

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 7th day of November, 2023 (“Effective Date”) by and between the County of Santa Barbara, a political subdivision of the State of California (the “Lender” or “County”), and Buellton Garden Apartments, L.P., 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 10 and 12 McMurray 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 eighty-nine (89) 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. Lender has been awarded an annual allocation of Permanent Local Housing Allocation (“PLHA”) Program funds (“PLHA Funds”) from the State of California (the “State”) pursuant to Senate Bill 2, effective January 1, 2018, which, in part, created the PLHA Program as an ongoing permanent source of funding available to eligible counties and cities. PLHA Funds are derived from certain real estate transaction documentation recordation fees and allocated to eligible counties and cities formulaically.

D. Concurrently herewith, Lender is lender to Owner a loan in the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000), comprised of HOME Funds and PLHA Funds, to provide financing for the Project (the “County HOME Loan”), as evidenced by that certain County HOME Loan Promissory Note of even date herewith executed by Borrower in favor of Lender in the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000) (“County HOME Loan Note”) and that certain County HOME Loan Agreement of even date herewith by and between Lender and Borrower (“County HOME Loan Agreement”).

E. As further consideration for the County HOME Loan and to further the interests of the Lender, 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 This section intentionally left blank.

1.4 “**COUNTY HOME LOAN**” means the loan of HOME Funds and PLHA Funds in the maximum aggregate amount of One Million, Five Hundred Thousand Dollars (\$1,500,000) 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 Note.

1.5 “**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.

1.6 “**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, and the Lender, as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust.

1.7 **“COUNTY HOME LOAN DOCUMENTS”** means, collectively, the County HOME Loan Agreement, the County HOME Loan 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.

1.8 **“COUNTY HOME LOAN NOTE”** means the promissory note executed by the Owner concurrently herewith in favor of the Lender in the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000) evidencing the County HOME Loan, which is secured by the County HOME Loan Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory note.

1.9 **“HOME-ASSISTED UNIT”** means any of the six (6) 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.

1.10 **“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.

1.11 **“LENDER”** is the County of Santa Barbara, a political subdivision of the State of California, and its authorized representatives, officers, officials, directors, employees, and agents.

1.12 This section intentionally left blank.

1.13 **“OWNER”** means Buellton Garden Apartments, L.P., a California limited partnership.

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

1.15 **“PROPERTY”** means that certain real property and improvements thereon located at 10 and 12 McMurray Road in 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.

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

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

- a) For each of the two 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 each of the two two-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
- c) For each of the two three-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.

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.

1.18 **“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.

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

1.20 **“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 fifty-five (55) years after the date of the issuance by the City of Buellton Building Official of a certificate of occupancy for the Project.

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

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

## **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. Upon termination of this Agreement, Owner shall be required to comply with the terms of the Tax Credit Regulatory Agreement to be recorded after completion of the Project for the duration of the County HOME Loan.

**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, and (ii) all PLHA program requirements, including, but not limited to, the PLHA Statutes, Guidelines, Notice of Funding Availability, that certain Standard Agreement (20-PLHA-15194) by and between the State and the County, and the housing first practices described in California Code of Regulations, title 25, section 8409(b)(1)-(6) (all of the requirements referenced in this Section 2.3., collectively, the “HOME Requirements”).

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

**3.1 OCCUPANCY OF PROJECT.** A total of six (6) 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 six (6) 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 1.17 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 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.

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 defined above in Section 1.17 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 HOME-Assisted Unit is not occupied by a Qualifying Household by the Occupancy Deadline (“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 (11th) 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 occupy the HOME-Assisted Units. 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 Affordability Period, 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. 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 shall submit its proposed Property Manager for the Project to Lender for Lender's approval. Lender hereby preapproves the Duncan Group, a California nonprofit public benefit corporation, as the Property Manager for the Project. 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. Owner shall amend the Management Policies in any way 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 the Lender's request. 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 all Tenant leases 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 Program regulations ss 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 review and inspections of the Property, as required by regulation, the HOME Requirements, and/or as reasonably requested by Lender.

**5.5 ANNUAL REPORT.** On or before April 1<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 Section 1.2 of 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, Owner shall submit all information and completed forms requested by the Lender in 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, 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 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, and shall not be subordinate, to all 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 as follows: (i) to that certain State HCD Project loan made by the California Department of Housing and Community Development to Owner in the amount of \$19,155,000 through the Multi-family Housing Program (MHP), and a loan made by State HCD in the amount of \$5,260,770, provided through the Joe Serna Farmworker Housing Program, and (ii) to the documents evidencing and securing that certain construction loan to be made by Wells Fargo Bank, National Association, a national banking association ("Senior Lender"), in an amount not to exceed \$55,000,000 for purposes of constructing the Project, which construction loan will convert to a permanent loan provided by California Community Reinvestment Corporation, a California nonprofit public benefit corporation ("CCRC") in an amount not to exceed \$5,000,000.

