section 5.11, below.

1.3 **“ANNUAL PAYMENT DATE”** means the date that is ninety (90) days after the end of each Fiscal Year until the County HOME Loan is repaid in full, commencing in the first calendar year after the Project is completed, as evidenced by the recording of a notice of completion for the Project (“Notice of Completion”).

1.4 **“AREA MEDIAN INCOME”** means the area median income for the Santa Maria-Santa Barbara Metropolitan Statistical Area as determined annually, with adjustments for household size by HUD.

1.5 **“BANK LOAN”** means (i) that certain construction loan to be made by Senior Lender to Borrower within 30 days of the Effective Date for construction of the Project, in the approximate amount of \$24,751,708, which will convert to a permanent loan provided by Senior Lender in the approximate amount of \$1,717,400.

1.6 **“BORROWER”** means The Village Senior LP, a California limited partnership, and its representatives and authorized assigns, transferees, and successors-in-interest to the extent permitted hereunder.

1.7 **“BUDGET”** means that budget for the construction of the Project attached hereto as Exhibit B, which is hereby incorporated into this County HOME Loan Agreement by this reference, and which identifies the sources and eligible uses of funds for Project development

costs, including costs eligible to be reimbursed with County HOME Loan funds hereunder in conformance with 24 CFR 92.206.

1.8 **“COUNTY”** means the County of Santa Barbara, a political subdivision of the State of California.

1.9 **“CERTIFICATE OF OCCUPANCY”** means the Certificate of Occupancy issued for the Project by the County of Santa Barbara Planning and Development Department, Building and Safety Division.

1.10 **“COUNTY HOME LOAN”** means the loan by County to Borrower of HOME Funds in the maximum aggregate amount of Two Million Dollars (\$2,000,000) as provided in this County HOME Loan Agreement and evidenced by the County HOME Loan Promissory Note to finance certain development costs of the Project.

1.11 **“COUNTY HOME LOAN AGREEMENT”** means this County HOME Loan Agreement entered into by and between Lender and Borrower regarding the County HOME Loan.

1.12 **“COUNTY HOME LOAN DEED OF TRUST”** means that certain deed of trust, assignment of rents, and security agreement dated on or about the date hereof and recorded against the Property and the improvements to be constructed thereon as security for the County HOME Loan, executed by Borrower as trustor in favor of County as beneficiary, in the form attached hereto as Exhibit C and hereby incorporated into this County HOME Loan Agreement by this reference, as may be amended from time to time in accordance with the provisions thereof and hereof.

1.13 **“COUNTY HOME LOAN DOCUMENTS”** means, collectively, this County HOME Loan Agreement, the County HOME Loan Note, the County HOME Loan Deed of Trust, and the County HOME Loan Regulatory Agreement, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments hereto and thereto.

1.14 **“COUNTY HOME LOAN PROMISSORY NOTE”** means that certain secured Promissory Note of even date herewith, executed by Borrower in favor of Lender in the amount of Two Million Dollars (\$2,000,000), evidencing the County HOME Loan, substantially in the form attached hereto as Exhibit D and hereby incorporated into this County HOME Loan Agreement by this reference, as it may be amended from time to time in accordance with the provisions thereof and hereof.

1.15 **“COUNTY HOME LOAN REGULATORY AGREEMENT”** means that certain Regulatory Agreement executed by Borrower and Lender concurrently herewith, in the form attached hereto as Exhibit E and incorporated herein by this reference, to be recorded against the Property, which regulates the use of the HOME-Assisted Units.

1.16 **“COUNTY MONITORING FEE”** means a fee, in the initial amount of \$2,500 and increasing annually by 3%, which shall be paid to the County by the Borrower annually on the day that is ninety (90) days after the end of each Fiscal Year during the Term. The initial

County Monitoring Fee, in the amount of \$2,500, shall be paid on the date ninety (90) days following the end of the Fiscal Year in which the Certificate of Occupancy is issued.

1.17 **“FISCAL YEAR”** means the twelve (12) -month accounting period, beginning January 1 and ending December 31 of each year during the Term.

1.18 **“HAZARDOUS MATERIALS”** means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as “hazardous substances,” “hazardous wastes,” “hazardous materials,” “pollutants,” “contaminants,” or “toxic substances,” under any federal or state environmental and health and safety laws and regulations, including, but not limited to, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead.

1.19 **“HCD”** means the State of California Department of Housing and Community Development.

1.20 **“HCD Loan”** may be used to refer to either of the following: (i) that certain construction and permanent loan made by HCD to Borrower in the amount of Three Million, Nine Hundred Sixty Thousand Dollars (\$3,960,000), through the Housing for a Healthy California Program (“HHC”), and (ii) that certain permanent loan to be made by HCD to Borrower in the amount of Two Million, Five Hundred Fifty One Thousand, Four Hundred Forty-Five Dollars (\$2,551,445) through the Veterans Housing and Homeless Prevention Program (“VHHP”).

1.21 **“HOME AFFORDABILITY PERIOD”** means the period of time during which the HOME-Assisted Units must meet the affordability requirements imposed under the HOME Program, commencing upon Project completion as evidenced by the recording of a Notice of Completion and in conformance with 24 CFR 92.2 and 24 CFR 92.252(e), and terminating on the date that is six months after the date that is twenty (20) years after the date of the issuance of the Certificate of Occupancy.

1.22 **“HOME-ASSISTED UNIT”** means any of the nine (9) Units on the Property designated by the Borrower as “floating” HOME-Assisted Units with restricted occupancy and rents pursuant to and subject to the requirements of this Agreement, each of which must be occupied by a Qualifying Household. A Unit shall not be considered a HOME-Assisted Unit until such Unit has been constructed and made available for occupancy.

1.23 **“HOME FUNDS”** means Home Investment Partnerships Program funds from the United States Department of Housing and Urban Development and as defined in 24 CFR 92.2, which is the funding source for the County HOME Loan.

1.24 **“HUD”** means the United States Department of Housing and Urban Development.

1.25 **“INSURANCE REQUIREMENTS”** means the insurance coverages which must be in full force and effect during the Term of this County HOME Loan Agreement, as specified in Exhibit F, attached hereto and hereby incorporated into this County HOME Loan Agreement by this reference.

1.26 “**LENDER**” means the County of Santa Barbara, a political subdivision of the State of California.

1.27 “**LIMITED PARTNER**” means NEF FRE Affordable Housing Fund II LP, a Delaware limited partnership, and, to the extent in accordance with the provisions of this County HOME Loan Agreement and the Regulatory Agreement, each of its permitted successors and assigns.

1.28 “**MANAGING GENERAL PARTNER**” means the Managing General Partner of the Borrower, The Village Senior LLC, a California limited liability company.

1.29 “**OPERATING EXPENSES**” means, actual, reasonable and customary costs, fees and expenses paid by or on behalf of Borrower in accordance with the Lender-approved operating budgets for such Fiscal Year and directly attributable to the operation, maintenance, and management of the Project, including painting, cleaning, repairs and alterations, landscaping, utilities, rubbish removal, certificates, permits and licenses, sewer charges, real and personal property taxes and assessments, insurance, reasonable Property Management Fee, annual County Monitoring Fee, annual monitoring fees required by Senior Lenders as conditions of the Senior Loans, supportive services, security, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, cash deposited into reserves for operating expenses and capital replacements pursuant to Section 2.12, below, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings, and reasonable fees and expenses of accountants, attorneys, consultants and other professionals. Borrower shall report Operating Expenses to Lender in each Annual Financial Statement.

1.30 “**PROJECT**” means the construction, operation and management of the Property and the improvements to be constructed thereon according to the terms of this County HOME Loan Agreement and in accordance with 24 CFR 92.2.

1.31 “**PROPERTY**” means that certain real property and improvements thereon located on Valley Vineyard Circle, in the City of Buellton, California, as more particularly described in Exhibit A, which is attached hereto and hereby incorporated into this County HOME Loan Agreement by this reference.

1.32 “**QUALIFYING HOUSEHOLD**” means a household that qualifies as a Very Low-Income Household as defined in Section 1.39, below, and as set forth in the County HOME Loan Regulatory Agreement.

1.33 “**QUALIFYING RENT**” means the total monthly charges for rent of a HOME-Assisted Unit, which shall not exceed:

- a) For each of the eight (8) one-bedroom HOME-Assisted Units, the rent shall not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals fifty percent (50%) of the AMI as determined by HUD, with adjustments for number of bedrooms in the Unit and smaller and larger families; and

- b) For the one (1) two-bedroom HOME-Assisted Unit, the rent shall not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals fifty percent (50%) of the AMI as determined by HUD, with adjustments for number of bedrooms in the Unit and smaller and larger families; and

Qualifying Rent is not required to be lower than the HOME rent limits for the Project in effect as of the Effective Date. In accordance with 24 CFR 92.252(d), if the tenant pays for utilities and services (excluding telephone, television and Internet services), then the Qualifying Rent shall be reduced by the maximum monthly allowance for utilities and services using the annual HUD Utility Schedule Model, or other annual utility schedule as determined by Lender.

1.34 “**RESIDUAL RECEIPTS**” means the amount of annual Revenue *minus* the sum of annual Operating Expenses (defined below).

1.35 “**REVENUE**” means all income in connection with the Project, including, but not limited to, rents from the Units and income from laundry operations, vending machines, equipment rental fees, rental subsidy payments, meeting space rental, rental income for commercial space or commercial use, storage, parking, and interest on any accounts, other than approved reserve accounts, related to the Project. Borrower shall report all Revenue to Lender in each Annual Financial Statement. Excluded from the definition of Revenue are funds received by Borrower from any capital contributions, disbursements of loan proceeds, and any insurance payments.

1.36 “**SENIOR LENDER**” means Banner Bank, a Washington corporation.

1.37 “**SENIOR LOANS**” means (i) the Bank Loan and (ii) the HCD Loans.

1.38 “**TERM**” shall have the meaning set forth in Section 9.8, below.

1.39 “**VERY LOW-INCOME HOUSEHOLD**” means a household, as defined in 24 CFR 92.2, whose annual income does not exceed fifty percent (50%) of Area Median Income.

## ARTICLE 2 TERMS OF THE COUNTY HOME LOAN

2.1 **COUNTY HOME LOAN.** On and subject to the terms and conditions of the County HOME Loan Documents, Lender agrees to make and Borrower agrees to accept a loan with the following terms:

2.2 **AMOUNT.** The principal amount of the County HOME Loan shall be an amount not to exceed Two Million Dollars (\$2,000,000), which and shall be evidenced by the County HOME Loan Note (“Maximum Loan Disbursement Amount”). In the event that insufficient HOME Funds are available to Lender for any reason at any time during the Term, Lender shall not be obligated to make payments to Borrower unless and until sufficient HOME Funds become available to Lender.

2.3 **INTEREST.** Subject to the provisions of Section 2.4, below, the County HOME Loan Note shall bear simple interest at a rate of three percent (3%) per annum on the outstanding

balance from the date of the first disbursement under the County HOME Loan Note. Interest is not compounding.

**2.4 DEFAULT INTEREST.** In the event of a default by Borrower of any of its obligations under this County HOME Loan Agreement and expiration of applicable cure periods, if any, Borrower shall pay to Lender interest on the outstanding principal of the County HOME Loan at an annual rate equal to the lesser of (i) thirteen percent (13%), or (ii) the highest interest allowed by law, from the date of such default until the date that such default is cured, if subject to cure, or the County HOME Loan is repaid in full (“Default Interest”). Such Default Interest shall be paid by Borrower to Lender monthly on the first day of each month.

**2.5 AMOUNT AND TIME OF PAYMENT.** The principal of the County HOME Loan and all accrued and unpaid interest thereon, in accordance with the County HOME Loan Note, shall be due and payable on the earlier of: (a) the date that is fifty-five (55) years after the date of the recordation of the Notice of Completion, or (b) the date the Property is sold or otherwise Transferred (defined below in Section 5.14), unless such Transfer is specifically and expressly approved by the Lender in advance in writing, or (c) the date that is twelve (12) months after the Effective Date, if Borrower has then failed to commence construction as set forth in Section 4.1 of this County HOME Loan Agreement, or (d) the occurrence of an Event of Default by Borrower, as defined below in Section 8.1, which, if subject to cure, has not been cured as provided for below in Section 8.2. Annual loan payments on the County HOME Loan shall be made in accordance with Section 2.9, below, and in accordance with the provisions of the County HOME Loan Note. In the event of an Event of Default by Borrower, as defined below in Section 8.1, which, if subject to cure, has not been cured as provided for below in Section 8.2, the then-unpaid principal and all accrued and unpaid interest shall be due and payable in accordance with Section 8.3, below. In any event, the principal of and all accrued and unpaid interest on the County HOME Loan shall be due and payable no later than December 31, 2081.

**2.6 USE OF COUNTY HOME LOAN FUNDS.** County HOME Loan funds shall be used only for those certain development costs specified in the Budget attached hereto as Exhibit B, and shall only be disbursed in accordance with the provisions of Article 3, below. The Budget shall not be modified other than via an amendment to this County Home Loan Agreement duly executed by Lender in accordance with Section 9.3, below, and provided that costs set forth in the Budget are eligible under 24 CFR 92.206, and that the appropriate level of Environmental Review is completed under the National Environmental Policy Act of 1969 (NEPA) (42 USC 4321, et seq.), and applicable related environmental authorities at 24 CFR 50.4, and HUD’s implementing regulations at 24 CFR Parts 50 and 58 remain applicable. County HOME Loan funds shall only be utilized for costs related to residential uses, and shall not be utilized for costs related to commercial uses or any other nonresidential uses associated with the Project.

**2.7 SECURITY.** Borrower shall secure its obligation to repay the County HOME Loan by executing the County HOME Loan Deed of Trust, in substantially the form attached hereto as Exhibit C and recording it as a lien against the Property, subordinate only to the Senior Loans. Upon closing, Borrower shall cause the recordation of the County HOME Loan Deed of Trust, and the County HOME Loan Regulatory Agreement with the Recorder for the County of Santa Barbara, and shall cause the delivery of conformed copies of the recorded documents to Lender.



**2.8 REPAYMENT OF THE COUNTY HOME LOAN; ANNUAL FINANCIAL STATEMENTS.** All accrued interest and principal shall be due and payable in accordance with the terms set forth in Section 2.5, above, and in this Section 2.8. Annual payments on the County HOME Loan shall be made on each Annual Payment Date, until the principal of the County HOME Loan and all unpaid interest thereon has been repaid in full, from Residual Receipts, which Residual Receipts shall be paid in the following order and priority: *First* to fund and replenish the Reserve Accounts; *second* to mandatory Bank Loan debt service; *third* to the deferred Developer Fee; *fourth* to asset management, partnership management and similar fees, including fees paid to investors, in an aggregate amount not to exceed, for the then-current year, \$39,505 for 2024 increased at the rate of 3.5% for each subsequent year; *fifth*, of the remaining Residual Receipts, (i) fifty percent (50%) to Borrower for Distributions (including loan repayments and fees paid to Borrower's partners and affiliates of any entity that has an ownership interest a partner of Borrower or the Project), and (ii) fifty percent (50%) to HCD, Lender and City of Buellton ("City") for repayment of the HCD Loans, the County HOME Loan, the City Loan in the amount of \$150,000 in amounts proportional to such agencies' respective assistance amounts until repaid in full, which respective assistance amounts, as of the Effective Date, are as follows: twenty-two and eighty-six hundredths percent (22.86%) to HCD in connection with its HHC loan to Borrower; fourteen and seventy-three hundredths percent (14.73%) to HCD in connection with its VHHP loan to Borrower; eleven and fifty-five hundredths percent (11.55%) to Lender for repayment of the County HOME Loan, and eighty-seven hundredths percent (0.87%) to the City of Buellton for repayment of the loan from the City of Buellton to Borrower.

For each Fiscal Year during the Term, Borrower shall submit an Annual Financial Statement to Lender no later than 60 days after the end of such Fiscal Year. All payments made on the County HOME Loan by Borrower shall be applied as follows: first, to pay current annual interest due, if any; then, to the cumulative interest owed, if any; then, to reduce the principal amount of the County HOME Loan.

**2.9 DISPUTE RESOLUTION.** In the event that either of Borrower or Lender determines that there has been an understatement or underpayment of the amount of Residual Receipts reported or paid to Lender, Borrower shall promptly pay to Lender the full amount of such understatement or underpayment, but in any event, no later than the date that is twenty (20) days after the earlier of (a) the date of Borrower's determination of such understatement or underpayment, or (b) Lender's notice to Borrower of Lender's determination of such understatement or underpayment. In the event that Lender determines that there has been an overpayment of Residual Receipts to Lender, Lender shall promptly pay to Borrower the amount of such overpayment, but in any event, within twenty (20) days of such determination. If contested, Borrower has the right to pay under protest and request and pay for an audit by an independent certified public accountant.

**2.10 PREPAYMENT OF COUNTY HOME LOAN.** No prepayment penalty will be charged to Borrower for payment of all or any portion of the County HOME Loan amounts prior to the end of the Term described herein. However, prepayment of the County HOME Loan during the term of the County HOME Loan Regulatory Agreement shall require Lender approval and, in

any event, shall not affect Borrower's obligations under the County HOME Loan Regulatory Agreement.

**2.11 ANNUAL OPERATING EXPENSES.** Thirty (30) days prior to the end of each Fiscal Year, Borrower shall submit to Lender, for Lender's review and approval, a proposed operating budget for the Project for the following Fiscal Year. Each proposed operating budget shall include scheduled payments to be made into all operating and reserve accounts, including, but not limited to, the Capital Replacement Reserve account and the Operating Reserve account (defined below). Actual Operating Expenses incurred by Borrower during any Fiscal Year shall not exceed one hundred twenty percent (120%) of the amount of Operating Expenses in the operating budget for such Fiscal Year, as approved by Lender, without Lender's prior written consent in each instance.

**2.12 OPERATING AND CAPITAL REPLACEMENT RESERVE FUNDS.** Borrower shall fund a capital replacement reserve in the amount of not less than Five Hundred Dollars (\$500) per Unit per year ("Capital Replacement Reserve"), and shall capitalize an operating reserve in an amount of not less than the sum of the following: three (3) months of projected Operating Expenses (excluding the cost of on-site Supportive Services coordination), three (3) months of Capital Replacement Reserve deposits, and three (3) months of non-contingent debt service ("Operating Reserve" and, together with the Capital Replacement Reserve, collectively, the "Reserve Accounts"). Reserve Account balances shall be set forth in each Annual Financial Statement. All withdrawals from the Reserve Accounts require the prior written approval of Lender; provided, however, that should Lender fail to take action on a request for an eligible withdrawal from the replacement reserve within 30 days of documented receipt of the request, that request shall be deemed approved. Borrower shall fund the Reserve Accounts no later than date of the conversion of the Bank Loan from a construction loan to a permanent loan.

### **ARTICLE 3 COUNTY HOME LOAN DISBURSEMENT**

**3.1 CONDITIONS PRECEDENT TO DISBURSEMENT.** Lender shall not be obligated to make any disbursements of County HOME Loan funds or take any other action under the County HOME Loan Documents unless the following conditions precedent are satisfied prior to each disbursement of County HOME Loan funds:

- A. Borrower has acquired title to the Property;
- B. There exists no Event of Default or any act, failure, omission or condition that with the giving of notice or passage of time would constitute an Event of Default;
- C. Borrower has executed and delivered to Lender all documents, instruments, and policies required under the County HOME Loan Documents, including, but not limited to, an ALTA Lender's policy of title insurance in the amount of Two Million Dollars (\$2,000,000) from a title insurance company approved by the Lender and in a form reasonably acceptable to Lender;
- D. Borrower has provided to Lender the certificates of insurance as specified in the insurance provisions set forth in Exhibit F;

E. Borrower has secured all final permits, entitlements and approvals required by all permitting and regulatory authorities and jurisdictions; and

F. Borrower has complied with all reporting requirements set forth in this County HOME Loan Agreement, including, but not limited to, in accordance with Sections 3.2 and 5.11.

G. There are sufficient HOME Funds available to Lender.

**3.2 DISBURSEMENT OF FUNDS.** Lender shall provide the County HOME Loan funds to Borrower for reimbursement of development costs incurred by Borrower and approved by Lender in accordance with the Budget (Exhibit B). County HOME Loan funds shall only be disbursed after the costs which are to be reimbursed therewith have been incurred. Borrower may not request disbursement of County HOME Loan funds until needed for payment of those certain development costs as specified in the Budget (Exhibit B). Disbursement of County HOME Loan funds shall not exceed a total of Two Million, Dollars (\$2,000,000).

County HOME Loan funds shall be disbursed through periodic payments based upon development costs incurred and work completed, as evidenced by documentation supporting the completed work signed by the Project architect and verified by Lender. Borrower shall submit to Lender disbursement requests (each a "Written Disbursement Request") in writing no more frequently than one time per month using the County's Expenditure Summary and Payment Request form, in the form attached hereto as Exhibit H and incorporated herein by reference ("ESPR"). Written Disbursement Requests shall include itemized invoices corresponding to the Budget (Exhibit B). Borrower shall also attach to each ESPR copies of receipts or other proof of each payment by Borrower for which Borrower requests reimbursement therein, in form acceptable to Lender, that demonstrate date and amount of each such payment by Borrower and the nature of the expense incurred. Borrower shall also attach to each Written Disbursement Request ESPR copies of certified payroll reports current to within twenty-one (21) calendar days of the date of such Written Disbursement Request ESPR documenting compliance with the Davis-Bacon Act, unless the Project includes fewer than twelve (12) HOME-Assisted Units and federal assistance for the Project is limited to HOME Funds. Additionally, Borrower shall provide to Lender evidence of compliance with Section 3 of the Housing and Community Development Act of 1968 (12 USC, 1701u) and 24 CFR Part 75, and evidence of compliance with the requirement to take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible pursuant to 2 CFR Part 200. Lender reserves the right to request additional documentation as necessary to ensure compliance with the County HOME Loan documents and all Federal, state and local laws, regulations, ordinances, orders, rules, directives, circulars, bulletins, notices, guidelines, and policies (the foregoing, collectively, "Applicable Laws" or "Applicable Law").

Written Disbursement Requests shall only include items included in the Budget (Exhibit B). No changes to the Budget shall be effective without the prior written approval of Lender in each instance in response to a written request from Borrower regarding same. In no event shall Lender's obligations hereunder exceed the Maximum Loan Disbursement Amount. Any costs in

excess of the Maximum Loan Disbursement Amount that are necessary for the completion of the Project shall be the sole responsibility of Borrower.

Notwithstanding the above, as a special disbursement condition, Lender shall retain Ten Thousand Dollars (\$10,000) of HOME Funds until thirty (30) days after (i) Borrower has completed the construction of the Project, as evidenced by the Certificates of Occupancy, (ii) Borrower has provided tenant data for the nine (9) HOME-Assisted Units as required under the HOME Program, and (iii) any and all liens (except those otherwise approved in the Loan Documents) against the Property are released.

#### **ARTICLE 4 DEVELOPMENT OF PROJECT**

**4.1 COMMENCEMENT OF CONSTRUCTION.** Borrower shall commence construction of the Project no later than twelve (12) months after the Effective Date of this County HOME Loan Agreement. Commencement of construction shall mean obtaining all final permits, entitlements and approvals required by all permitting and regulatory authorities and jurisdictions, and commencing work on any task associated with a line item in the Budget (Exhibit B) at the Property that requires a permit, entitlement or approval. If Borrower fails to commence construction as set forth above, Lender may terminate this County HOME Loan Agreement pursuant to Article 8, below.

**4.2 COMPLETION OF CONSTRUCTION.** Borrower shall diligently pursue construction of the Project to completion, and shall complete construction of the Project no later than thirty (30) months after commencement of construction, as defined in Section 4.1, above. Borrower shall provide proof of completion as evidenced by the recording of the Notice of Completion and securing the Certificate(s) of Occupancy.

**4.3 FINANCING.** Borrower shall promptly inform Lender in writing of any changes in the amount, terms, or sources of financing or funding for the Project.

**4.4 CONTRACTS AND SUBCONTRACTS.** All work and professional services for the Project shall be performed by persons or entities licensed or otherwise authorized to perform such work or service(s) in the State of California.

All costs incurred in development and operation of the Project shall be the responsibility and obligation solely of Borrower.

**4.5 INSPECTIONS.** Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Project site by Lender and by public authorities during reasonable business hours upon reasonable notice for the purposes of determining compliance with this County HOME Loan Agreement. Copies of monthly construction inspection reports completed by the Senior Lender or Borrower pursuant to the Senior Loan documents shall be provided to the County by Borrower immediately upon completion of each such construction inspection report.

4.6 **SITE SUPERVISION.** During the construction of the Project, Borrower shall maintain a full-time site superintendent to supervise all construction work on the Property. The site superintendent shall be on-site at all times during construction work hours.

4.7 **CONSTRUCTION RESPONSIBILITIES.** Borrower shall be solely responsible for all aspects of Borrower's conduct and omissions, and conduct and omissions on behalf of Borrower, in connection with the Project, including, but not limited to, the quality and suitability of the construction work described in the Budget (Exhibit B), the supervision of construction work, and the qualifications, financial condition, and performance of all contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by Lender with reference to the Project is solely for the purpose of determining whether Borrower is properly discharging its obligations under the Loan Documents, and should not be relied upon by Borrower or by any third parties as a warranty or representation by Lender as to the quality of the construction of the Project.

4.8 **BARRIERS TO THE DISABLED.** The Project shall be developed and the Property shall be maintained and operated in compliance with all applicable federal, state, and local requirements for access for disabled persons, including but not limited to Section 504 of the Rehabilitation Act of 1973 (29 USC 794), as amended, and with implementing regulations at 24 CFR Part 8, and the Fair Housing Act (42 USC 3601-3619), implemented at 24 CFR Part 100, Subpart D. Within thirty (30) days after Borrower has completed the construction of the Project, Borrower shall submit satisfactory documentation of compliance with these requirements, including, but not limited to, a certification from the Project architect documenting the unit number and type of accessibility features of each Unit.

4.9 **LEAD-BASED PAINT AND ASBESTOS REMOVAL.** Borrower and its contractors and subcontractors shall not use lead-based paint or asbestos in the construction or maintenance of the Project, and shall comply with Federal regulations set forth in 24 CFR Part 35, subparts A, B, J, K, M and R, 29 CFR, 40 CFR, the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X (42 USC, 4851, et seq.), the Lead-Based Paint Poisoning Paint Provision Act (42 USC 4821, et seq.), California OSHA, California Health and Safety Code, and all other applicable Federal, state and County laws, regulations, and standards. Borrower shall incorporate, or cause to be incorporated, this provision in all contracts and subcontracts for work performed on the Project which involve the application of paint or removal of asbestos.

4.10 **QUALITY OF WORK AND PROPERTY STANDARDS.** Borrower shall construct the Project in conformance with all Applicable Laws, including, but not limited to:

- A. All applicable Federal, state, and local statutes and regulations;
- B. All applicable Federal, state, and local building codes and zoning ordinances;
- C. All permits, entitlements, and approvals for the Project;
- D. Applicable Federal, state, and local energy conservation codes; and
- E. Property standards set forth at 24 CFR 92.251.

**4.11 MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the Property, or a stop notice affecting the County HOME Loan is served on Lender or any other lender or other third party in connection with the Project, Borrower shall, within sixty (60) days of such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to Lender a surety bond in sufficient form and amount, provide Lender with a lien-free endorsement, or provide Lender with other assurance reasonably satisfactory to Lender that the claim of lien or stop notice shall be promptly paid or discharged.

If Borrower fails to discharge any lien, encumbrance, charge, or claim referred to herein, then, in addition to any other right or remedy, Lender may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternatively, Lender may require Borrower to immediately deposit with Lender the amount necessary to satisfy such lien or claim and any costs pending resolution thereof. Lender may use such deposit to satisfy any claim or lien that is adverse to or against Borrower or the Property.

Borrower shall record a valid notice of cessation or Notice of Completion upon cessation of construction work on the Project for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes Lender, but without any obligation on the part of Lender, to record any notices of completion or cessation of labor, or any other notice that Lender deems necessary or desirable to protect its interest in the Project and Property.

**4.12 COMPLIANCE WITH HOME PROGRAM AND OTHER FEDERAL REQUIREMENTS.** All requirements imposed on properties assisted under the HOME program as contained in 42 USC Sections 12701, et seq., 24 CFR Part 92, and other implementing laws, rules, and regulations, are incorporated herein by this reference. In the event of any conflict between this County HOME Loan Agreement and the HOME Regulations, the HOME Regulations shall govern.

The laws and regulations governing the use of the HOME Funds ("HOME Regulations") include, but are not limited to, the following:

A. Uniform Guidance. The applicable policies, guidelines, and requirements set forth in 2 CFR Part 200.

B. Audit requirements. Agencies that expend \$750,000 or more in federal funds in a year as calculated therein must undergo a single audit in compliance with 2 CFR 200.501.

C. Architectural Barriers. The requirements of the Architectural Barriers Act of 1968 (42 USC 4151-4157).

D. Handicap Discrimination. The requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and federal regulations issued pursuant thereto, which prohibits discrimination against the handicapped in any federally assisted program.

E. Environmental Review. The provisions of the National Environmental Policy Act of 1969 (NEPA) (42 USC 4321, et seq.), and applicable related environmental authorities at 24 CFR Part 50.4, and HUD's implementing regulations at 24 CFR Parts 50 and 58.

F. Fair Housing. The requirements of the Fair Housing Act (42 USC 3601-3619) and implementing regulations at 24 CFR Parts 100, 109 and 110; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 USC 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1.

G. Prevailing Wages. If applicable, Borrower shall comply, and cause all contractors and subcontractors to comply with (1) Davis-Bacon and Related Acts (40 USC 3141, et seq.); (2) Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333); (3) Copeland Anti-Kickback Act (40 USC 3145); and (4) Fair Labor Standards Act of 1938, as amended (29 USC 201 et. seq.).

H. Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u, requiring that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the Project area and agreements for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the Project. Borrower agrees to include the following language in all contracts and subcontracts executed in connection with this County HOME Loan Agreement, as required pursuant to 24 CFR Part 75:

1. The work to be performed under this County HOME Loan Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). 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. The regulations are found at 24 CFR Part 75.
2. Borrower shall comply with HUD's regulations in 24 CFR part 75, which implement section 3. Borrower shall comply with the requirements set forth in 24 CFR Sections 75.9 and 75.19, as applicable. As evidenced by their execution of this contract, Borrower certifies that it is under no contractual or other impediment that would prevent it from complying with the part 75 regulations.
3. Borrower shall, and shall cause its contractors and subcontractors to, (a) comply with part 75 regulatory requirements under this section 3 clause, and (b) conduct such party's business practices in a manner that provides records and reports consistent with HUD section 3 reporting and compliance under covered contracts, defined as 'any project that individually or in the aggregate receives greater than \$200,000 in any form of federal assistance'. This may include, but is not limited to: 1) certifications, records and documentation confirming contractor and business qualification as a Section 3 Business

Concern, if applicable; 2) certifications, records and documentation confirming workers' qualification and status as a Section 3 and/or Targeted Section 3 Worker; if applicable; c) certified payroll records, reports and documentation reflecting time and hours for all labor performed on section 3 covered contracts, including hours for certified Section 3 and Targeted Section 3 workers, if and as applicable; and d) any such additional records, documents and reports that County may request to confirm compliance with part 75 requirements.

4. The Borrower shall, and shall cause its contractors and subcontractors to, include this section 3 clause in every contract or subcontract subject to compliance with regulations in 24 CFR part 75, and shall take appropriate action, as provided in an applicable provision of the contract or subcontract or in this section 3 clause, upon a finding that any contractor or subcontractor is in violation of the regulations in 24 CFR part 75. The Borrower shall not contract with or permit its contractors to subcontract with any contractor or subcontractor in the event that the Borrower has notice or actual or constructive knowledge that such contractor or subcontractor has been found to be in violation of the regulations in 24 CFR part 75.
5. In the event that County or HUD determines that it is necessary to deploy qualitative efforts in accordance with 24 CFR Sections 75.15(b) and/or 75.25(b), Borrower shall work in good faith with County in order to implement such qualitative efforts. Such efforts may include the qualitative efforts outlined in County's Section 3 Plan, Policies and Procedures, as it may be revised or amended from time to time. County's Section 3 Plan, Policies and Procedures are available upon request at the County's Community Services Department and may be provided electronically.
6. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract by Lender for default, and debarment or suspension from future HUD assisted contracts.

I. Build America, Buy America. Unless exempted by HUD under a General Waiver or Specific Waiver, the Borrower shall comply with the applicable requirements of the Build America, Buy America Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended.

J. Minority and Women's Business Enterprise (MBE/WBE). The requirements of Executive Orders 11625, 12432 and 12138 and 2 CFR Part 200, whereby Borrower shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Borrower shall submit to Lender on an annual basis, not later than November 15 of each calendar year during the Term prior to the issuance of the Notice of Completion, a HUD MBE/WBE Report in the form attached herein as Exhibit I. The annual MBE/WBE Report shall cover the reporting period from October 1 through September 30 of each calendar year during the Term.

K. Conditions for Faith-Based Organizations. Borrower shall comply with HOME regulations pertaining to faith-based activities found at 24 CFR 92.257.



L. Debarred Contractors. All contractors, subcontractors, and consultants used by Borrower in the development of the Project shall not be debarred or otherwise prohibited from participation in a federal project pursuant to 2 CFR Part 2424. Borrower shall furnish Lender with evidence of compliance with this provision generated from the System for Award Management (“SAM”) at [www.sam.gov](http://www.sam.gov).

M. Anti-Lobbying. Borrower hereby certifies that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and (3) It will require that the language of subparagraphs (1) and (2) of this paragraph (L) and the paragraph (M), immediately below, of this certification be included in the award documents for all awards and subawards at all tiers (including subcontracts, subgrants, contracts, and grants under grants, loans, and cooperative agreements) and that Borrower and all contractors and subcontractors shall certify and disclose accordingly.

N. Lobbying Certification. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

O. HUD Regulations. All other HUD regulations in effect during the Term pertaining to HOME.

4.13 **RELOCATION.** If and to the extent that development of the Project results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, Borrower shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits, including but not limited to the Uniform Relocation and Real Property Acquisitions Act As Amended (42 USC 4601, et seq.) (“URA”), Section 104(d) of the Housing and Community Development Act of 1974 (42 USC 5304(d)), regulations at 24 CFR Part 42 and 49 CFR Part 24, and HUD Handbook 1378. Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws. If, upon audit review by Lender or by any Federal agency, it is determined that additional relocation payments are due, then Borrower consents to make such payments. In the event

Borrower does not make payments as requested by Lender, then such failure to make such payments shall constitute an Event of Default. Lender may require repayment of the County HOME Loan plus any and all relocation payments due. Without limiting or otherwise affecting the standard indemnity and insurance provisions set forth in Article 6 and Exhibit F, Borrower hereby agrees to indemnify Lender for any action brought against Lender based on an alleged failure to comply with relocation obligations on this Project.

**4.14 UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance by a party hereto of such party's obligation(s) under this County HOME Loan Agreement may be extended for a period equal to the period of a delay in such performance which is directly caused by: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; freight embargoes; pandemics including any resultant quarantine restrictions other than in connection with COVID-19; or other events beyond the reasonable control of, and in no way directly or indirectly caused by or otherwise attributable to any act or omission of the party claiming such delay ("Force Majeure Event"). An extension of time for a Force Majeure Event will be granted only if the party claiming such delay, within ten (10) calendar days from the commencement of such Force Majeure Event, provides written notice to the other party hereto specifying the Force Majeure Event, the performance purportedly delayed thereby, such party's good faith estimate of the duration of such delay, and such extension of time is either (a) accepted by the other party hereto in writing, or (b) not rejected in writing by the other party within fourteen (14) calendar days of receipt of such notice. In any event, notwithstanding the foregoing, construction of the Project must be completed no later than four (4) years after the Effective Date. Times of performance under this County HOME Loan Agreement may also be extended for any cause for any period of time by written agreement duly executed by each of Lender and Borrower.

## ARTICLE 5 OPERATION

**5.1 OPERATION OF PROJECT.** Borrower shall operate and manage the Project in full conformance with the terms of the County HOME Loan Regulatory Agreement.

Borrower shall maintain and operate the HOME-Assisted Units so as to provide decent, safe, and sanitary housing, and shall provide the HOME-Assisted Units with the same level of services (including security), amenities, and maintenance as are applied to the other Units in the Project. Optional services provided by or on behalf of Borrower to residents of any Unit(s) must be available to residents of all Units on the same terms and conditions.

**5.2 MANAGEMENT PLAN.** Borrower shall comply with the Management Plan attached hereto as Exhibit G and incorporated herein by this reference ("Management Plan"). No changes shall be made to the Management Plan without Lender's prior written approval in each instance. Notwithstanding the foregoing, Lender reserves the right to require changes to the Management Plan as necessary to conform with HUD requirements.

**5.3 AFFIRMATIVE MARKETING PLAN.** In the marketing of the Project, Borrower shall comply with the affirmative marketing provisions of the Management Plan. The Management Plan must include information on affirmative marketing efforts and compliance with

fair housing laws. At a minimum, Borrower, the Management Plan, and the Project must meet the affirmative marketing requirements set forth in 24 CFR 92.351, as may be amended from time to time.

**5.4 TENANT SELECTION.** In the selection of tenants, Borrower shall comply with the written tenant selection provisions of the Management Plan. Tenant selection must, and the Management Plan must provide that tenant selection shall, at a minimum, meet the requirements for tenant selection set forth in 24 CFR 92.253, as may be amended from time to time.

Borrower shall rent the HOME-Assisted Units to any Qualifying Household(s) according to the tenant selection plan. Borrower shall verify each prospective tenant's eligibility, and require from each tenant a statement that such household's income from all sources does not exceed allowable limits as described in the County HOME Loan Regulatory Agreement.

**5.5 INCOME CERTIFICATION.** The Annual Income levels and other qualifications of each applicant for a HOME-Assisted Unit shall be certified by Borrower no earlier than six (6) months prior to such Qualifying Household's occupancy of a HOME-Assisted Unit, and shall be recertified by Borrower annually thereafter. If the size of a Qualifying Household occupying a HOME-Assisted Unit changes, Borrower may request additional information and documentation to determine eligibility.

**A. Initial Annual Income Verification.** Before a Qualifying Household occupies a HOME-Assisted Unit, the Borrower shall verify that the Annual Income provided in an Annual Income certification for such Qualifying Household is accurate by taking both of the following steps as a part of the verification process:

- (1) **Third Party Verification:** All third parties (e.g., employer, Social Security Administration, public assistance agency, etc.) are contacted to provide information to verify Annual Income. Written requests and responses are required; and
- (2) **Review of Documents:** The Qualifying Household provides documents verifying their Annual Income (e.g., pay stubs, tax returns, etc.). These documents must then be retained by Borrower in the Project files.

**B. Annual Income Recertification.** At the time of each lease renewal or pursuant to an annual schedule adopted by the Borrower, and no later than the one-year anniversary of the initial Annual Income verification and annually thereafter, Borrower shall recertify the Annual Income of each Tenant occupying a HOME-Assisted Unit using the method as described in Section 5.5.A, above.