**6.2 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 Sections 8.1.D, 8.1.E, and/or 8.1.I of 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 Sections 8.1.D, 8.1.E, 8.1.I and/or 8.1.J of 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 during the Term, comply with all of the insurance and indemnification provisions set forth in Exhibit B, attached hereto and incorporated herein by this reference.

**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 between any provision of this Agreement and any provision contained in any of the other County HOME Loan Documents, the terms 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 the 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

**Owner:** Buellton Garden Apartments, L.P.  
1060 Kendall Road  
San Luis Obispo, California 93401  
Attention: Kenneth Trigueiro, CEO and President

With copy to: Wells Fargo Affordable Housing Corp.  
550 S. Tryon Street  
23<sup>rd</sup> Floor, MAC D1086-239  
Charlotte, NC 28202-4200  
Attention: Director of Tax Credit Asset Management

With copy to: Gubb & Barshay LLP  
235 Montgomery Street, Suite 1110  
San Francisco, CA. 94104  
Attn: Erica Williams Orcharton, Esq.

With copy to: Wells Fargo Bank, National Association  
550 S. Tryon Street  
23rd Floor, MAC# D1086-4200  
Charlotte, North Carolina 28202-4200  
Attention: Manager, CLI Deal Management  
Loan No. 1021607

With copy to: Wells Fargo Bank, National Association  
Community Lending and Investment  
MAC# E2064-092  
333 S Grand Avenue, 9th Floor  
Los Angeles, CA 90071-1504  
Attention: Aaron Meyer  
Loan No. 1021607

With copy to: California Community Reinvestment Corporation  
100 W. Broadway  
Suite 1000  
Glendale, California 91210  
Attention: President

With copy to: Sheppard Mullin Richter & Hampton, LLP  
650 Town Center Drive, 10th Floor  
Costa Mesa, CA 92626  
Attention: Ken Fox, 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 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 (except as permitted in the County HOME Loan Documents), or any of Owner's rights or obligations hereunder, without the prior written consent of Lender in each instance. 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 Agreement to be executed by their respective duly authorized officers.

**ATTEST:**

Mona Miyasato  
Clerk of the Board

By: \_\_\_\_\_  
Deputy Clerk of the Board

**COUNTY:**

County of Santa Barbara,  
a political subdivision of the State of California

By: \_\_\_\_\_  
DAS WILLIAMS  
Board Chair

**APPROVED AS TO ACCOUNTING FORM:**

BESTY M. SCHAFFER, CPA, CPFO  
AUDITOR-CONTROLLER

By: DocuSigned by:  
*Robert Eis*  
D25019E2AF094BE...  
Deputy

**BORROWER**

**BUELLTON GARDEN APARTMENTS, L.P.,**  
a California limited partnership

By: Buellton Garden Apartments LLC, a California Limited Liability Company, its managing general partner

**APPROVED AS TO FORM**

RACHEL VAN MULLEM  
COUNTY COUNSEL

By: DocuSigned by:  
*Lauren Wideman*  
8F464D822C84468...  
Deputy County Counsel

By: People’s Self-Help Housing Corporation, a California nonprofit public benefit corporation, its sole member and manager

By: \_\_\_\_\_  
Kenneth Trigueiro. CEO and President

**APPROVED AS TO FORM: RISK MANAGEMENT**

By: DocuSigned by:  
*Gregory Milligan*  
DC240AC1E64247D...  
Gregory Milligan, ARM, AIC  
Risk Manager

IN WITNESS WHEREOF, County and Borrower have caused this Agreement to be executed by their respective duly authorized officers.

**ATTEST:**

Mona Miyasato  
Clerk of the Board

By: \_\_\_\_\_  
Deputy Clerk of the Board

**COUNTY:**

County of Santa Barbara,  
a political subdivision of the State of California

By: \_\_\_\_\_  
DAS WILLIAMS  
Board Chair

**APPROVED AS TO ACCOUNTING  
FORM:**

BESTY M. SCHAFFER, CPA, CPFO  
AUDITOR-CONTROLLER

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

**BORROWER**

**BUELLTON GARDEN APARTMENTS, L.P.,**  
a California limited partnership

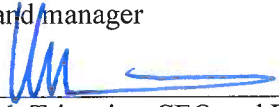
By: Buellton Garden Apartments LLC, a California  
Limited Liability Company, its managing general  
partner

**APPROVED AS TO FORM**

RACHEL VAN MULLEM  
COUNTY COUNSEL

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

By: People's Self-Help Housing Corporation, a  
California nonprofit public benefit corporation, its  
sole member and manager

By:   
Kenneth Trigueiro. CEO and President

**APPROVED AS TO FORM:  
RISK MANAGEMENT**

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

**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**

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:

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  
Standard Indemnification and Insurance Provisions