**5.6 INITIAL LEASING OF THE PROJECT.** Before leasing any portion of the Project, Borrower shall submit its proposed form of lease for the Units to Lender for Lender's review and approval. The initial term of each HOME-Assisted Unit lease shall be for no less than one year, unless a shorter term is requested by the tenant occupying such HOME-Assisted Unit, and no HOME-Assisted Unit lease shall contain any provision which is prohibited by 24 CFR Section 92.253(b), as may be amended from time to time. No rent increase shall occur at any time during the term of any HOME-Assisted Unit lease. Any refusal to renew or termination of a HOME-Assisted Unit lease must be in conformance with 24 CFR 92.253(c), as may be amended

from time to time, and must be preceded by not less than thirty (30) days' written notice by the Borrower to the tenant(s) of such HOME-Assisted Unit specifying the grounds for such action. Borrower shall submit its proposed rents and utility allowance schedule to Lender for Lender's review and approval at least thirty (30) days prior to leasing any HOME-Assisted Unit. Borrower shall lease all nine (9) HOME-Assisted Units to Qualifying Households within six (6) months of completion of construction as defined in Section 4.2, above, and shall provide Lender with detailed occupancy data and demographic information on all tenants of the HOME-Assisted Units.

**5.7 AFFORDABILITY RESTRICTIONS.** Nine (9) Units in the Project shall be designated by Borrower as HOME-Assisted Units. Each of the HOME-Assisted Units shall be occupied by a Qualifying Household, as set forth in the County HOME Loan Regulatory Agreement, and shall meet the following standards:

- A. The HOME-Assisted Units shall be designated as "floating" so that the Units designated as HOME-Assisted Units under the County HOME Loan Regulatory Agreement may change over time, as long as the total number and type of HOME-Assisted Units in the Project remains constant.
- B. The HOME-Assisted Units shall be similarly constructed and of comparable quality to all other Units in the Project;
- C. The HOME-Assisted Units shall be dispersed throughout the Project; and
- D. Borrower shall provide tenants of HOME-Assisted Units with access to and enjoyment of all common areas and facilities of the Project on the same basis as tenants of other Units.

**5.8 RENTS FOR HOME-ASSISTED UNITS.** Rents for HOME-Assisted Units shall be limited to Qualifying Rents as set forth in the County HOME Loan Regulatory Agreement.

**5.9 CONFLICTS BETWEEN COVENANTS OR RESTRICTIONS AFFECTING THE PROPERTY.** Any conflicts between the restrictive provisions contained in this County HOME Loan Agreement, the County HOME Loan Note, the County HOME Loan Deed of Trust, the County HOME Loan Regulatory Agreement, and any other agreements in connection with the County HOME Loan and/or the Property are to be resolved by applying the more restrictive covenant(s) or restriction(s) in the applicable County HOME Loan Document(s).

**5.10 NONDISCRIMINATION.** Borrower shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Property on the basis of race, color, ancestry, national origin, religion, sex, gender, gender identity or expression, sexual preference or orientation, age, marital status, family status, source of income, military or veteran status, physical or mental disability, medical condition, genetic information, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC) acquired or perceived, or any basis prohibited by law. Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination and equal opportunity in housing.

**5.11 RECORDS AND REPORTS.** Borrower shall be accountable to Lender for all County HOME Loan funds disbursed to Borrower pursuant to the County HOME Loan Documents and 24 CFR 92.508. Borrower shall maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures for construction costs drawn from County HOME Loan funds, and shall maintain all invoices, receipts, and other documents related to expenditures for construction costs using or reimbursed from County HOME Loan funds until the later of (i) the date that is five (5) years after recordation of the Notice of Completion issued for the Project, or (ii) June 30, 2035. Borrower shall maintain all records relating to this County HOME Loan Agreement and any revenue received by Borrower or the Project until five (5) years after the Term; provided, however, that in the event that any litigation, claim, negotiation, audit monitoring, inspection or other action has been started before the expiration of the required record retention period, all records must be retained until completion of all such action(s) and resolution of all issues which arise in connection with such action(s). Borrower shall maintain all records contemplated herein in an accurate and current manner. Tenant income, rent, and Unit inspection information, must be retained for the most recent five year period, until five years after the HOME Affordability Period terminates.

Borrower shall promptly comply with all requirements and conditions of the County HOME Loan Documents. Borrower shall promptly supply, upon the request of Lender, any and all information and documentation which involves the Project, and shall cooperate with Lender.

Borrower shall submit to Lender:

- Monthly written Project construction progress reports and an updated construction schedule within ten (10) calendar days following the end of each month during the period commencing with the execution of this County HOME Loan Agreement and concluding upon the issuance of the Certificate of Occupancy.
- Records of all permits, entitlements and approvals, inspections and sign-offs required by all permitting and regulatory authorities and jurisdictions within thirty (30) days following the recordation of the Notice of Completion.
- Copies of the Certificate(s) of Occupancy upon receipt.
- Data on the initial lease-up of HOME-Assisted Units as defined herein sufficient to close out the Project in the federal Integrated Disbursement and Information System within ten (10) days following the first date when leases are in effect for each of the HOME-Assisted Units.

**5.12 AUDITS.** Borrower shall conduct annual audits in accordance with 2 CFR Part 200. Each year, at least thirty (30) days prior to the Annual Payment Date, Borrower shall submit to Lender an Annual Financial Statement. Borrower shall make available to Lender for examination at reasonable intervals and during normal business hours all books, accounts, reports, files, and other papers or property relating to or prepared in connection with the Property or any of the County HOME Loan Documents (“Records”), and shall permit Lender to audit, examine,

and make excerpts or transcripts from such Records. Lender may make audits of any conditions relating to the County HOME Loan Documents, including, but not limited to, the right to review, obtain, and copy all records and supporting documentation pertaining to the performance of this County HOME Loan Agreement and the other County HOME Loan Documents. Borrower acknowledges and agrees that each of HCD and the State of California Tax Credit Allocation Committee likewise has the right to audit Borrower's records and interview Borrower's employees.

Lender shall notify Borrower of any Records it deems insufficient ("Deficiency Notice"). Borrower shall have fifteen (15) calendar days from the date of such Deficiency Notice to correct all deficiencies in the Records specified by Lender in such Deficiency Notice, or, if more than fifteen (15) days shall be reasonably necessary to correct such deficiencies, Borrower shall submit a written request to Lender for an extension of such 15-day period. Lender shall respond to extension requests within fifteen (15) days of Lender's receipt thereof. Borrower shall begin to correct such deficiencies within fifteen (15) days, and shall diligently complete correction of all deficiencies identified in the Deficiency Notice as soon as reasonably possible, but in no event later than 60 days after the date of such Deficiency Notice.

**5.13 ENCUMBRANCE OF PROPERTY.** Except as otherwise provided in this County HOME Loan Agreement or the Loan Documents, including with respect to the Senior Loans, Borrower shall not engage in any financing or any other transaction creating any security interest or other encumbrance or lien upon the Property, whether by express agreement or operation of law or otherwise, or allow any encumbrance or lien to be made on or attached to the Property, except with the prior written consent of Lender. Borrower shall notify Lender in writing in advance of any financing secured by any deed of trust, mortgage, or other similar lien instrument that it proposes to enter into with respect to the Project or Property, and of any encumbrance or lien that has been created on or attached to the Property whether by voluntary act of Borrower or otherwise.

**5.14 TRANSFERS.** Borrower has not made or created, and shall not make or permit, any sale, assignment, conveyance, or other transfer, directly or indirectly, whether by operation of law or otherwise, of the Property, this County HOME Loan Agreement, or any of Borrower's rights or obligations hereunder, including, but not limited to, the sale, assignment, or transfer of any general partnership interests ("Transfer"), without the prior written consent of Lender, which consent shall not be unreasonably withheld. Notwithstanding the forgoing, the following shall not constitute a default hereunder or under the County HOME Loan Note, and any such actions shall not accelerate the maturity of the County HOME Loan: (i) the Limited Partner removes the Borrower's general partner(s) (the "Removed General Partner(s)") for cause in accordance with the Borrower's amended and restated partnership agreement dated on or about the date hereof ("Partnership Agreement"); or (ii) the Limited Partner transfers or assigns its interest in Borrower in accordance with the Partnership Agreement; provided, however, that each of the general partner(s) selected to replace such Removed General Partner(s) is reasonably acceptable to the County, and is selected with reasonable promptness.

Notwithstanding the other provisions of this Section 5.14 or other restrictions on Transfer in this Agreement, the following Transfers shall be permitted and are hereby approved by the County:

- A. The lease of residential units in the Project consistent with the County HOME Loan Regulatory Agreement.

**5.15 FEES, TAXES, AND OTHER LEVIES.** Borrower shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Project and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by Lender, Borrower deposits with Lender all funds or other forms of assurance Lender deems, in good faith from time to time, appropriate to protect Lender from the consequences of such contest being unsuccessful.

**5.16 DAMAGE TO PROPERTY.** If any building and/or improvement erected by Borrower on the Property is damaged or destroyed by an insurable cause, Borrower shall, at its sole cost and expense, diligently undertake to repair or restore all such building(s) and/or improvement(s) consistent with the original plans and specifications for the Project, unless Lender reasonably determines that such restoration or repair is not economically feasible. Lender shall commence such work or repair within one hundred twenty (120) days after such damage or loss occurs, and shall cause such work to be completed within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Borrower shall make up the deficiency.

If Lender determines that restoration or repair is not economically feasible, then Lender may declare an Event of Default, such that the unpaid principal and all accrued and unpaid interest on the County Home Loan shall then be immediately due and payable, and Borrower shall apply all insurance proceeds thereto.

**5.17 EQUAL EMPLOYMENT OPPORTUNITY.** Borrower and all contractors, subcontractors, and professional service providers performing services on the Property or otherwise in connection with the Project shall comply with all requirements hereunder concerning equal employment opportunity, and all requirements hereunder concerning equal opportunities for businesses and lower-income persons (referred to as the Section 3 clause of the HUD Act of 1968, 12 USC 1701u).

## **ARTICLE 6 INDEMNITY AND INSURANCE**

**6.1 INDEMNITY.** Borrower shall comply with the indemnification provisions set forth in Exhibit F, attached hereto and incorporated herein.

**6.2 INSURANCE.** Borrower shall comply with the insurance provisions set forth in Exhibit F "Standard Indemnification and Insurance Provisions" attached hereto and incorporated herein by reference ("Standard Indemnification and Insurance Provisions").

**6.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No officials, employees or agents of Lender shall be personally liable to Borrower for any obligation created under the terms of these County HOME Loan Documents.

## **ARTICLE 7 HAZARDOUS MATERIALS**

**7.1 REPRESENTATIONS AND WARRANTIES.** After reasonable investigation and inquiry, Borrower hereby represents and warrants that, as of the date of this County HOME Loan Agreement, and except as previously disclosed and acknowledged in writing by Borrower or as disclosed by the reports based on environmental audit(s) performed on the Property and submitted to Lender, that (a) the Property is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials in violation of Applicable Law; (b) the Property is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, and common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including, but not limited to, those relating to soil and groundwater conditions (collectively, "Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the Property by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the Property (including in the soil, surface water, or groundwater under the Property), or any other occurrences or conditions on the Property, or on any other real property, that could cause the Property or any part thereof to be classified as a "hazardous waste property" or as a "buffer zone property" under California Health and Safety Code Sections 25100, et seq., or regulations adopted in connection therewith.

**7.2 NOTIFICATION TO LENDER.** Borrower shall promptly notify Lender in writing of: (a) the discovery of any concentration or amount of Hazardous Materials of which Borrower becomes aware or of which Borrower has direct or constructive knowledge on or under the Property requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge, whether direct or constructive, by Borrower that the Property does not comply with any Hazardous Materials Laws; (c) the receipt by Borrower of notice of any Hazardous Materials claims; and (d) the discovery by Borrower of any occurrence or condition on the Property, or on any real property located within 2,000 feet of the Property, that could cause the Property or any part thereof to be designated as a "hazardous waste property" or as a "buffer zone property" under California Health and Safety Code Sections 25100, et seq., or regulations adopted in connection therewith.

**7.3 USE AND OPERATION OF PROPERTY.** Borrower shall ensure that none of Borrower, nor any agent, employee, or contractor of Borrower, nor any authorized user of the Property, shall use the Property or allow the Property to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. At all times, Borrower shall comply, and cause the Project and use thereof to comply, with all Hazardous Materials Laws.

**7.4 REMEDIAL ACTIONS.** If at any time Borrower has actual or constructive knowledge of the presence of any Hazardous Materials on or under the Property, Borrower shall promptly undertake, at no cost or expense to Lender, all handling, treatment, removal, storage,



decontamination, cleanup, transport, disposal, and other remedial actions, if any, required by any Hazardous Materials Laws, or by any orders or requests of any governmental entity or agency, or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to Borrower's right of contest below.

**7.5 RIGHT OF CONTEST.** Borrower may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by Borrower in good faith, (b) Borrower promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by Lender, Borrower deposits with Lender all funds and other forms of assurance and security that Lender in good faith from time to time determines appropriate to protect Lender from the consequences of such contest being unsuccessful, and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by Borrower under this Section 7.5, provided that Borrower does so in full compliance herewith and with the other Loan Documents and all applicable laws.

**7.6 ENVIRONMENTAL INDEMNITY.** Without limiting or otherwise affecting the indemnity and insurance provisions set forth in Article 6, above, and Exhibit F, Borrower shall defend, indemnify, and hold Lender free and harmless against any and all claims, demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including, but not limited to, all costs of legal proceedings and reasonable attorney's fees, that Lender may directly or indirectly incur, sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this County HOME Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not Borrower knew of same) of any Hazardous Materials occurring prior to or during Borrower's use or occupancy of the Property.

## **ARTICLE 8 DEFAULT AND REMEDIES**

**8.1 EVENTS OF DEFAULT.** The occurrence of any of the following events shall constitute an "Event of Default" under this County HOME Loan Agreement:

A. Monetary. (1) Borrower's failure to pay when due any sums payable under the County HOME Loan Note or any advances made by Lender under the County HOME Loan Deed of Trust or this County HOME Loan Agreement; (2) Borrower's use of County HOME Loan funds for costs other than approved construction costs or for uses inconsistent with other terms and restrictions in the County HOME Loan Documents; (3) Borrower's failure to obtain and maintain the insurance coverage required under this County HOME Loan Agreement; (4) Borrower's failure to make any other payment or assessment due under the County HOME Loan Documents; (5) Borrower's failure to pay taxes; (6) Borrower's default under other debt secured by the Property after the applicable notice and cure periods provided in such other debt or security instruments have expired, if any;

B. Construction. (1) Borrower's deviation from the Budget, without Lender's prior written consent; (2) use of defective or unauthorized materials or defective workmanship in

constructing the Project; (3) Borrower's failure to commence or timely complete construction in accordance with this County Home Loan Agreement; (4) the cessation of construction prior to completion of the Project for a period of more than thirty (30) consecutive calendar days without prior written approval from Lender; (5) Borrower's failure to remedy any deficiencies in recordkeeping or failure to provide records to Lender upon Lender's reasonable request; (6) Borrower's failure to substantially comply with any Applicable Laws or Lender policies pertaining to construction, including, but not limited to, provisions of this County HOME Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and women-owned business enterprises, disabled access, lead-based paint, Hazardous Materials, and provision or relocation benefits and assistance;

C. Operation. (1) Discrimination by Borrower on any basis prohibited by this County HOME Loan Agreement or Applicable Law, or (2) the imposition of any encumbrances or liens on the Property without Lender's prior written consent;

D. General performance of County HOME Loan obligations. Any breach by Borrower beyond applicable notice and cure periods, if any, of any of Borrower's obligations under this County HOME Loan Agreement or any of the other County HOME Loan Documents;

E. General performance of other obligations. Any breach by Borrower of any material obligations on Borrower imposed by any other agreements, beyond applicable notice and cure periods set forth therein, if any, including, but not limited to, any grant agreements, with respect to the financing, construction, or operation of the Project or the Property, to the extent that such breach impairs Lender's security under any of the County HOME Loan Documents;

F. Representations and warranties. A determination by Lender that its security has been or will be materially impaired due to the fact that any of Borrower's representations or warranties made in any of the County HOME Loan Documents, or any certificates, documents, or schedules supplied to Lender by or on behalf of Borrower, were untrue in any material respect when made, or that Borrower concealed or failed to disclose a material fact from Lender;

G. Damage to or failure to maintain Property. Material damage or destruction to the Property by fire or other casualty if Borrower does not take steps to reconstruct the Project as required by the County HOME Loan Documents, or if Borrower fails to maintain the Property pursuant to Section 5.1 above;

H. Bankruptcy, dissolution, and insolvency. Borrower's: (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after such filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

I. Program compliance. Any non-compliance with any of the HOME Regulations including, but not limited to, the provisions of Section 4.12, above, the County HOME Loan Regulatory Agreement, the HOME Investment Partnerships Program Final Rule set forth at 24 CFR Part 92, and other Federal requirements set forth at 24 CFR Part 92 Subpart H.

J. Tax Credit Compliance. The Project shall comply with the rent and income restrictions and other terms of the Regulatory Agreement recorded on the Project by the California Tax Credit Allocation Committee ("Tax Credit Regulatory Agreement"). Non-compliance under the terms of the Tax Credit Regulatory Agreement shall constitute an Event of Default under the County HOME Loan Agreement, subject to applicable cure periods, if any.

K. Relocation Benefits. Failure to make any payments pursuant to Section 4.13, above.

**8.2 NOTICE OF DEFAULT; OPPORTUNITY TO CURE.** In the event of an Event of Default, Lender shall give written notice to Borrower of such Event of Default ("Default Notice") specifying: (a) the nature of the event or deficiency giving rise to the Event of Default, (b) whether, in Lender's reasonable discretion, such Event of Default is subject to cure, and (c) if the Default Notice indicates that such Event of Default is subject to cure, the action(s) required to cure such Event of Default, and the date(s) by which such action(s) to cure, as specified therein, must be completed, which shall not be less than the time to cure as stated in Paragraph A or B, as applicable, of this Section 8.2, below. Borrower's Limited Partner(s) may, on Borrower's behalf, cure an Event of Default in accordance with the cure requirements set forth in the applicable Default Notice, which shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

A. **Time to Cure Monetary Default.** In the event of a monetary Event of Default Borrower shall have a period of seven (7) days after such Default Notice within which to cure such monetary Event of Default prior to exercise of remedies by the Lender hereunder, or such longer period of time as may be specified in the Default Notice.

B. **Time to Cure Non-Monetary Default.** If the event of a non-monetary Event of Default, if the default is reasonably capable of being cured within thirty (30) days, as determined by the Lender in its reasonable discretion, Borrower shall have thirty (30) days from the date of the Default Notice to effect a cure prior to exercise of remedies by the Lender, or such longer period of time as may be specified in the Default Notice. If the non-monetary Event of Default is such that it is not reasonably capable of being cured within thirty (30) days, as determined by the Lender in its reasonable discretion, or such longer period if so specified in the applicable Default Notice, and if Borrower (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is determined by the Lender, in Lender's reasonable discretion, to be reasonably necessary to cure such default prior to exercise of Lender's remedies. Notwithstanding the foregoing, in no event shall the Lender be precluded from exercising remedies in the event of any of the following: (i) the default is not cured within thirty (30) days after the date of the Default Notice, or such longer period of time as may be specified by Lender in writing duly executed by

Lender with respect to such Event of Default during such 30-day period; or (ii) Lender's security becomes or is about to become materially jeopardized by any failure to cure a default.

**8.3 LENDER'S REMEDIES.** In the event of an Event of Default and, if applicable, failure to cure such Event of Default in accordance with the applicable Default Notice, Lender's obligation to disburse County HOME Loan funds shall terminate, and Lender may also, in addition to other rights and remedies permitted by the County HOME Loan Documents or Applicable Law, proceed with any or all of the following remedies in any order or combination Lender may choose, in Lender's sole discretion:

A. Terminate this County HOME Loan Agreement, in which event the entire principal amount outstanding and all accrued and unpaid interest under the County HOME Loan Note, as well as any other monies advanced to Borrower by Lender under the County HOME Loan Documents, including, but not limited to, administrative costs, shall immediately become due and payable at the option of Lender;

B. Bring an action in equitable relief (1) seeking the specific performance by Borrower of the terms and conditions of the County HOME Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the County HOME Loan and demand immediate full payment of the principal amount outstanding and all accrued and unpaid interest under the County HOME Loan Note, as well as any other monies advanced to Borrower by Lender under the County HOME Loan Documents plus associated amounts due, such as relocation benefits described in Section 4.13, above;

D. Enter the Property and take any actions Lender deems necessary to complete construction of the Project, including, but not limited to, (1) making changes in the construction work as described in the Budget (Exhibit B) or other work or materials with respect to the Project, (2) entering into, modifying, or terminating any contractual arrangements (subject to Lender's right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that Lender deems necessary to comply with Hazardous Materials Laws or to otherwise render the Property suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve Lender's interest in seeing the Project developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that Lender or the receiver deems necessary to comply with Hazardous Materials Laws or to otherwise render the Property suitable for occupancy);

F. Order immediate stoppage of construction work and demand that any condition resulting in an Event of Default be corrected before construction work may continue;

G. Disburse from County HOME Loan proceeds any amount necessary to cure any monetary default;

H. Enter upon, take possession of, and manage the Property, either in person, via agent, or by a receiver appointed by a court, and collect rents and other amounts specified in the assignment of rents in the County HOME Loan Deed of Trust and apply them to operate the Property or to pay off the County HOME Loan and/or any advances made under the County HOME Loan Documents, as provided for by the County HOME Loan Deed of Trust;

I. Initiate and pursue any private and/or judicial foreclosure action allowed under Applicable Law and the power of sale provision in the County HOME Loan Deed of Trust;

J. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

K. Pursue any other remedy allowed at law or in equity. Nothing in this Section 8.3 is intended or shall be construed as precluding Lender from proceeding with a non-judicial foreclosure under the power of sale contained in the County HOME Loan Deed of Trust in the event of an uncured or incurable Event of Default.

## ARTICLE 9 GENERAL PROVISIONS

9.1 **BORROWER'S WARRANTIES.** Borrower represents and warrants that (1) it has access to professional advice and support to the extent necessary to enable Borrower to fully comply with the terms of each of the County HOME Loan Documents and to otherwise carry out the Project in a good and workmanlike and professional manner, (2) it is duly organized, validly existing, and in good standing under the laws of the State of California, (3) it has the full power and authority to undertake the Project and to execute the County HOME Loan Documents, (4) the persons identified in Borrower's signature blocks, below, as executing and delivering the County HOME Loan Documents on behalf of Borrower are duly authorized to do so, (5) there has been no substantial adverse change in Borrower's financial condition since the date of application for the County HOME Loan, such as judgment liens, tax liens, mechanic's liens, bankruptcy, etc., and (6) all representations in the Borrower's loan application (including all supplementary submissions) are true, correct and complete in all respects and are offered to induce Lender to make the County HOME Loan.

9.2 **CONTRACT ADMINISTRATION.** The County's Community Services Department ("CSD") will serve as the County's (or Lender's) administrator of the Project and the County HOME Loan Documents. CSD is authorized to approve Budget revisions as authorized under Section 2.6 of this County HOME Loan Agreement, collect loan repayments, and perform loan and Project monitoring functions and other administrative duties.

9.3 **CHANGES OR AMENDMENTS.** No changes, modifications, or amendments to this County HOME Loan Agreement shall be effective unless set forth in a written amendment to this County HOME Loan Agreement duly executed by both Lender and Borrower which makes specific reference to this County HOME Loan Agreement, and is signed by a duly authorized representative of each party hereto. Such amendment(s) shall not invalidate any parts of this

County HOME Loan Agreement that are not changed by such amendment, nor relieve or release Lender or Borrower from its obligations under this County HOME Loan Agreement that are not changed by such amendment. Borrower agrees to not unreasonably withhold its approval of any amendments proposed by Lender that are necessary in order to conform with Applicable Laws and available funding amounts.

The Director of CSD (“Director”) or the Director’s designee is authorized to approve, in his or her discretion, and execute amendments to the County HOME Loan Agreement on behalf of Lender to make any one or more of the following changes:

9.3.1 Changes to this County HOME Loan Agreement that are necessary in order to conform with federal, state or local governmental laws, regulations, ordinances, orders, rules, directives, circulars, bulletins, notices, guidelines, policies and available funding amounts.

9.3.2 Amendments to this County HOME Loan Agreement which are deemed to be minor by the Director and County Counsel, and which do not adversely affect the County’s rights, responsibilities, or interests hereunder.

9.4 **MONITORING AND EVALUATION.** Except as otherwise provided for in this County HOME Loan Agreement, Borrower shall maintain and submit to Lender, within ten (10) business days of Lender’s request for same, records which clearly document Borrower’s performance under each requirement of the County HOME Loan Documents.

9.5 **CONFLICTS OF INTEREST.** Borrower covenants that:

A. Except for approved eligible administrative or personnel costs, no person described in subsection (B) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this County HOME Loan Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person’s tenure. The Borrower shall exercise due diligence to ensure strict compliance with the provisions of this Section 9.5. Any conflict of interest must be reported to the County in accordance with 2 CFR 200.113.

B. The conflict of interest provisions of Section 9.5(A), above, apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the County, or any person related within the third (3rd) degree of such person.

9.6 **POLITICAL ACTIVITY.** None of the funds, materials, property or services contributed by Lender or Borrower under this County HOME Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

9.7 **PUBLICITY.** Any publicity produced by Borrower for the Project during the term of the County HOME Loan and for one year thereafter shall make reference to the contribution of Lender in making the Project possible. The words "The County of Santa Barbara" shall be prominently displayed in any and all pieces of publicity, including but not limited to flyers, press releases, posters, signs, brochures, public service announcements, interviews, and newspaper articles. Borrower further agrees to cooperate with authorized staff and officials of Lender in any Lender-generated publicity or promotional activities undertaken with respect to the Project.

9.8 **TERM OF THIS AGREEMENT.** The term of this County HOME Loan Agreement shall commence as of the first date on which this County HOME Loan Agreement is duly executed by all of the parties hereto ("Effective Date") and shall terminate on the date that is fifty-five (55) years after the date of the recordation of the Notice of Completion, unless earlier terminated in accordance with the provisions of this County HOME Loan Agreement ("Term").

9.9 **GOVERNING LAW.** The County HOME Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

9.10 **STATUTORY REFERENCES.** All references in the County HOME Loan Documents or County HOME Loan Regulatory Agreement to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the County of Santa Barbara shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject as the provision to which specific reference was made.

9.11 **TIME.** Time is of the essence in this County HOME Loan Agreement and the other County HOME Loan Documents.

9.12 **CONSENTS AND APPROVALS.** Any consent or approval of Lender or Borrower required under this County HOME Loan Agreement and the other County HOME Loan Documents shall not be unreasonably withheld. No approval or consent required under this County HOME Loan Agreement or any of the other County HOME Loan Documents shall be effective unless in writing and executed by a duly authorized representative of the party granting such approval or consent.

9.13 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between Borrower and Lender shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Borrower and Lender as follows:

**LENDER:** County of Santa Barbara  
Housing and Community Development  
123 E Anapamu Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
Attn: Deputy Director

With copy to: Office of County Counsel

County of Santa Barbara  
105 E Anapamu Street, Room 201  
Santa Barbara, CA 93101, Suite

**BORROWER:** The Village Senior LP  
702 Country Square Drive, Suite #200  
Ventura, CA 93003  
Attention: CEO

With copy to: Goldfarb and Lipman, LLC  
1300 Clay Street, Eleventh Floor  
Oakland, CA 94612  
Attn: Lynn Hutchins, Esq.

With copy to: NEF FRE Affordable Housing Fund II LP  
c/o National Equity Fund, Inc.  
10 S. Riverside Plaza, Suite 1700  
Chicago, IL 60606  
Attn: General Counsel

With copy to: Holland & Knight LLP  
10 Saint James Avenue  
Boston, MA 02116  
Attn: Sean B. Leonard

**9.14 BINDING UPON SUCCESSORS.** All provisions of these County HOME Loan Documents shall be binding upon and inure to the benefit of the permitted successors-in-interest, permitted transferees, and permitted assigns of each of the parties hereto; provided, however, that this Section 9.14 shall not be construed to waive the prohibition on Transfers by Borrower without Lender's prior written consent in each instance, as set forth in Section 9.16, below.

**9.15 RELATIONSHIP OF PARTIES.** The relationship of Borrower and Lender for this Project under this County HOME Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Lender neither undertakes nor assumes any responsibility or duty to Borrower (except as specifically provided for herein) or any third party with respect to the Project, the Property, or the County HOME Loan.

**9.16 ASSIGNMENT AND ASSUMPTION.** Borrower shall not assign or otherwise transfer, directly or indirectly, whether by operation of law or otherwise ("Transfer"), this County HOME Loan Agreement or any of the other County HOME Loan Documents, or any of its interest herein or therein, or any of its rights or obligations hereunder or thereunder, without the prior written consent of Lender in each instance. Any purported Transfer in violation of the foregoing provisions of this Section 9.16 shall be void *ab initio*.



9.17 **WAIVER.** All consents and waivers by Lender of any obligation in County HOME Loan Agreement or any of the other County HOME Loan Documents must be in writing duly executed by Lender. No waiver shall be implied from any delay or failure by Lender to take action with respect to any breach or default of Borrower or to pursue any remedy allowed under this County HOME Loan Agreement or any of the other County HOME Loan Documents or Applicable Law. Any extension of time granted to Borrower to perform any obligation under this County HOME Loan Agreement or any of the other County HOME Loan Documents shall not operate as a waiver or release from any of Borrower's obligations under the County HOME Loan Documents. Consent by Lender to any act or omission by Borrower shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for Lender's written consent to any other action in any other instance.

9.18 **INTEGRATION.** This County HOME Loan Agreement and the other County HOME Loan Documents, including all exhibits hereto and thereto, contain the entire agreement of the parties hereto with respect to the subject matter hereof and supersede any and all prior negotiations and agreements with respect to the subject matter hereof.

9.19 **OTHER AGREEMENTS.** Borrower represents that it has not entered into any agreements that are inconsistent with the terms of this County HOME Loan Agreement or any of the other County HOME Loan Documents. Borrower shall not enter into any agreements that are inconsistent with the terms of this County HOME Loan Agreement or any of the other County HOME Loan Documents without Lender's prior written consent in each instance.

9.20 **SEVERABILITY.** Every provision of this County HOME Loan Agreement is intended to be severable in the event that any provision of this County HOME Loan Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, in which case, the validity, legality, and enforceability of the remaining provisions of this County HOME Loan Agreement shall not thereby in any way be affected or impaired.

9.21 **COUNTERPARTS.** This County HOME Loan Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together form one single document.

9.22 **ORDER OF PRECEDENCE.** In the event of any conflict or inconsistency between the provisions of Articles 1 through 9 of this Agreement, on the one hand, and the provisions of the Exhibits attached hereto and incorporated herein by reference, on the other, the provisions of Articles 1 through 9 of this Agreement shall control and prevail, other than with respect to Exhibit F, which shall control and prevail over the provisions of Articles 1 through 9 of this Agreement. In the event of any conflict or inconsistency between the provisions of any of the Exhibits hereto, such conflict or inconsistency shall be resolved by the following order of precedence:

1. Exhibit F
2. Exhibit A
3. Exhibit B
4. Exhibit E

5. Exhibit C
6. Exhibit D
7. Exhibit H
- 8 Exhibit I
9. Exhibit G

**Exhibits**

- A: Legal Description of the Property
- B: Project Budget
- C: County HOME Loan Deed of Trust
- D: County HOME Loan Promissory Note
- E: County HOME Loan Regulatory Agreement
- F: Standard Indemnification and Insurance Provisions [under review by investor]
- G: Management Plan
- H: Sample ESPR
- I: Minority and Owned Business Annual Report Document

*Signatures appear on following page. No further text appears here.*

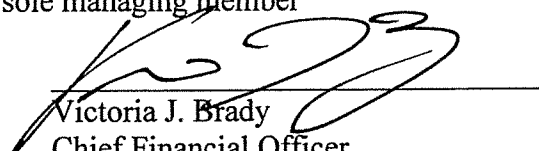
IN WITNESS WHEREOF, County and Borrower have caused this County HOME Loan Agreement to be executed by their respective duly authorized representatives, as set forth below, effective as of the Effective Date.

THE VILLAGE SENIOR LP,  
a California limited partnership

By: The Village Senior LLC,  
a California limited liability company,  
its general partner

By: Cabrillo Economic Development Corporation,  
a California nonprofit public benefit corporation,  
its sole managing member

By:

  
Victoria J. Brady  
Chief Financial Officer

*County signatures follow*

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Buellton, County of Santa Barbara, State of California, described as follows:

All that certain real property situated in the County of Santa Barbara, State of California, described as follows:

Lot 4 of Lot Line Adjustment No. 13-LLA-03, recorded September 23, 2014 as Instrument No. 2014-0043409 of Official Records, being a portion of Lots 2 and 5 of Tract 31,052 in the City of Buellton, County of Santa Barbara, State of California, as per map recorded in Book 205, Pages 69 and 70 of Maps, in the Office of the County Recorder of said County.

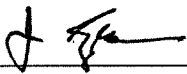
Excepting all oil, petroleum and other hydrocarbon substance, including natural gas, in and upon said land, as reserved in deeds from Merchants Trust Company, a Corporation, recorded September 5, 1912 in Book 137, Page 165 and September 24, 1913 in Book 141, Page 519 both of Deeds, in the Office of the County Recorder of said County.


APN: 137-790-008

IN WITNESS WHEREOF, County and Borrower have caused this County HOME Loan Agreement to be executed by their respective duly authorized representatives, as set forth below, effective as of the Effective Date.

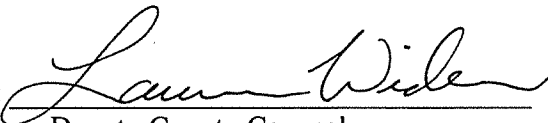
**APPROVED AS TO ACCOUNTING FORM:**  
BETSY M. SCHAFFER, CPA, CPFO  
AUDITOR-CONTROLLER

**COUNTY:**  
County of Santa Barbara, a political  
subdivision of the State of California


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

By:  \_\_\_\_\_  
Steve Lavagnino, Board Chair

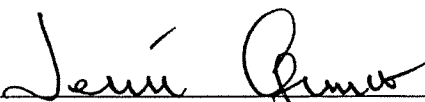
**APPROVED AS TO FORM:**  
RACHEL VAN MULLEM  
COUNTY COUNSEL

By:  \_\_\_\_\_  
Deputy County Counsel

**APPROVED AS TO FORM:**  
RISK MANAGEMENT

By:  \_\_\_\_\_  
Gregory Milligan ARM, AIC

**APPROVED BY DEPARTMENT:**  
COMMUNITY SERVICES DEPARTMENT

By:  \_\_\_\_\_  
Jesús Armas, Director

**EXHIBIT B**

**BUDGET**

**EXHIBIT C**  
**COUNTY HOME LOAN DEED OF TRUST**

NO FEE DOCUMENT

**Recording requested by and  
when recorded, mail to:**

County of Santa Barbara  
Housing and Community Development  
123 E. Anapamu Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
Attn: Deputy Director

NO FEE DOCUMENT PURSUANT TO  
CALIFORNIA GOVERNMENT CODE SECTION 27383

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**COUNTY HOME LOAN DEED OF TRUST,  
ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT**

THIS COUNTY HOME LOAN DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT (“County HOME Loan Deed of Trust”) is made as of \_\_\_\_\_, 2024, by The Village Senior LP, a California limited partnership (“Trustor”), to Commonwealth Land Title Company, a California corporation, as trustee (“Trustee”), for the benefit of the County of Santa Barbara, a political subdivision of the State of California (“Beneficiary”). This County HOME Loan Deed of Trust is junior and subordinate to the deed of trust recorded prior to or concurrently herewith in favor of Banner Bank, a Washington corporation, securing a construction loan from Banner Bank to Trustor for development of the Property (defined below) in the approximate amount of Twenty-Four Million, Seven Hundred Fifty-One Thousand, Seven Hundred and Eight Dollars (\$24,751,708), which will convert to a permanent loan after completion of construction on the Property in the approximate amount of One Million, Seven Hundred Seventeen Thousand, Four Hundred Dollars (\$1,717,400) (“Bank Loan”), that deed of trust in favor of the California Department of Housing and Community Development (“HCD” and, together with Banner Bank, collectively, “Senior Lenders”) securing that certain Housing for a Healthy California (“HHC”) loan from HCD to Trustor in an amount not to exceed Three Million, Nine-Hundred Sixty Thousand Dollars (\$3,960,000) (“HHC Loan”), and that deed of trust in favor of HCD securing that certain Veterans Housing and Homeless Prevention Program (“VHHP”) loan from HCD to Trustor in the amount of Two Million, Five Hundred Fifty One Thousand, Four Hundred Forty-Five Dollars (\$2,551,445) (“VHHP Loan” and, together with the HHC Loan and the Bank Loan, collectively, the “Senior Loans”), to be recorded at conversion of the aforementioned Banner Bank construction loan to a permanent loan (the aforementioned deeds of trust securing the Bank Loan, the HHC Loan, and the VHHP Loan, collectively, the “Senior Liens”).



## GRANT IN TRUST

1. **GRANT.** Trustor, in consideration of the indebtedness referred to below, hereby irrevocably grants and conveys to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, all of Trustor's interest in the property located at 332 and 334 Valley Vineyard Circle Road, in the City of Buellton, County of Santa Barbara, California, as more particularly described in the attached Exhibit A, incorporated herein by this reference (the "Property");

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property; all buildings, structures, fixtures, improvements, signs, and landscaping now or hereafter erected or located on the Property, including all equipment and machinery used for supplying or distributing heating, cooling, electricity, gas, water, air, and light, all kitchen and laundry appliances such as washers, dryers, refrigerators, garbage disposals, ovens, ranges, dishwashers, all plumbing and bathroom fixtures, all security and access control equipment, fire prevention and extinguishment equipment, elevators, floor coverings, window coverings, paneling, cabinets, (provided, however, that Trustor shall have the right to remove, if necessary, such fixtures, furnishings, and equipment for the purpose of replacement with similar items of the same quality performing the same functions, which replacements shall themselves become part of this grant); all building material and equipment either now or hereafter delivered to the Property and intended to be installed therein or any such material and equipment purchased in whole or in part with funds loaned to Trustor by Beneficiary pursuant to the County HOME Loan Note (defined below), whether or not located on the Property; all reserves, accounts, deferred payments, and refunds relating to development on the Property; all Revenue, including rents and income generated by or derived from the Property or improvements thereon (subject however to the assignment of rents to Beneficiary contained herein); all leases, subleases, rental agreements and licenses covering the Property or any portion thereof now existing or hereafter entered into, and all interests of Trustor in security deposits, advance rentals, accounts, payments, and receivables of similar nature with respect to such leases, subleases, rental agreements and licenses; all easements and rights-of-way appurtenant to the Property, including parking and recreational easements, and all interests of Trustor in any land lying within the right-of-way of any streets, sidewalks, and areas of land adjacent to or used in connection with the Property; all development rights and credits, air rights, water rights, and oil, gas or mineral rights with respect to the Property; all claims or demands with respect to insurance proceeds, bonds, warranties, guarantees and sureties, and all awards made for a taking by eminent domain; all interests and rights in any private or government grants, subsidies, loans, or other financing with respect to development on the Property; all interests in personal property used in and about the Property (except furniture and other personal property of occupants of dwelling units on the Property); all intangible Property and rights relating to the Property or operations on the Property, including copyrights, patents, trade names, goodwill, trademarks, and service marks; all government permits, approvals, and map rights related to construction of the Property; all architectural, structural, and mechanical plans, specifications, designs, studies, and data with respect to construction or improvements on the Property; all environmental tests, studies and reports with respect to the Property; all current and future claims and rights of action of Trustor against prior owners and operators of the Property, neighboring property owners and operators, tenants and former tenants, consultants, advisors, and other third parties with respect to

environmental or Hazardous Materials contamination and cleanup of the Property under any federal, state, or local ordinances, statutes, regulations, or administrative decisions or common law.

All of the foregoing, together with the Property, is herein referred to as the "Security."

### **OBLIGATIONS SECURED**

2. **OBLIGATIONS.** Trustor makes this grant for the purpose of securing the following obligations of Trustor:

A. Repayment of the indebtedness of Trustor to Beneficiary in the principal sum of Two Million Dollars (\$2,000,000) with interest thereon, evidenced by the County HOME Loan Promissory Note executed by Trustor on or about the date hereof, in the original principal amount of Two Million Dollars (\$2,000,000) (the "County HOME Loan Note"), on file at the offices of Beneficiary and hereby incorporated by reference into this County HOME Loan Deed of Trust, or as much of such principal sum as has been disbursed to Trustor thereunder; and

B. Payment of any sums advanced by Beneficiary to protect the Security and priority of this County HOME Loan Deed of Trust; and

C. Payment of any sums advanced by Beneficiary following a breach of Trustor's obligation for payment of said sums, such as Trustor's obligation to pay fees, assessments, taxes, charges, and levies imposed by any public authority or utility company and/or Trustor's obligation to pay any sums payable under the County HOME Loan Note and the expiration of any applicable cure period, with interest thereon as provided herein; and

D. Performance of every obligation, covenant or agreement of Trustor contained in this County HOME Loan Deed of Trust, the County HOME Loan Note, and the County HOME Loan Agreement executed between Trustor and Beneficiary in connection with the development of the Property, on file at the offices of Beneficiary and hereby incorporated into this County HOME Loan Deed of Trust by this reference, including all exhibits thereto ("County HOME Loan Agreement"), and the County HOME Loan Regulatory Agreement executed between Trustor and Beneficiary on or about the date hereof regarding the Property ("County HOME Loan Regulatory Agreement" and, together with this County HOME Loan Deed of Trust, the County HOME Loan Note, and the County HOME Loan Agreement, collectively, the "County HOME Loan Documents"), including all modifications, extensions and renewals of such obligations; and

E. Performance of any other obligation or repayment of any other indebtedness of Trustor to Beneficiary, where such evidence of obligation or indebtedness specifically recites that it is secured by this County HOME Loan Deed of Trust; and

F. Performance of any obligations of Trustor in any other agreements with respect to financing of development of the Property or the Security, the failure to perform or the

absence of which would adversely affect Beneficiary, whether or not Beneficiary is a party to such agreements.

**ABSOLUTE ASSIGNMENT OF RENTS AND RIGHT TO POSSESSION**

3. **ASSIGNMENT.** As additional security, Trustor hereby assigns to Beneficiary: (a) all of the Revenue, rents, profits, and income from the Security, any deposits now or hereafter in Trustor's possession which have been collected with respect to the Security, and any reserve or capital funds now or hereafter held by Trustor with respect to construction or operation of the Security (collectively, the "Rents"); and (b) the right to enter, take possession of, and manage the Security; provided, however that Trustor shall have, before an Event of Default, the exclusive right to possess the Security and to collect Rents and use them in accordance with the County HOME Loan Documents. The assignment in this Section 3 is intended to be an absolute and present transfer of Trustor's interest in existing and future Rents, effective as of the date of this County HOME Loan Deed of Trust.

4. **ENFORCEMENT.** Upon the occurrence of an Event of Default which remains uncured after expiration of the applicable cure period, if any, pursuant to the terms of the County HOME Loan Agreement or other County HOME Loan Documents, Beneficiary may, in addition to other rights and remedies permitted by the County HOME Loan Agreement, this County HOME Loan Deed of Trust, or applicable law: (a) enter upon, take possession of, and manage the Security, either in person as a mortgagee-in-possession, by agent, or by a receiver appointed by a court, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Security, (b) collect all Rents, including those past due and unpaid, and apply the same to pay for the Project Related Costs, costs and expenses of operation of the Security, including attorneys' fees, and pay off any indebtedness secured by this County HOME Loan Deed of Trust, all in such order as Beneficiary may determine, (c) enter upon and take possession of the Security, and complete construction of any improvements on the Security as provided for in the plans and specifications approved under the County HOME Loan Agreement or any modifications to the plans and specifications or the development of the Security that Beneficiary in its sole discretion believes is appropriate, and/or (d) Beneficiary may make, cancel, enforce, and modify leases and rental agreements, obtain and evict tenants, set and modify rent terms, sue for rents due, enter into, modify, or terminate any contracts or agreements, or take any legal action, as it deems necessary with respect to the Rents or to development or operation of the Security, subject to the rent restrictions imposed against the Property by the County HOME Loan Regulatory Agreement.

5. **APPOINTMENT OF A RECEIVER.** In any action to enforce this assignment, Beneficiary may apply for the appointment of a receiver to take possession of the Security and take whatever measures are necessary to preserve and manage the Security for the benefit of Beneficiary and the public interest. Trustor hereby consents to the appointment of a receiver. The receiver shall have all of the authority over the Security that Beneficiary would have if Beneficiary took possession of the Security under this assignment as a mortgagee-in-possession, including the right to collect and apply Rents and the right to complete construction of improvements.

6. **NO WAIVER OF POWER OF SALE.** The entering upon and taking possession of the Security and the collection of Rents shall not cure or waive any Event of Default or notice of

default hereunder or under any of the County HOME Loan Documents or invalidate any act done by Beneficiary, Beneficiary's agents or a receiver in response to such Event of Default or notice of default and, notwithstanding the continuance in possession of the Security or the collection and application of Rents, Beneficiary shall be entitled to exercise every right provided for in this County HOME Loan Deed of Trust, in the County HOME Loan Documents or by law upon occurrence of any Event of Default, including the right to exercise the power of sale.

### **COMMERCIAL CODE SECURITY AGREEMENT**

7. **GRANT.** This County HOME Loan Deed of Trust is intended to be a security agreement and financing statement pursuant to the California Commercial Code for any of the items specified above as part of the Security which under applicable law may be subject to a security interest pursuant to the California Commercial Code, and Trustor hereby grants Beneficiary a security interest in the Security. Beneficiary may file a copy of this County HOME Loan Deed of Trust in the real estate records or other appropriate index as a financing statement for any of the items specified as part of the Security. Trustor shall execute and deliver to Beneficiary at Beneficiary's request any financing statements, as well as extensions, renewals, and amendments thereof, and copies of this instrument in such form as Beneficiary may require to perfect a security interest with respect to the Security. Trustor shall pay all costs of filing such financing statements and shall pay all reasonable costs of any record searches for financing statements and releases. Without the prior written consent of Beneficiary, Trustor shall not create or permit any other security interest in the Security. This County HOME Loan Deed of Trust constitutes a fixture filing under Division 9 of the California Commercial Code.

8. **REMEDIES.** Upon Trustor's breach of any obligation or agreement in the County HOME Loan Documents, after expiration of any applicable cure period, Beneficiary shall have the remedies of a secured party under the California Commercial Code and at Beneficiary's option may also invoke the remedies provided for elsewhere in this County HOME Loan Deed of Trust or County HOME Loan Documents. Beneficiary may proceed against the Security specified above separately or together and in any order whatsoever.

### **RIGHTS AND OBLIGATIONS OF TRUSTOR**

9. **PERFORMANCE OF SECURED OBLIGATION.** Trustor shall promptly perform each obligation secured by this County HOME Loan Deed of Trust in accordance with the County HOME Loan Documents.

10. **PAYMENT OF PRINCIPAL AND INTEREST.** Trustor shall promptly pay when due the principal and any interest due on the indebtedness evidenced by the County HOME Loan Note.

11. **MAINTENANCE OF THE SECURITY.** Trustor shall, at the Trustor's own expense, maintain and preserve the Security or cause the Security to be maintained and preserved in good condition, in good repair, ordinary wear and tear excepted, and in a decent, safe, sanitary, habitable and tenable condition. Trustor shall not cause or permit any violation of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitudes as they pertain to

improvements, alterations, maintenance or demolition on the Security. Trustor shall not commit or permit intentional waste on or to the Security. Trustor shall not abandon the Security. Beneficiary shall have no responsibility over maintenance of the Security. In the event Trustor fails to maintain the Security in accordance with the provisions of this County HOME Loan Deed of Trust or any of the other County HOME Loan Documents, and after any applicable cure periods, Beneficiary may, but shall be under no obligation to, make such repairs or replacements as are necessary and provide for payment thereof. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of interest as specified in the County HOME Loan Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this County HOME Loan Deed of Trust.

**12. INSPECTION OF THE SECURITY.** Trustor shall permit Beneficiary to enter and inspect the Security during normal business hours for compliance with these obligations upon at least 24 hours' advance notice of such visit by Beneficiary to Trustor or Trustor's management agent, and shall include provisions in each Tenant lease providing for same, and shall provide notices to Tenants as necessary regarding same.

**13. LIENS, ENCUMBRANCES, AND CHARGES.** Trustor shall discharge any lien or encumbrance not approved by Beneficiary in writing that may attain priority over this County HOME Loan Deed of Trust, as provided for in the County HOME Loan Agreement.

**14. DEFENSE AND NOTICE OF CLAIMS AND ACTIONS.** Trustor shall appear in and defend, at its own expense, any action or proceeding purporting to affect the Security and/or the rights of Beneficiary. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding and of any condemnation offer or action with respect to the Security upon Trustor's receipt of notice thereof.

**15. SUITS TO PROTECT THE SECURITY.** Beneficiary shall have all rights, power and authority to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Security or Rents or prejudice to any interest or right of Beneficiary, (b) to preserve or protect its interest in the Security and in the Rents, and (c) to restrain or enjoin the enforcement of or compliance with any governmental legislation, regulation, or order if the enforcement of or compliance with such legislation, regulation, or order would impair the Security or Rents or be prejudicial to any interest or right of Beneficiary.

**16. DAMAGE TO SECURITY.** Trustor shall give Beneficiary and Trustee prompt notice in writing of any damage to or destruction of the Security. If any Security is damaged or destroyed, Trustor shall, at its cost and expense, repair or restore said Security materially consistent with the original plans and specifications. Such work or repair shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Trustor shall make up the deficiency.

17. **TITLE.** Trustor warrants that Trustor lawfully has legal title to the Security without any limitation on the right to encumber other than those limitations set forth in the HOME Promissory Loan Document, Home County HOME Loan Agreement, County HOME Loan Deed of Trust and County HOME Loan Regulatory Agreement approved by Beneficiary.

18. **GRANTING OF EASEMENTS.** Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to the Security except those required or desirable for installation and maintenance of utilities including water, gas, electricity, sewer, cable television, telephone, or those required by law.

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

20. **INSURANCE.** Trustor shall provide such insurance as required under the County HOME Loan Documents. In the event Trustor fails to maintain the full insurance coverage required by this County HOME Loan Deed of Trust and the County HOME Loan Documents, Beneficiary, after at least seven business days prior notice to Trustor, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by Beneficiary, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the County HOME Loan Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Trustor to Beneficiary and shall be secured by this County HOME Loan Deed of Trust.

21. **CONDEMNATION.** Subject to the rights of the Senior Lenders under the Senior Liens, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of taking all or any part of or interest in the Security under assertion of the power of eminent domain ("Condemnation Funds") are hereby assigned to and shall be paid to Beneficiary. Beneficiary is authorized (but not required) to collect and receive all Condemnation Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as Beneficiary shall determine in its sole discretion. All or any part of the Condemnation Funds so collected and recovered by Beneficiary may be released to Trustor upon such conditions as Beneficiary may impose in Beneficiary's sole discretion. Application of all or any part of the Condemnation Funds collected and received by Beneficiary or the release thereof shall not cure or waive any Event of Default under this County HOME Loan Deed of Trust or any of the other County HOME Loan Documents.

Trustor shall have the right to rebuild repair or restore the Security using available Funds therefor, provided that (a) such Funds are sufficient to keep the all loans encumbering the Property in balance and rebuild repair or restore and operate the Security in compliance with the County

HOME Loan Regulatory Agreement and in a manner that provides adequate security to Beneficiary for repayment of the County HOME Loan or, if such Funds are insufficient or such security is inadequate, then Trustor shall have funded such deficiency and/or provided additional security to the satisfaction of Beneficiary; (b) Beneficiary shall have the right to approve plans and specifications for any rebuild, repair or restoration, and the right to require that disbursement of insurance proceeds and Funds for rebuilding repairing or restoring improvements on the Property be placed in a construction escrow or similar arrangement subject to Beneficiary's approval; and (c) no Event of Default then exists under any of the County HOME Loan Documents.

**22. ACCELERATION ON TRANSFER OF SECURITY; ASSUMPTION.** In the event that Trustor, without the prior written consent of the Beneficiary, sells, encumbers, transfers, or conveys, or agrees to sell, encumber, transfer, or convey, its interest in the Security or any part thereof or any interest therein, Beneficiary may, in its sole discretion, declare any or all sums secured by this County HOME Loan Deed of Trust to be immediately due and payable. This option shall not apply in case of:

A. The grant of a leasehold interest to tenants who will occupy units in the Project as provided for under the County HOME Loan Agreement;

B. Sale or transfer of personal property pursuant to the grant provisions in this County HOME Loan Deed of Trust. Consent to a sale, encumbrance, or transfer shall not be deemed to be a waiver of the right to require such consent to future or successive transactions;

C. If Trustor is a partnership, transfers of a limited partner's interests to the Managing General Partner of the Trustor, or a Beneficiary-approved affiliate thereof in accordance with the Partnership Agreement;

D. If Trustor is a partnership, transfers of the general partner's interest if such general partner is removed for cause in accordance with Trustor's limited partnership agreement, provided that each of the general partner(s) selected to replace such removed general partner(s) is reasonably acceptable to Beneficiary, and is selected with reasonable promptness; or

E. Transfers of the Project and/or Property to the general partner(s) or a Beneficiary-approved affiliate thereof of the Trustor following the expiration of the tax credit compliance period in accordance with the terms of a purchase option and/or right of first refusal agreement described in Trustor's partnership agreement, provided that such purchase option is and remains subordinate to the County HOME Loan Documents; provided further that, as a condition of such transfer, the transferee agrees in writing in form acceptable to Beneficiary to assume and be subject to the terms, conditions, and restrictions contained in the County HOME Loan Regulatory Agreement.

**23. RECONVEYANCE BY TRUSTEE.** This County HOME Loan Deed of Trust shall remain in effect and continue for the entire Term of the County HOME Loan Agreement. Upon written request of Beneficiary stating that all sums secured by this County HOME Loan Deed of

Trust have been paid and upon surrender of this County HOME Loan Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

### **DEFAULT AND REMEDIES**

**24. EVENTS OF DEFAULT.** Any of the events listed in the County HOME Loan Agreement as an Event of Default shall also constitute an Event of Default under this County HOME Loan Deed of Trust. A cure of any default made or tendered by Trustor's limited partners shall be accepted or rejected on the same basis as if made or tendered by Trustor.

**25. ACCELERATION OF MATURITY.** Upon the happening of an Event of Default which, if subject to cure, has not been cured within the time and in the manner provided in the County HOME Loan Agreement, Beneficiary may declare all sums advanced to Trustor under the County HOME Loan Note and this County HOME Loan Deed of Trust immediately due and payable.

**26. BENEFICIARY'S REMEDIES.** Upon the happening of an Event of Default which, if subject to cure, has not been cured within the time and in the manner provided in the County HOME Loan Agreement, Beneficiary may, in addition to other rights and remedies permitted by the County HOME Loan Agreement, the County HOME Loan Note, or applicable law, proceed with any or all of the following remedies:

A. Enforce the assignment of Rents and right to possession as provided for in this County HOME Loan Deed of Trust, and/or seek appointment of a receiver to take over possession of the Security and collect Rents;

B. Enter the Security and take any actions necessary in its judgment to complete construction on the Security, either in person or through a receiver appointed by a court;

C. Advance any amount necessary to cure any monetary Event of Default under this County HOME Loan Deed of Trust, the County HOME Loan Agreement, or the County HOME Loan Note;

D. Commence an action to foreclose this County HOME Loan Deed of Trust pursuant to California Code of Civil Procedure Section 725a et seq., as amended, and/or seek appointment of a receiver from a court of competent jurisdiction with the authority to protect Beneficiary's interests in the Security, including the authority to complete construction of improvements;

E. Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold and exercise its power of sale as provided for below; and/or

F. Pursue any other rights and remedies allowed at law or in equity.



**27. FORECLOSURE BY POWER OF SALE.** Should Beneficiary elect to foreclose by exercise of the power of sale contained in this County HOME Loan Deed of Trust, Beneficiary shall notify Trustee and shall deposit with Trustee this County HOME Loan Deed of Trust (the deposit of which shall be deemed to constitute evidence that the unpaid sums disbursed under the County HOME Loan Note are immediately due and payable), and such receipts and evidence of any advances made that are additionally secured hereby as Trustee may require.

Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such notice of default and election to sell as then required by law and by this County HOME Loan Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said notice of sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by Trustor, at public auction to the highest bidder for cash or credit in lawful money of the United States payable at the time of sale. Trustee shall deliver to the purchaser its deed or deeds conveying the Security so sold, but without any covenant or warranty, express or implied. Any person, including, without limitation, Trustor, Trustee, or Beneficiary, may purchase at the sale.

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

**28. APPLICATION OF SALE PROCEEDS.** After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale as follows: first, to the payment of all sums then secured by this County HOME Loan Deed of Trust, in such order and amounts as Beneficiary in its sole discretion determines; and second, the remainder, if any, to the person or persons legally entitled thereto.

**29. REMEDIES CUMULATIVE.** No right, power or remedy conferred upon or reserved to Beneficiary by this County HOME Loan Deed of Trust is intended to be exclusive of any other rights, powers or remedies, but each such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

### **GENERAL PROVISIONS**

**30. GOVERNING LAW.** This County HOME Loan Deed of Trust shall be interpreted under and governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

**31. STATEMENT OF OBLIGATION.** Beneficiary may collect a fee from Trustor not to exceed the maximum allowable under applicable law for furnishing a statement of obligations as provided in the California Civil Code.

32. **CONSENTS AND APPROVALS.** Any consent or approval of Beneficiary required under this County HOME Loan Deed of Trust shall not be unreasonably withheld.

33. **TIME.** Time is of the essence in this County HOME Loan Deed of Trust.

34. **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between Trustor and Beneficiary shall be sufficiently given and shall not be deemed given unless dispatched by USPS registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Trustor and Beneficiary as follows:

**BENEFICIARY:** County of Santa Barbara  
Housing and Community Development  
123 E. Anapamu Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
Attn: Deputy Director

With copy to: Office of County Counsel  
County of Santa Barbara  
105 E Anapamu Street, Room 201  
Santa Barbara, CA 93101

**TRUSTOR:** The Village Senior LP  
Cabrillo Economic Development Corporation  
702 Country Square Drive, Suite #200  
Ventura, CA 93003  
Attn: Chief Executive Officer

With copy to:  
With copy to: Goldfarb and Lipman, LLC  
1300 Clay Street, Eleventh Floor  
Oakland, CA 94612  
Attn: Lynn Hutchins, Esq.

With copy to Trustor's Limited Partner:  
NEF FRE Affordable Housing Fund II LP  
c/o National Equity Fund, Inc.  
10 S. Riverside Plaza, Suite 1700  
Chicago, IL 60606  
Attn: General Counsel

With copy to: Holland & Knight LLP  
10 Saint James Avenue  
Boston, MA 02116  
Attn: Sean B. Leonard

**35. BINDING UPON SUCCESSORS.** All provisions of this County HOME Loan Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Trustor, Trustee, and Beneficiary.

**36. WAIVER.** No waiver by Beneficiary of any obligation of Trustor in this County HOME Loan Deed of Trust shall be effective unless in writing signed by Beneficiary. No waiver will be implied from any delay or failure by Beneficiary to take action on any breach or Event of Default of Trustor or to pursue any remedy allowed under the County HOME Loan Deed of Trust, the other County HOME Loan Documents, or applicable law. Any extension of time granted to Trustor to perform any obligation under this County HOME Loan Deed of Trust shall not operate as a waiver or release Trustor from any of its obligations under this County HOME Loan Deed of Trust. Consent by Beneficiary to any act or omission by Trustor shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's written consent to future waivers.

**37. AMENDMENTS AND MODIFICATIONS.** No amendment of or modification to this County HOME Loan Deed of Trust shall be effective unless it is in writing duly executed by both Beneficiary and Trustor.

**38. LOAN AGREEMENT CONTROLS.** If there is any contradiction between this County HOME Loan Deed of Trust and the County HOME Loan Agreement, the terms of the County HOME Loan Agreement shall control, except that Trustor shall have no defense or claim that this County HOME Loan Deed of Trust does not establish a valid lien on the Property or the Security.

**39. DEFINITIONS.** Capitalized terms used but not otherwise defined in this County HOME Loan Deed of Trust shall have the same meaning ascribed to such terms in the County HOME Loan Agreement.

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

**41. SEVERABILITY.** Every provision of this County HOME Loan Deed of Trust is intended to be severable in the event that any term or provision of this County HOME Loan Deed of Trust is declared to be illegal, invalid, or unenforceable by a court of competent jurisdiction, in which case, the legality, validity, and enforceability of the remaining provisions hereof shall not be affected. If the lien of this County HOME Loan Deed of Trust is invalid or unenforceable as to any part of the Trustor's indebtedness or the Trustor's obligations secured thereby, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the Trustor's indebtedness and all payments made on the indebtedness (whether voluntary or under foreclosure or other enforcement action or procedure) shall be considered to have been first

paid or applied to the payment of that portion of the indebtedness which is not secured or partially secured by the lien of this County HOME Loan Deed of Trust.

**42. SUBSTITUTION OF TRUSTEES.** Beneficiary may from time to time appoint another trustee to act in the place and stead of Trustee or any successor. Upon such appointment and without conveyance, the successor trustee shall be vested with all title, powers, and duties conferred upon Trustee.

**43. ACCEPTANCE BY TRUSTEE.** Trustee accepts this trust when this County HOME Loan Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under this County HOME Loan Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

**44. TAX CREDITS.** Notwithstanding anything to the contrary contained herein or in any documents secured by this deed of trust or contained in any subordination agreement, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the property encumbered by this deed of trust, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall apply:

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

**45. NONRECOURSE.** Except as expressly provided in the second paragraph of this Section 45, the Trustor, and the Trustor's partners, officers, directors, employees and agents shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the County HOME Loan Promissory Note, and the sole recourse of the Beneficiary with respect to the principal of, or interest on, the County HOME Loan Promissory Note shall be to the property securing the indebtedness evidenced by this County HOME Deed of Trust; provided, however, that none of this Section 45 or any provision of this County HOME Deed of Trust shall be construed to (i) limit or impair the enforcement against the Security of all the rights and remedies of the Beneficiary, or (ii) be deemed in any way to impair the right of the Beneficiary to assert the unpaid principal amount of the County HOME Loan Promissory Note as demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on, the County HOME Loan Promissory Note, except as hereafter set forth. No provision of this County HOME Deed of Trust shall be construed to relieve the Trustor of personal liability to the extent of actual damages for (i) Trustor's fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges (which are not contested by the Trustor in good faith) which may create liens on the Property that are payable or

applicable prior to any foreclosure under the County HOME Loan Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by the Trustor other than in accordance with the County HOME Loan Deed of Trust; (iv) the material misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; (v) the Trustor's indemnification obligations under the County HOME Loan Agreement; and (vi) payment to the Beneficiary of any rental income or other income arising with respect to the Property received by the Trustor after the Beneficiary has given notice to the Trustor of the occurrence of an Event of Default and after the expiration of all applicable notice and cure periods under the County HOME Loan Agreement, if any, subject to the rights of Senior Lenders under the Senior Liens.

*Signatures appear on following page. No further text appears here.*

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

**TRUSTOR:**

THE VILLAGE SENIOR LP,  
a California limited partnership

By: The Village Senior LLC,  
a California limited liability company,  
its general partner

By: Cabrillo Economic Development Corporation,  
a California nonprofit public benefit corporation,  
its sole managing member

By: \_\_\_\_\_  
Victoria J. Brady  
Chief Financial Officer

[TRUSTOR'S SIGNATURE MUST BE ACKNOWLEDGED]

**ACKNOWLEDGMENT**

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 Santa Barbara

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Buellton, County of Santa Barbara, State of California, described as follows:

All that certain real property situated in the County of Santa Barbara, State of California, described

as follows:

Lot 4 of Lot Line Adjustment No. 13-LLA-03, recorded September 23, 2014 as Instrument No. 2014-0043409 of Official Records, being a portion of Lots 2 and 5 of Tract 31,052 in the City of Buellton, County of Santa Barbara, State of California, as per map recorded in Book 205, Pages 69 and 70 of Maps, in the Office of the County Recorder of said County.

Excepting all oil, petroleum and other hydrocarbon substance, including natural gas, in and upon said land, as reserved in deeds from Merchants Trust Company, a Corporation, recorded September 5, 1912 in Book 137, Page 165 and September 24, 1913 in Book 141, Page 519 both of Deeds, in the Office of the County Recorder of said County.

APN: 137-790-008



**EXHIBIT D**

**COUNTY HOME LOAN PROMISSORY NOTE**

## COUNTY HOME LOAN PROMISSORY NOTE

\$2,000,000

Santa Barbara, California  
\_\_\_\_\_, 2024

FOR VALUE RECEIVED, The Village Senior LP, a California limited partnership (“Borrower”), whose address is 702 Country Square Drive, Suite #200, Ventura, California 93003, hereby promises to pay to the order of the County of Santa Barbara, a political subdivision of the State of California (“Lender”), whose address is 123 E. Anapamu Street, 2<sup>nd</sup> Floor, Santa Barbara, California 93101, the principal amount equal to Two Million Dollars (\$2,000,000), or so much thereof as may be advanced by Lender to Borrower, together with interest thereon, as set forth below.

1. **PURPOSE.** In order to assist Borrower in developing a total of fifty (50) residential housing units, comprised of forty-nine (49) affordable rental housing units and one (1) manager’s unit, located at 332 and 334 Valley Vineyard Circle, in the City of Buellton, Santa Barbara County, California (“Project”), Lender has agreed to loan to Borrower the amount of Two Million Dollars (\$2,000,000) (the “County HOME Loan”), derived from funds received by the Lender from the United States Department of Housing and Urban Development through the HOME Investment Partnerships Program (“HOME Funds”).

2. **BORROWER’S OBLIGATION.** This promissory note (“County HOME Loan Promissory Note”) evidences Borrower’s obligation to pay Lender the principal amount of Two Million Dollars (\$2,000,000) for the HOME Funds loaned to Borrower by Lender for the specific uses designated, and subject to the terms and conditions set forth, in that certain loan agreement by and between Borrower and Lender of even date herewith (“County HOME Loan Agreement”).

3. **INTEREST.** Subject to Section 4, below, this County HOME Loan Promissory Note shall bear simple interest at the rate of three percent (3%) per annum from the date of the first disbursement under the County HOME Loan Agreement and this County HOME Loan Promissory Note. Interest hereunder is not compounding.

4. **DEFAULT INTEREST.** In the event of an Event of Default by Borrower of any of its obligations under this County HOME Loan Promissory Note or any of the other County HOME Loan Documents, interest shall accrue on the outstanding principal of this County HOME Loan Promissory Note at an annual rate equal to the lesser of (i) ten percent (13%), or (ii) the highest interest allowed by law, from the date of such Event of Default until the date that such Event of Default is cured, if subject to cure pursuant to Section 8.2 of the County HOME Loan Agreement, or the County HOME Loan is repaid in full, and such default interest shall be due and payable by Borrower to Lender monthly on the first day of each month.

5. **AMOUNT AND TIME OF PAYMENT.** All unpaid principal and accrued and unpaid interest hereunder shall be due and payable on the earlier of: (a) the date that is fifty-five (55) years after the date of the recordation of the Notice of Completion issued for the Project, or (b) the date the Property is sold or otherwise Transferred, unless Lender expressly consents in

advance in writing to such Transfer in each instance or such Transfer is expressly permitted under the County HOME Loan Agreement, and each such Transfer is completed in accordance with all conditions imposed by Lender in connection with such consent, including, but not limited to, such transferee expressly assuming, in writing duly executed by such transferee in form approved by Lender, all of Borrower's obligations hereunder and under the other County HOME Loan Documents, or (c) Borrower has failed to commence construction as set forth in Section 4.1 of the County HOME Loan Agreement, or (d) an Event of Default by Borrower, as defined in the County HOME Loan Agreement, which, if subject to cure, has not been cured as provided for in Section 8.2 of the County HOME Loan Agreement. Annual payments on the County HOME Loan hereunder shall be made in accordance with Section 7, below. In the event of an Event of Default by Borrower, as defined in the County HOME Loan Agreement, which, if subject to cure, has not been cured as provided for in Section 8.2 of the County HOME Loan Agreement, all unpaid principal and all accrued and unpaid interest hereunder shall immediately be due and payable in accordance with Section 9 of this County HOME Loan Promissory Note. In any event, all unpaid principal and all accrued and unpaid interest hereunder shall be due and payable by Borrower to Lender no later than December 31, 2081.

**6. DEFINITIONS.** All capitalized terms used but not defined in this County HOME Loan Promissory Note shall have the respective meanings ascribed to such terms in the County HOME Loan Agreement.

**7. PAYMENTS; ANNUAL FINANCIAL STATEMENTS.** All accrued interest and principal hereunder shall be due and payable in accordance with the terms set forth in Section 5, above, and this Section 7. Annual payments on the County HOME Loan shall be made on each Annual Payment Date, until the principal of the County HOME Loan and all unpaid interest thereon has been repaid in full, from Residual Receipts, which Residual Receipts shall be paid in the following order and priority: *First* to fund and replenish the Reserve Accounts; *second* to mandatory Bank Loan debt service; *third* to the deferred Developer Fee; *fourth* to asset management, partnership management and similar fees, including fees paid to investors, in an aggregate amount not to exceed, for the then-current year, \$39,505 for 2024 and increased at the rate of 3.5% for each subsequent year; *fifth*, of the remaining Residual Receipts, (i) fifty percent (50%) to Borrower for Distributions (including loan repayments and fees paid to Borrower's partners and affiliates of any entity that has an ownership interest a partner of Borrower or the Project), and (ii) fifty percent (50%) to HCD and Lender for repayment of the HCD Loans, the County HOME Loan, and \$150,000 loan from the City of Buellton ("City") in amounts proportional to such agencies' respective assistance amounts until repaid in full, which respective assistance amounts, as of the Effective Date, are as follows: twenty-two and eighty-six hundredths percent (22.86%) to HCD in connection with its HHC loan to Borrower; fourteen and seventy-three hundredths percent (14.73%) to HCD in connection with its VHHP loan to Borrower; eleven and fifty-five hundredths percent (11.55%) to Lender for repayment of the County HOME Loan, and eighty-seven hundredths percent (0.87%) to the City of Buellton for repayment of the loan from the City of Buellton to Borrower in connection with the Project. All payments made by Borrower to Lender hereunder shall be applied as follows: first, to pay current annual interest due, if any; then, to the cumulative interest owed, if any; then, to reduce the principal amount of the County HOME Loan.

In the event that either of Borrower or Lender determines that there has been an understatement or underpayment of the amount of Residual Receipts reported or paid to Lender, Borrower shall promptly pay to Lender the full amount of such understatement or underpayment, but in any event, no later than the date that is twenty (20) days after the earlier of (a) the date of Borrower's determination of such understatement or underpayment, or (b) Lender's notice to Borrower of Lender's determination of such understatement or underpayment. In the event that Lender determines that there has been an overpayment of Residual Receipts to Lender, Lender shall promptly pay to Borrower the amount of such overpayment, but in any event, within twenty (20) days of such determination. If contested, Borrower has the right to pay under protest and request and pay for an audit by an independent certified public accountant. For each Fiscal Year during the Term, Borrower shall submit an Annual Financial Statement to Lender no later than 60 days after the end of such Fiscal Year.

**8. PLACE AND MANNER OF PAYMENT.** All amounts due and payable under this County HOME Loan Promissory Note are payable at the office of Lender at the address set forth above, or at such other place as Lender may designate to Borrower in writing from time to time, in any coin or currency of the United States which on the respective Annual Payment Dates shall be legal tender for the payment of public and private debts.

**9. DEFAULT AND ACCELERATION.** This County HOME Loan Promissory Note is secured by the County HOME Loan Deed of Trust. All covenants, conditions and agreements contained in the County HOME Loan Deed of Trust and the County HOME Loan Agreement are hereby made a part of this County HOME Loan Promissory Note. Borrower agrees that the amount of principal and all then-accrued and unpaid interest hereunder, shall, at the option of Lender, be immediately due and payable upon any Event of Default, as defined in the County HOME Loan Agreement, which, if subject to cure in accordance with Section 8.2 of the County HOME Loan Agreement and the applicable Notice of Default, has not been cured in accordance with the County HOME Loan Agreement and the applicable Notice of Default, including, but not limited to, the failure of Borrower to make any payment when due. Upon the occurrence of any Event of Default, Lender may exercise any other rights or remedies permitted under this County HOME Loan Promissory Note, any of the other County HOME Loan Documents, or applicable law. Cure of an Event of Default made or tendered by Borrower's limited partner(s) shall be accepted or rejected as provided in the County HOME Loan Agreement.

**10. PREPAYMENT OF COUNTY HOME LOAN.** No prepayment penalty will be charged to Borrower for payment of all or any portion of the County HOME Loan amounts prior to the end of the Term. However, prepayment of the County HOME Loan during the Term of the County HOME Loan Regulatory Agreement shall require Lender's prior written approval, and shall not affect Borrower's obligations under the County HOME Loan Regulatory Agreement.

**11. NO OFFSET.** Borrower hereby waives any and all rights of offset it now has or may hereafter have against Lender, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this County HOME Loan Promissory Note.

**12. WAIVERS.** All presentments, notices of dishonor, and protests are waived by all makers, sureties, guarantors, and endorsers of this County HOME Loan Promissory Note, if any.

13. **CONSENTS AND APPROVALS.** Any consent or approval of Lender required under this County HOME Loan Promissory Note shall not be unreasonably withheld or delayed.

14. **NOTICES.** Except as may be otherwise specifically provided herein, no approval, notice, or consent of Lender shall be effective unless in writing signed by Lender. Notices to Borrower hereunder may be delivered to Borrower at the address of Borrower set forth below, or at such other place or places as Borrower may designate in writing, from time to time, in accordance with the Notice provisions of the County HOME Loan Agreement, for the receipt of communications from Lender. A copy of each notice sent to Borrower by Lender hereunder shall also be sent to Borrower's Limited Partner at the address set forth below.

**Lender:** County of Santa Barbara  
Housing and Community Development  
123 E Anapamu Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
Attn: Deputy Director

**With copy to:** Office of County Counsel  
County of Santa Barbara  
105 E Anapamu Street, Room 201  
Santa Barbara, CA 93101

**Borrower:** The Village Senior LP  
702 Country Square Drive, Suite #200  
Ventura, CA 93003  
Attention: Chief Executive Officer

**With copy to Borrower's  
Limited Partner:** NEF FRE Affordable Housing Fund II LP  
c/o National Equity Fund, Inc.  
10 S. Riverside Plaza, Suite 1700  
Chicago, IL 60606  
Attn: General Counsel

15. **ASSIGNMENT; BINDING UPON SUCCESSORS.** All provisions of this County HOME Loan Promissory Note shall be binding upon and inure to the benefit of the permitted successors-in-interest, transferees, and assigns of Borrower and Lender; provided, however, that Borrower shall not assign or otherwise transfer, directly or indirectly, whether by operation of law or otherwise, this County HOME Loan Promissory Note or any of Borrower's rights or obligations hereunder without the prior written consent of Lender in each instance.

16. **GOVERNING LAW.** This County HOME Loan Promissory Note shall be interpreted under and governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

17. **SEVERABILITY.** Every provision of this County HOME Loan Promissory Note is intended to be severable in the event that any provision of this County HOME Loan Promissory Note shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in which case, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

18. **TIME.** Time is of the essence in this County HOME Loan Promissory Note.

19. **WAIVER.** No waiver by Lender of any provision of this County HOME Loan Promissory Note or any of the other County HOME Loan Documents shall be effective unless in writing signed by Lender. No waiver will be implied from any delay or failure by Lender to take action on any breach or default of Borrower or to pursue any remedy allowed under any of the County HOME Loan Documents or applicable law. Any extension of time granted to Borrower to perform any obligation hereunder or under and of the other County HOME Loan Documents shall not operate as a waiver of or release from any of the Borrower's obligations hereunder or under and of the other County HOME Loan Documents. Consent by Lender to any act or omission by Borrower shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for Lender's written consent to future waivers.

20. **AMENDMENTS AND MODIFICATIONS.** No amendment or modification to or of this County HOME Loan Promissory Note shall be effective unless in writing and duly executed by both Borrower and Lender.

21 **NONRECOURSE.** Except as expressly provided in the second paragraph of this Section 21, the Borrower, and the Borrower's partners, officers, directors, employees and agents shall not have any direct or indirect personal liability for payment of the principal of, or interest on, this County HOME Loan Promissory Note. The sole recourse of the Lender with respect to the principal of, or interest on, the County HOME Loan Promissory Note shall be to the property securing the indebtedness evidenced by the County HOME Loan Promissory Note. However, nothing contained in the foregoing limitation of liability shall (i) limit or impair the enforcement against all such security for the County HOME Loan Promissory Note of all the rights and remedies of the Lender, or (ii) be deemed in any way to impair the right of the Lender to assert the unpaid principal amount of the County HOME Loan Promissory Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the County HOME Loan Promissory Note, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of personal liability to the extent of actual damages for (i) fraud or willful misrepresentation or misconduct by or on behalf of Borrower or any of Borrower's officers, agents, partners, or any of Borrower's partner's members, managers, officers, directors, employees, or agents; (ii) the failure to pay taxes, assessments or other charges (which are not contested by the Borrower in good faith) which may create liens on the Property that are payable or applicable prior to any foreclosure under the County HOME Loan Deed of Trust (to the full extent of such taxes, assessments or

other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by the Borrower other than in accordance with the County HOME Loan Deed of Trust; (iv) the material misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; (v) the Borrower's indemnification obligations under the County HOME Loan Agreement; and (vi) payment to the Lender of any rental income or other income arising with respect to the Property received by the Borrower after the Lender has given notice to the Borrower of the occurrence of an Event of Default and after the expiration of all applicable notice and cure periods, subject to the rights of any lender providing a loan secured by the Property to which the Lender has subordinated the County HOME Loan Deed of Trust.

**21. COUNTY HOME LOAN AGREEMENT CONTROLS.** In the event that any conflict or discrepancy between the provisions of this County HOME Loan Promissory Note and the County HOME Loan Agreement, the provisions of the County HOME Loan Agreement shall control and prevail.

**BORROWER**

THE VILLAGE SENIOR LP,  
a California limited partnership

By: The Village Senior LLC,  
a California limited liability company,  
its general partner

By: Cabrillo Economic Development Corporation,  
a California nonprofit public benefit corporation,  
its sole managing member

By: \_\_\_\_\_  
Victoria J. Brady  
Chief Financial Officer



**EXHIBIT E**  
**COUNTY HOME LOAN REGULATORY AGREEMENT**

NO FEE DOCUMENT

**Recording requested by and  
When recorded, mail to:**

County of Santa Barbara  
Housing and Community Development  
123 East Anapamu Street, 2nd Floor  
Santa Barbara, CA 93101  
Attn: Deputy Director

NO FEE DOCUMENT PURSUANT TO  
CALIFORNIA GOVERNMENT CODE SECTION 27383

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**COUNTY HOME LOAN REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

This County HOME Loan Regulatory Agreement and Declaration of Restrictive Covenants (this “Agreement”) is made as of this \_\_\_ day of \_\_\_, 2024 by and between the County of Santa Barbara, a political subdivision of the State of California (the “Lender” or “County”), and The Village Senior LP, a California limited partnership (the “Owner” or “Borrower” and, together with the County, collectively, the “Parties” and each individually a “Party”).

**RECITALS**

A. The Owner owns a parcel of real property located at 332 and 334 Valley Vineyard Circle Road in Buellton, California, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the “Property”), upon which the Owner intends to construct fifty (50) units of permanent rental housing, of which one unit is designated as a manager’s unit not subject to income or rent limits (the “Project”).

B. The Lender has received HOME Investment Partnerships Program (“HOME”) funds (“HOME Funds”) from the United States Department of Housing and Urban Development (“HUD”) pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 for the purpose of expanding the supply of decent, safe, sanitary and affordable housing for low-income persons and families.

C. Concurrently herewith, Lender is lending to Owner a loan in the maximum amount of Two Million Dollars (\$2,000,000) in HOME Funds, to provide financing for the Project (the “County HOME Loan”), as evidenced by that certain County HOME Loan Promissory Note (“County HOME Loan Promissory Note”) of even date herewith executed by Borrower in favor of Lender in the amount of Two Million Dollars (\$2,000,000), and that certain County HOME Loan Agreement of even date herewith by and between Lender and Borrower (“County HOME Loan Agreement”).

D. As further consideration for the County HOME Loan and as a requirement of HUD for use of the HOME Funds, the Owner has agreed to enter into and record this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership, and management of the Project. The covenants in this Agreement are intended to run with the land and be binding on the Owner and its successors and assigns with respect to the Property.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the aforementioned County HOME Loan, the Owner and the Lender hereby agree as follows:

### **1. DEFINITIONS**

All capitalized terms used but not defined in this Agreement shall have the respective meanings ascribed to such terms in the County HOME Loan Agreement. Some of the following terms are defined in the County HOME Loan Agreement and repeated herein for convenience of reference.

1.1 **“ANNUAL INCOME”** means the definition of Annual Income as more particularly defined at 24 CFR 5.609.

1.2 **“AREA MEDIAN INCOME”** or **“AMI”** means the area median income for the Santa Maria-Santa Barbara Metropolitan Statistical Area, with adjustments for household size, as determined from time to time by HUD pursuant to the United States Housing Act of 1937, as amended, or such other method of median income calculation applicable to the Lender that HUD may hereafter adopt in connection with said Act.

1.3 **“COUNTY HOME LOAN”** means the loan of HOME Funds in the maximum aggregate amount of Two Million Dollars (\$2,000,000) made by the Lender to the Owner to finance certain development costs of the Project pursuant to the County HOME Loan Agreement and the County HOME Loan Promissory Note.

1.4 **“COUNTY HOME LOAN AGREEMENT”** is the loan agreement executed concurrently herewith by and between the Owner and the Lender, setting forth the terms and conditions governing the County HOME Loan.

1.5 **“COUNTY HOME LOAN DEED OF TRUST”** means that certain deed of trust, assignment of rents, and security agreement recorded against the Property and the improvements to be constructed thereon as security for the County HOME Loan, executed concurrently herewith by the Owner, as trustor, in favor of the Lender, as beneficiary, as it may be amended from time to time.

1.6 **“COUNTY HOME LOAN DOCUMENTS”** means, collectively, the County HOME Loan Agreement, the County HOME Loan Promissory Note, the County HOME Loan Deed of Trust, and this Agreement, including all exhibits hereto and thereto, as such documents may be amended from time to time in accordance with the provisions hereof and thereof.

1.7 “**COUNTY HOME LOAN PROMISSORY NOTE**” means the promissory note executed by the Owner concurrently herewith in favor of the Lender in the amount of Two Million Dollars (\$2,000,000) evidencing the County HOME Loan, which is secured by the County HOME Loan Deed of Trust, as it may be amended from time to time.

1.8 “**HOME-ASSISTED UNIT**” means any of the nine (9) Units on the Property designated by the Owner as “floating” HOME-Assisted Units with restricted occupancy and rents pursuant to and subject to the requirements of this Agreement, each of which must be occupied by a Qualifying Household. A Unit shall not be considered a HOME-Assisted Unit until such Unit has been constructed and made available for occupancy.

1.9 “**LENDER**” is the County of Santa Barbara, a political subdivision of the State of California.

1.10 “**OWNER**” means The Village Senior LP, a California limited partnership.

1.11 “**PROJECT**” means the construction, operation and management of the Property and the improvements thereon and constructed thereon during the Term.

1.12 “**PROJECT COMPLETION**” means that all necessary title transfer requirements and construction work for the Project have been performed, the Project complies with the requirements of 24 CFR Part 92 (including, but not limited to, 24 CFR 92.2, 24 CFR 92.252(e), and the property standards under § 92.251), and the Project completion information has been entered into the disbursement and information system established by HUD; provided, however, that, with respect to rental housing Project completion, for the purposes of § 92.502(d), Project completion occurs upon completion of construction and before occupancy.

1.13 “**PROPERTY**” means that certain real property and improvements thereon located on Valley Vineyard Circle Road, in the City of Buellton, California as more particularly described in Exhibit A, attached hereto and incorporated herein by reference, including, but not limited to, all improvements constructed thereon during the Term.

1.14 “**QUALIFYING HOUSEHOLD**” means a household that qualifies as a Very Low-Income Household, as defined herein.

1.15 “**QUALIFYING RENT**” means the total monthly charges for rent of a HOME-Assisted Unit, which shall not exceed:

- a) For each of the eight (8), one-bedroom HOME-Assisted Units, the rent shall not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals fifty percent (50%) of the AMI as determined by HUD, with adjustments for number of bedrooms in the Unit and smaller and larger families; and
- b) For the one (1) two-bedroom HOME-Assisted Unit, the rent shall not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals fifty percent (50%)

of the AMI as determined by HUD, with adjustments for number of bedrooms in the Unit and smaller and larger families; and

HOME rents are not required to be lower than the HOME rent limits for the Project in effect as of the Effective Date of this Agreement.

In accordance with 24 CFR 92.252(d), if the Tenant of a HOME-Assisted Unit pays for utilities and services (excluding telephone, television and Internet services), then the Qualifying Rent for such Unit shall be reduced by the maximum monthly allowance for utilities and services using the annual HUD Utility Schedule Model or other annual utility schedule as determined by the County.

1.16 “**TAX CREDIT REGULATORY AGREEMENT**” means that regulatory agreement required by the California Tax Credit Allocation Committee that will be recorded after completion of the Project and which restricts the Tenant income and rents for all Units in the Project, with the exception of the Project’s manager’s unit which shall not be so restricted.

1.17 “**TENANT**” means a household occupying a Unit.

1.18 “**TERM**” means the term of this Agreement, which shall commence on the Effective Date and terminate on the date that is six (6) months after the date that is twenty (20) years after the date of the issuance by the County of Santa Barbara Planning and Development Department, Building and Safety Division. of a certificate of occupancy for the Project.

1.19 “**UNIT**” means a housing unit in the Project.

1.20 “**VERY LOW-INCOME HOUSEHOLD**” means a household, as defined in 24 CFR 92.2, whose annual income does not exceed fifty percent (50%) of Area Median Income.

## **2. TERM AND COMPLIANCE**

**2.1 COMPLIANCE WITH COUNTY HOME LOAN DOCUMENTS.** The Owner’s actions with respect to the Property and the use of funds from the County HOME Loan shall at all times be in full conformity with all of the requirements of the County HOME Loan Documents, including, but not limited to, the insurance requirements contained therein.

**2.2 TERM OF AGREEMENT.** This Agreement shall remain in full force and effect for the entirety of the Term. The requirements of this Agreement shall apply throughout the Term without regard to the term of any loan or mortgage or any Transfer.

**2.3 COMPLIANCE WITH PROGRAM REQUIREMENTS.** At all times during the Term, the Owner shall comply with (i) all HOME program requirements, including, but not limited to, 24 CFR Part 92, and all HOME program policies and procedures in effect during the Term, (collectively, the “HOME Requirements”).

## **3. PROJECT OCCUPANCY AND RENTS**

**3.1 OCCUPANCY OF PROJECT.** A total of nine (9) Units in the Project shall be designated as HOME-Assisted Units. Each HOME-Assisted Unit must be occupied, or reserved for occupancy, by a Qualifying Household.

**3.2 HOME-ASSISTED UNITS.** At all times during the Term, the Owner shall limit rental of nine (9) HOME-Assisted Units to Qualifying Households at Qualifying Rents that do not exceed the maximum rental charges for each HOME-Assisted Unit as set forth in Sections 1.15 and 3.4 herein. The HOME-Assisted Units shall be designated as “floating” so the HOME-Assisted Units may change over time as long as the total number and type of HOME-Assisted Units in the Project remains constant.

All HOME-Assisted Units shall meet the following standards:

- A. The HOME-Assisted Units shall be similarly constructed and of comparable quality to all other Units in the Project, and shall be dispersed throughout the Project; and
- B. All Tenants of HOME-Assisted Units shall be provided with access to and enjoyment of all common areas and facilities of the Project on the same basis as Tenants of other Units.

**3.3 OTHER PROJECT UNITS.** The Units other than the HOME-Assisted Units, excluding any manager’s unit, must at all times during the Term comply with the rent and income restrictions and other provisions of the Tax Credit Regulatory Agreement. Non-compliance under the terms of the Tax Credit Regulatory Agreement shall constitute an Event of Default under the County HOME Loan Agreement and a default hereunder.

Owner must maintain and operate the Project in compliance with all applicable federal, state, and local requirements for access for disabled persons, including, but not limited to, Section 504 of the Rehabilitation Act of 1973 (29 USC 794), as amended, and with implementing regulations at 24 CFR, Part 8, and the Fair Housing Act (42 USC 3601-3619), implemented at 24 CFR Part 100, Subpart D. Within thirty (30) days after Borrower has completed the construction of the Project, Borrower shall submit to Lender documentation satisfactory to Lender evidencing compliance with all such requirements, including, but not limited to, a certification from the Project architect documenting the Unit numbers and type of accessibility features of no less than two (2) Units accessible for persons with mobility impairments and one (1) Unit accessible for persons with either hearing or visual impairments.

### **3.4 MAXIMUM RENTAL CHARGES.**

A. Maximum rental charges for each HOME-Assisted Unit shall not exceed the Qualifying Rent as described above in Section 1.15 and Section 3.2.

B. The Qualifying Rent for each HOME-Assisted Unit shall be set by the Lender at the time of initial occupancy of the Project. Annual increases in Qualifying Rents shall be calculated based on the change in Area Median Income published annually by HUD. Owner shall not increase Qualifying Rents charged to any Tenant occupying a HOME-Assisted Unit without the prior written approval of the County in each instance. Owner shall submit to the County a written request for approval of each such increase at least sixty (60) calendar days prior to the requested effective

date of such increase. Lender may approve such request if the increased Qualifying Rents would comply with all applicable HOME Requirements. Owner must deliver to Tenants of HOME-Assisted Units written notice of each such County-approved increase at least thirty (30) days prior to any increase in Qualifying Rents, consistent with State law.

**3.4.1 OCCUPANCY DEADLINES.** Owner shall ensure that each HOME-Assisted Unit is occupied by a Qualifying Household Tenant in accordance with the deadlines for occupancy set forth at 24 CFR 92.252. Each HOME-Assisted Unit shall be occupied by a Qualifying Household within six (6) months after the date of Project Completion (“Occupancy Deadline”), which Project Completion shall be evidenced by the recording of a notice of completion and Certificate(s) of Occupancy. In the event that any of the HOME-Assisted Units is not occupied by a Qualifying Household by the Occupancy Deadline (each, a “HOME-Assisted Unit Vacancy”), Owner shall (i) deliver to Lender, within five (5) days after the Occupancy Deadline, written notice of each such HOME-Assisted Unit Vacancy, (ii) submit to Lender, within ten (10) days after the Occupancy Deadline, a detailed record of Owner’s marketing efforts with respect to the Project and the HOME-Assisted Units, and (iii) comply with Lender’s reasonable requests for additional information pertaining to such marketing efforts.

Any HOME-Assisted Unit Vacancy on the date that is eleven (11) months after the date of the issuance of a Certificate of Occupancy shall constitute an Event of Default by Owner. On or before the date that is three (3) days after the last day of the eleventh (11<sup>th</sup>) month after the date of Project Completion, Owner shall provide to Lender written notice of each such HOME-Assisted Unit Vacancy and its marketing plan to Lender to evidence ongoing efforts to lease each of the HOME-Assisted Units to a Qualified Household. Within five (5) days of receipt of such notice of HOME-Assisted Unit Vacancy from Owner, Lender shall give written notice to Owner of such Event of Default in accordance with Section 6.2, below. Owner shall cure such Event of Default before the last day of the twelfth (12<sup>th</sup>) month after the date of Project Completion. Notwithstanding any other provision of this Agreement, or any provision of any other County HOME Loan Document or subordination agreement to the contrary, Owner shall immediately repay to Lender all County HOME Loan funds invested in Units that are not rented to Qualifying Households within 12 months of Project Completion.

**3.5 INCOME CERTIFICATION.** The Annual Income levels and other qualifications of applicants for HOME-Assisted Units shall be certified by Owner no earlier than six (6) months prior to the Qualifying Household’s expected occupancy of a HOME-Assisted Unit, and recertified annually thereafter by the Owner, in compliance with 24 CFR 92.203. Before an applicant occupies a HOME-Assisted Unit, the Owner shall verify that the Annual Income calculated in an Annual Income certification for such applicant is accurate by taking both of the following steps as a part of the verification process:

- (1) **Third Party Verification:** Owner shall contact all third parties referenced in such Qualifying Household’s Annual Income Certification (e.g., employer, Social Security Administration, public assistance agency) are contacted in writing to obtain written verification from each such third party of such Qualifying Household’s Annual Income; and
- (2) **Review of Documents:** Owner shall require each Qualifying Household to provide documents verifying such Qualifying Household’s Annual Income (e.g., pay stubs, tax

returns), and shall retain all such Qualifying Household Annual Income verification documents in the Project files.

B. Annual Income Recertification. At the time of each HOME-Assisted Unit lease renewal, or pursuant to an annual schedule adopted by the Owner, and in no event later than the one-year anniversary of the initial Annual Income verification for each HOME-Assisted Unit, and annually thereafter during the Term, Owner shall recertify the Annual Income of each Tenant occupying a HOME-Assisted Unit using the method described in Section 3.5.A, above. Such annual recertification shall be used in order to determine 30% of each Qualifying Household's tenant portion of rent payment for such HOME-Assisted Unit.

**3.6 INCREASES IN QUALIFYING HOUSEHOLD INCOMES.** In the event that recertification of the Annual Income of a Tenant who previously qualified as a Qualifying Household ("Previously-Qualifying Household") indicates that such Tenant's Annual Income exceeds the maximum designated for a Unit reserved for a Very Low-Income Household hereunder and pursuant to the HOME Requirements, the Owner may increase the amount of rent payable by such Tenant for such Unit only as permitted by HUD in accordance with regulations regarding "over-income tenants" at 24 CFR 92.252(i). If such Previously-Qualifying Household's income exceeds eighty percent (80%) of AMI, then the Unit occupied by such Previously-Qualifying Household no longer qualifies as a HOME-Assisted Unit, and the next available Unit of comparable size and amenities or larger must be designated as the replacement HOME-Assisted Unit.

#### **4. LEASING THE PROJECT**

4.1 **TENANT LEASES.** The Owner shall execute a written lease agreement ("Lease") with Tenant(s) of each HOME-Assisted Unit for a term of at least one year, unless the Owner and such Tenant(s) mutually agree to a shorter Lease term; provided, however, that no such Lease agreement may be for a term of less than thirty (30) days. Each Lease, and all changes thereto, must be approved in writing in advance by Lender.

A. The Owner shall include in each Lease for each HOME-Assisted Unit provisions which provide that a Qualifying Household occupying such HOME-Assisted Unit is subject to annual certification of such Qualifying Household's Annual Income, and that the tenancy of such Qualifying Household shall be terminated as soon as possible in accordance with State law should one or more of such Qualifying Household's members misrepresent any material fact regarding such Qualifying Household's qualification as a Low-Income Household. The Owner shall include in each Lease for each HOME-Assisted Unit provisions which prohibit Qualifying Household occupying such HOME-Assisted Unit from subleasing such HOME-Assisted Unit.

B. In addition to executing a Lease for each HOME-Assisted Unit, the Owner shall require that each Qualifying Household leasing a HOME-Assisted Unit execute a Declaration of Intent to Occupy, which shall require the Qualifying Household to occupy such HOME-Assisted Unit as the Qualifying Household's primary residence.



C. The Lease for each HOME-Assisted Unit shall not contain any of the prohibited provisions identified at 24 CFR §92.253(b), including, but not limited to, the following:

1. *Agreement to be sued.* Agreement by the Tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;

2. *Treatment of property.* Agreement by the Tenant that the Owner may take, hold or sell personal property of Qualifying Household members without notice to the Tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the Tenant concerning disposition of personal property remaining in the HOME-Assisted Unit after the Tenant has moved out of the HOME-Assisted Unit. The Owner may dispose of such personal property in accordance with State law;

3. *Excusing Owner from responsibility.* Agreement by the Tenant not to hold the Owner or the Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

4. *Waiver of notice.* Agreement of the Tenant that the Owner may institute a lawsuit without notice to the Tenant;

5. *Waiver of legal proceedings.* Agreement by the Tenant that the Owner may evict the Tenant or Qualifying Household members without instituting a civil court proceeding in which the Tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

6. *Waiver of a jury trial.* Agreement by the Tenant to waive any right to a trial by jury;

7. *Waiver of right to appeal court decision.* Agreement by the Tenant to waive the Tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the Lease;

8. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the Tenant to pay attorney's fees or other legal costs even if the Tenant wins in a court proceeding by the Owner against the Tenant. The Tenant, however, may be obligated to pay costs if the Tenant loses; and

9. *Mandatory support services.* Agreement by the Tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

D. Owner shall not terminate the tenancy or refuse to renew the Lease of a Tenant of a HOME-Assisted Unit except for serious or repeated violations of the terms and conditions of such Lease, for violation of applicable Federal, State, or local law, or for other good cause approved by Lender. To terminate or refuse to renew such tenancy, the Owner shall serve written notice upon such Tenant specifying the grounds for such action at least thirty (30) days prior to termination of such tenancy.

E. Owner shall comply with all requirements of the Violence Against Women Act ("VAWA") set forth in 24 CFR part 5, subpart L. Owner shall provide the notice and certification form described in 24 CFR 5.2005(a) to an applicant for a HOME-Assisted Unit at the time such applicant is offered a lease for a HOME-Assisted Unit, or denied admission to a HOME-Assisted Unit based on the Owner's tenant selection policies and criteria. Owner shall further provide the

notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HOME-Assisted Unit. If a family living in a HOME-Assisted Unit separates under 24 CFR 5.2009(a), the remaining Tenant(s) may remain in the Unit. All Leases for HOME-Assisted Units must include a VAWA lease term/addendum to incorporate all requirements that apply to the Owner or Lease under 24 CFR part 5, subpart L, and 24 CFR 92.359, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). The VAWA lease term/addendum must also provide that the Tenant may terminate the Lease without penalty if it is determined that the Tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). Each Lease must require the Owner to notify the participating jurisdiction before the Owner bifurcates the Lease or provides notification of eviction to the Tenant(s) subject to such Lease. Owner shall comply with all other VAWA requirements applicable to the HOME program not specified herein.

F. Owner and Lender shall work together to comply with the requirements of the Coordinated Entry System under the Continuum of Care (“CoC”) program, as set forth at 24 CFR Part 578, PIH Notice 2013-15 and other guidance from HUD on CoC and PHA collaboration.

**4.2 TENANT SELECTION.** Before leasing any Unit in the Project, the Owner must provide to Lender for Lender’s review and approval the Owner’s written tenant selection plan (“Tenant Selection Plan”). Tenant selection must, at a minimum, meet the requirements for tenant selection set out in 24 C.F.R. 92.253(d) and any modifications thereto. All changes to the Tenant Selection Plan require prior written approval from Lender.

**4.3 SECTION 8 CERTIFICATE HOLDERS.** The Owner will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Units by such prospective Tenants.

**4.4 CONDOMINIUM CONVERSION.** The Owner shall not convert Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights in the Property during the Term.

**4.5 NONDISCRIMINATION.** The Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Units on the basis of race, color, ancestry, national origin, religion, sex, gender, gender identity or expression, sexual preference, age, marital status, family status, source of income, military or veteran status, physical or mental disability, medical condition, genetic information, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any basis prohibited by law. The Owner shall include a statement in all advertisements, notices and signs for the availability of Units for rent to the effect that the Owner is an Equal Housing Opportunity Provider.

**4.6 MARKETING PLAN.** Prior to occupancy, Owner shall submit to the Lender for approval its plan for marketing the Units, including information on affirmative marketing efforts and compliance with fair housing laws and the Lender's affirmative fair marketing guidelines. Upon receipt of the marketing plan, the Lender shall promptly review the marketing plan and shall approve or disapprove it within thirty (30) days after submission. If the marketing plan is not approved, Lender shall specify its reasons for disapproval. The Owner shall submit a revised marketing plan within thirty (30) days of Lender's notice of disapproval. Notwithstanding the above, the Marketing Plan will be deemed approved by the County upon either: a) approval of the Marketing Plan by the California Department of Housing and Community Development ("State HCD"); or b) determination by Lender that the Marketing Plan complies with 24 CFR 92.351 and the HOME Requirements. If the Marketing Plan remains unapproved pursuant to the terms of the preceding sentence, the County may, in its discretion, provide Borrower written notice of an Event of Default under Sections 8.1.D, 8.1.E, and/or 8.1.I of the County HOME Loan Agreement, and thereafter Borrower shall have 30 days to cure; or such shorter cure period as may be specified by State HCD.

## **5. PROPERTY MANAGEMENT**

**5.1 MANAGEMENT RESPONSIBILITIES.** The Owner shall be solely responsible for management of the Project, including all management functions with respect to the Project, including without limitation the selection of Tenants, certification and recertification of Qualifying Household size and Annual Income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Owner's Property Manager for the Project is Cabrillo Economic Development Corporation, a California nonprofit public benefit corporation. The Owner must not remove or replace the Property Manager without the prior written consent of the Lender in each instance, which consent shall not be unreasonably withheld.

**5.2 APPROVAL OF MANAGEMENT POLICIES.** The Owner shall submit its written management policies with respect to the Project ("Management Policies") to the Lender for Lender's review and approval as a condition precedent prior to Lender disbursement to Owner of any of the County HOME Loan funds. Owner shall amend the Management Policies in as necessary to ensure that the Management Policies comply with the provisions of this Agreement, the HOME Requirements, as may be amended from time to time, and the requirements of all lenders providing financing for the Project; provided, however, that in the event of any conflict between the HOME Requirements and the requirements of any lender providing financing for the Project, the HOME Requirements shall prevail and control, and the Management Policies shall comply with the HOME Requirements.

**5.3 INSPECTION AND RECORDS.** The Owner shall maintain records which clearly document the Owner's performance of its obligations under this Agreement. The Owner shall submit all requested records to the Lender within ten (10) business days of any request by Lender for such records. The Owner shall permit the Lender to enter and inspect the Property for compliance with Owner's obligations under this Agreement at all reasonable times upon forty-eight (48) hours' advance notice of such visit by the Lender to the Owner or the Owner's Property

Manager. Owner must include provisions in each Tenant lease that allow for County inspections of the Units.

**5.4 COMPLIANCE MONITORING.** The Owner shall, at all times during the Term, operate the Property and the Project in full compliance with this Agreement and the HOME Requirements, including, but not limited to, HOME Program regulations as set forth in 24 CFR Part 92 in effect as of the Effective Date, and as may be enacted or amended from time to time, and shall remain in compliance therewith throughout the entirety of the Term. The Owner shall permit the Lender to conduct compliance monitoring, including performing on-site records reviews and inspections of the Property, as required by law, the HOME Requirements, and/or as reasonably requested by Lender.

**5.5 ANNUAL REPORT.** On or before May 31<sup>st</sup> of each year during the Term following recordation of a notice of completion issued for the Project, the Owner shall submit to the Lender a report, in a form approved by Lender, for the immediately preceding calendar year, containing all information requested by Lender so as to allow the Lender to determine the Owner's compliance with this Agreement ("Annual Report"). The Annual Report shall include, at a minimum: (i) an Annual Financial Statement, as defined in the County HOME Loan Agreement, (ii) a report on the occupancy of the Project, (iii) a report on the physical condition of the Project, (iv) a report on the general management of the Project, (v) for each HOME-Assisted Unit, the rent, Annual Income, and household size of the Tenant household in occupancy of such Unit, as well as the date such tenancy commenced, and (vi) all other information requested by Lender.

Within thirty (30) days after receipt of a written request from Lender, Owner shall submit all information and completed forms requested by the Lender in connection with reporting requirements of HUD, the State of California, or the Lender. The Lender shall have the right to examine and make copies of all books, records and other documents and data in Owner's possession, custody, or control which pertain to the Project, Property, and/or any Unit to determine compliance with this Agreement.

**5.6 FEES, TAXES, AND OTHER LEVIES.** The Owner shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency.

**5.7 PROPERTY TAX EXEMPTION.** The Owner shall not apply for a property tax exemption for the Property under any provision of law other than California Revenue and Taxation Code Section 214(g) without the Lender's prior written consent in each instance. Lender acknowledges that Owner will be applying for a property tax exemption under California Revenue and Taxation Code Section 214(g) for the Property, and hereby provides its consent for such property tax exemption application.

**5.8 MAINTENANCE OF EXISTING STRUCTURES.** Owner shall construct and maintain all buildings on the Property in good condition, in good repair, ordinary wear and tear excepted, and in a decent, safe, sanitary, habitable and tenantable condition. All Units in the Project must meet the standards set forth in 24 CFR 92.251(f)(2) at all times during the Term of this Agreement. In the event that Lender establishes property standards in accordance with 24 CFR 92.251(f)(1), and determines in its sole discretion that such standards are applicable to the Project,

Lender shall send written notice of such determination to Owner. Upon Owner's receipt of such written notice, the property standards established by Lender pursuant to 24 CFR 92.251(f)(1) shall apply to all Units in the Project throughout the Term of this Agreement. Owner shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitudes as they pertain to improvements, alterations, maintenance or demolition on the Property. Owner shall be solely responsible for maintenance of the Property.

## **6. GENERAL PROVISIONS**

**6.1 SUBORDINATION.** This Agreement shall be senior to all, and shall not be subordinate to any, deeds of trust, notes, agreements, and other obligations of Lender concerning the Property, and may be subordinated in priority only as to liens and encumbrances otherwise approved in advance in writing by the Lender in each instance, in Lender's sole and absolute discretion. Lender hereby consents to the subordination of this Agreement to the documents evidencing and securing that certain construction loan to be made by Banner Bank, in the approximate amount of Twenty-Four Million, Seven Hundred Fifty-One Thousand, Seven Hundred and Eight Dollars (\$24,751,708) for purposes of constructing the Project, which construction loan will convert to a permanent loan in the approximate amount of One Million Seven Hundred Seventeen Thousand, Four Hundred Dollars (\$1,717,400) to that certain construction and permanent loan made by the California Department of Housing and Community Development ("HCD") to Owner in the amount of Three Million Nine Hundred Sixty Thousand Dollars (\$3,960,000), through the Housing for a Healthy California Program (HHC), and to that certain permanent loan to be made by HCD to Owner in the amount of Two Million Five Hundred Fifty One Thousand Four Hundred Forty-Five Dollars (\$2,551,445), through the Veterans Housing and Homeless Prevention Program (VHHP).

**2. DEFAULT AND REMEDIES** In the event of any breach of any provision(s) of this Agreement by the Owner, the Lender shall provide written notice to the Owner of such breach; provided, however, that if Owner has actual or constructive knowledge of such breach and has not received written notice of such breach from Lender, Owner shall immediately provide written notice to Lender of such breach. If Lender determines that such breach is capable of cure, Lender shall provide written notice to Owner stating that such breach is capable of cure, the actions required to effect such a cure, and the date by which such cure must be completed ("Opportunity to Cure Notice"), provided that the Owner diligently undertakes to cure such breach in accordance with such Opportunity to Cure Notice. In the event of a monetary breach, Owner shall have a period of seven (7) days after such Default Notice within which to cure such monetary breach prior to exercise of remedies by the Lender hereunder, or such longer period of time as may be specified in the applicable Opportunity to Cure Notice. If the event of a non-monetary breach, if such breach is reasonably capable of being cured within thirty (30) days, as determined by the Lender in its reasonable discretion, Owner shall have thirty (30) days from the date of the applicable Opportunity to Cure Notice in which to effect a cure prior to exercise of remedies by the Lender, or such longer period of time as may be specified in such Opportunity to Cure Notice. If the non-monetary breach is such that it is not reasonably capable of being cured within thirty (30) days, as determined by the Lender in its reasonable discretion, or such longer period if so specified in the applicable Opportunity to Cure Notice, and if Owner (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible,

then Owner shall have such additional time as is determined by the Lender, in Lender's reasonable discretion, to be reasonably necessary to cure such breach prior to exercise of Lender's remedies. Notwithstanding the foregoing, in no event shall the Lender be precluded from exercising remedies in the event of any of the following: (i) the breach is not cured within thirty (30) days after the date of such Opportunity to Cure Notice, or such longer period of time as may be specified by Lender in writing duly executed by Lender with respect to such breach during such 30-day period; or (ii) Lender's security becomes or is about to become materially jeopardized by any failure to cure a default. Lender shall accept a cure of such breach by the Owner's limited partner on the same basis as Lender would accept a cure of such breach by the Owner. If the Owner fails to perform a timely cure of the specified breach in accordance with such Opportunity to Cure Notice, or immediately upon the occurrence of a breach that the Lender determines to be incapable of cure, the Lender may proceed with any or all of the following remedies:

A. Bring an action in equitable relief seeking the specific performance by the Owner of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;

B. Enter upon, take possession of, and manage the Property and the Project, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Property;

C. After notice provided for herein, make such repairs or replacements to the Property and Project as are necessary and provide for payment thereof;

D. Pursue any other remedy provided under the County HOME Loan Documents or allowed at law or in equity.

**6.3 EVENT OF DEFAULT.** In the event that, at any time during the Term, any of Owner or the Project are not in compliance with any of the HOME Requirements or any provision of this Agreement, subject to applicable notice and cure periods as provided herein, such failure shall constitute an Event of Default hereunder and under the County HOME Loan Agreement. In the event that Owner or the Project fails to comply with any of the provisions of the Tax Credit Regulatory Agreement, such failure shall constitute an Event of Default hereunder and under the County HOME Loan Agreement.

**6.4 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No official elected or appointed, officer, director, employee, or agent of the Lender shall be personally liable to the Owner for any obligation created under this Agreement.

**6.5 INSURANCE AND INDEMNITY.** Owner shall at all times comply with all of the insurance and indemnification provisions set forth in Exhibit B, attached hereto and incorporated herein by this reference. The indemnification provided by this Agreement shall be a continuing right to indemnification and shall survive any Transfer of this Agreement and the expiration or termination of this Agreement.

**6.6 GOVERNING LAW.** This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

**6.7 AGREEMENT CONTROLS.** In the event of any conflict or inconsistency between any provision of this Agreement and any provision contained in any of the other County HOME Loan Documents, the provisions of this Agreement shall control and prevail.

**6.8 TIME.** Time is of the essence in this Agreement.

**6.9 CONSENTS AND APPROVALS.** Any consent or approval of the Lender required under this Agreement shall not be unreasonably withheld. No Lender consent or approval shall be effective unless in writing and executed by a duly authorized representative of the Lender.

**6.10 NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications to a Party hereunder shall be sufficiently given if, and shall not be deemed given unless, dispatched by U.S. Postal Service registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to such Party at the address set forth for such Party as follows, or to such other address as such Party may from time to time designate in writing delivered to the other Party in accordance with this Section 6.10:

**Lender:** County of Santa Barbara  
Housing and Community Development  
123 E Anapamu Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
Attn: Deputy Director

**With copy to:** Office of County Counsel  
County of Santa Barbara  
105 E Anapamu Street, Room 201  
Santa Barbara, CA 93101

**Borrower's Limited Partner:** NEF FRE Affordable Housing Fund II LP  
c/o National Equity Fund, Inc.  
10 S. Riverside Plaza, Suite 1700  
Chicago, IL 60606  
Attn: General Counsel

**With copy to:** Holland & Knight LLP  
10 Saint James Avenue  
Boston, MA 02116  
Attn: Sean B. Leonard

:

**Owner:** The Village Senior LP  
702 Country Square Drive, Suite #200  
Ventura, CA 93003  
Attention: Chief Executive Officer

With copy to: Goldfarb and Lipman  
1300 Clay Street, 11th Floor  
Oakland, CA 94612  
Attn: Lynn Hutchins, Esq.

**6.11 BINDING UPON SUCCESSORS.** This Agreement shall be recorded in the official records of the Santa Barbara County Clerk-Recorder's Office, and all provisions of this Agreement shall be binding upon and inure to the benefit of the permitted successors-in-interest, permitted transferees, and permitted assigns of the Owner, as permitted in accordance with the County HOME Loan Documents, and as expressly approved in advance in writing by the Lender in each instance, and shall run with the land with respect to the Property for the full Term of this Agreement, regardless of any assignment, payment, prepayment, expiration, or extinguishment of the County HOME Loan or County HOME Loan Promissory Note, any reconveyance of the County HOME Loan Deed of Trust, or any conveyance or Transfer of the Property or any portion thereof or any interest therein; provided, however, that Owner shall not shall not assign or otherwise transfer, directly or indirectly, whether by operation of law or otherwise ("Transfer"), this Agreement or the Property, or any of Owner's interest herein or therein, or any of Owner's rights or obligations hereunder, without the prior written consent of Lender in each instance except as otherwise permitted in the County HOME Loan Agreement. Any purported Transfer in violation of the foregoing provisions of this Section 6.11 shall be void *ab initio*.

**6.12 RELATIONSHIP OF PARTIES.** The relationship of the Owner and the Lender during the Term of this Agreement is solely that of lender and borrower and shall not be construed as a joint venture, equity venture, or partnership.

**6.13 WAIVER.** No waiver, consent, or approval by the Lender with respect to this Agreement shall be effective unless in writing executed by a duly authorized representative of Lender. No waiver shall be implied from any delay or failure by the Lender to take action on any breach or default of the Owner, or to pursue any remedy allowed under this Agreement or any of the other County HOME Loan Documents, or under applicable law. No extension of time granted by Lender to the Owner to perform an instance of an obligation under this Agreement shall operate as a waiver or release with respect to any other instance or obligation under this Agreement or any of the other County HOME Loan Documents. No consent by the Lender to an act or omission by the Owner shall be construed to constitute consent by Lender to any other or subsequent act or omission, or to waive the requirement that all waivers by Lender hereunder must be in writing executed by a duly authorized representative of Lender.



**6.14 AMENDMENTS AND MODIFICATIONS.** No amendment to or modification of this Agreement shall be effective unless in writing and duly executed by both the Owner and the Lender.

**6.15 SEVERABILITY.** Each provision of this Agreement is intended to be severable in the event that any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in which case, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

*Signatures appear on following page. No further text appears here.*

IN WITNESS WHEREOF, County and Borrower have caused this County HOME Loan Agreement to be executed by their respective duly authorized representatives, as set forth below, effective as of the first date fully executed by all of the parties hereto ("Effective Date").

THE VILLAGE SENIOR LP,  
a California limited partnership

By: The Village Senior LLC,  
a California limited liability company,  
its general partner

By: Cabrillo Economic Development Corporation,  
a California nonprofit public benefit corporation,  
its sole managing member

By: \_\_\_\_\_  
Victoria J. Brady  
Chief Financial Officer

*County signatures follow*

IN WITNESS WHEREOF, County and Borrower have caused this County HOME Loan Agreement to be executed by their respective duly authorized representatives, as set forth below, effective as of the Effective Date.

**APPROVED AS TO ACCOUNTING FORM:**  
BETSY M. SCHAFFER, CPA, CPFO  
AUDITOR-CONTROLLER

**COUNTY:**  
County of Santa Barbara, a political  
subdivision of the State of California

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

By: \_\_\_\_\_  
Steve Lavagnino, Board Chair

**APPROVED AS TO FORM:**  
RACHEL VAN MULLEM  
COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy County Counsel

**APPROVED AS TO FORM:**  
RISK MANAGEMENT

By: \_\_\_\_\_  
Gregory Milligan ARM, AIC

**APPROVED BY DEPARTMENT:**  
COMMUNITY SERVICES DEPARTMENT

By: \_\_\_\_\_  
Jesús Armas, Director

**ACKNOWLEDGMENT**

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 Santa Barbara

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## ACKNOWLEDGMENT

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WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Exhibit A

Legal Description of the Property

Real property in the City of Buellton, County of Santa Barbara, State of California, described as follows:

LOT 1 OF TRACT 31009 IN THE CITY OF BUELLTON, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 182, PAGES 9 THROUGH 13 INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES, INCLUDING NATURAL GAS, IN, ON AND UNDER THAT PORTION OF SAID LAND, AS EXCEPTED IN THE DEED FROM PAUL NIELSEN, ET UX. TO HAROLD A. MATHIESEN, ET UX., RECORDED SEPTEMBER 19, 1958 AS INSTRUMENT NO. 22849 IN BOOK 1556, PAGE 152 OF OFFICIAL RECORDS.

APN: 137-200-087

## Exhibit B

### Indemnification and Insurance Provisions (For Construction Contracts)

#### INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is caused by the active negligence, sole negligence, or willful misconduct of the COUNTY.

#### NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

#### INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope and Limit of Insurance  
Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
2. **Automobile Liability:** Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$2,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Contractor's Pollution Legal Liability and/or Asbestos Legal Liability:** (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR'S insurance at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR'S insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – **CONTRACTOR hereby agrees to waive rights of subrogation which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. This provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. At the option of the COUNTY, either: the CONTRACTOR shall cause the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the COUNTY, its officers, officials, employees, agents and volunteers; or the CONTRACTOR shall provide a financial guarantee satisfactory to the COUNTY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR'S obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required



insurance policies, including endorsements required by these specifications, at any time.

8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
  - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

**EXHIBIT F**

**STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS**

**EXHIBIT G**  
**MANAGEMENT PLAN**

**EXHIBIT H**  
**[SAMPLE ESPR]**

**EXHIBIT I**

**MINORITY AND WOMEN OWNED BUSINESS (MBE/WBE) REPORT DOCUMENT**