

**COUNTY HOME LOAN AGREEMENT
(\$3,173,437)**

Between

County of Santa Barbara

and

The Residences at Depot Street, L.P.

(201 & 205 N. Depot Street)



HOME Investment Partnerships Program
Catalog of Federal Domestic Assistance Number 14.239

COUNTY HOME LOAN AGREEMENT
(201 & 205 N. DEPOT STREET)

This agreement ("County HOME Loan Agreement") is made as of this ____ day of August, 2018, by and between the County of Santa Barbara, political subdivision of the State of California ("Lender"), and The Residences at Depot Street, L.P., a California limited partnership ("Borrower").

RECITALS

A. Lender wishes to promote the development of affordable rental housing in neighborhoods in need of revitalization 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 2015-2020 Consolidated Plan.

C. Borrower intends to construct an affordable rental housing project consisting of eighty (80) units, including two (2) managers' units (the "Project"). The Project will be targeted to households with incomes up to sixty percent (60%) of the Area Median Income (AMI) as determined by HUD and published annually. The two designated manager's units will not be subject to income and rent limits. The Project will include the following common amenities: on-site management, meeting rooms, courtyard, laundry facilities, playground, basketball court, computer room, elevators and on-site social services. The Project will be located at 201 & 205 N. Depot Street in the City of Santa Maria, California, as more particularly described in Exhibit A ("Legal Description").

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. Lender has an additional amount of funds set aside from fees paid by developers in-lieu of including affordable units in for-sale developments, as required by the Santa Barbara County Code, which funds have been placed in a trust for the purpose of providing affordable housing within Santa Barbara County ("In-Lieu Funds").

F. Borrower wishes to borrow from Lender and Lender wishes to extend to Borrower a loan of One Million Nine Hundred Ninety-Four Thousand Four Hundred Fifty-Nine Dollars (\$1,994,459) in HOME Funds, and One Million One Hundred Seventy-Eight Thousand Nine Hundred Seventy-Eight Dollars (\$1,178,978) in In-Lieu Funds, for a total of Three Million One Hundred Seventy-Three Thousand Four Hundred Thirty-Seven Dollars (\$3,173,437) to pay for certain development costs of the Project (the "County HOME Loan"). The terms of the County HOME Loan are set out in this County HOME Loan Agreement.

G. Pursuant to the FY 2017-18 Annual Action Plan Substantial Amendment approved by the Board of Supervisors of the County of Santa Barbara ("Board") on _____, 2018, HOME and In-Lieu funding has been designated for the Project, and also on _____, 2018, the Board approved the County HOME Loan and authorized the Chair of the Board to execute the County HOME Loan Agreement and related documents.

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

I. Borrower will execute a document concurrently herewith restricting rents and tenant income titled County HOME Loan Regulatory Agreement and Declaration of Restrictive Covenants ("County HOME Loan Regulatory Agreement") affecting eleven (11) of the seventy-eight (78) affordable housing units that will be designated by Borrower as the HOME-Assisted Units, and seven (7) of the seventy-eight (78) affordable housing units that will be designated by Borrower as County-Assisted Units assisted by In-Lieu Funds, for a total of eighteen (18) HOME- and County-Assisted Units.

J. The County HOME Loan will be evidenced by a promissory note in the amount of Three Million One Hundred Seventy-Three Thousand Four Hundred Thirty-Seven Dollars (\$3,173,437) executed by Borrower in favor of Lender, and the County HOME Loan and promissory note will be secured by a deed of trust.

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 meanings and content set forth in this section wherever used in this County HOME Loan Agreement, attached Exhibits, or documents incorporated into this County HOME Loan Agreement by reference.

1.1 **"AFFIRMATIVE MARKETING"** means actions taken to provide information and otherwise attract eligible persons in the housing market area to the available housing that are not likely to apply 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, prepared at Borrower's expense, by an independent certified accountant acceptable to Lender, which shall be provided as part of Borrower's annual reporting to Lender, in conformance with Section 2.9 and 5.12 below.

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

1.4 **"BORROWER"** means The Residences at Depot Street, L.P., a California limited partnership, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

1.5 **"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 uses of funds for Project development costs, costs to be paid with HOME Funds in conformance with 24 CFR 92.206, and a pro forma budget, and costs to be paid with In-Lieu Funds.

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

1.7 **“COUNTY-ASSISTED UNIT”** means any one of the seven (7) rental housing units on the Property designated by Borrower as the County-Assisted Unit(s) subject to the requirements of the County HOME Loan Regulatory Agreement (Exhibit E), which is attached hereto and hereby incorporated into this County HOME Loan Agreement by this reference. Notwithstanding the above, a County-Assisted Unit may not also be a “HOME-Assisted Unit” as defined herein in Section 1.18.

1.8 **“COUNTY HOME LOAN”** means the loan of HOME Funds and In-Lieu Funds in the total amount of Three Million One Hundred Seventy-Three Thousand Four Hundred Thirty-Seven Dollars (\$3,173,437) as provided in this County HOME Loan Agreement to finance certain development costs of the Project.

1.9 **“COUNTY HOME LOAN AGREEMENT”** means this loan agreement entered into between Lender and Borrower.

1.10 **“COUNTY HOME LOAN DEED OF TRUST”** means that deed of trust, assignment of rents, and security agreement placed on the Property and the improvements to be constructed thereon as security for the County HOME Loan by Borrower as trustor with Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said County HOME Loan Deed of Trust, which is attached hereto as Exhibit C and hereby incorporated into this County HOME Loan Agreement by this reference. The terms of the County HOME Loan Deed of Trust are incorporated into this County HOME Loan Agreement.

1.11 **“COUNTY HOME LOAN DOCUMENTS”** are collectively the 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 to these documents.

1.12 **“COUNTY HOME LOAN NOTE”** means the promissory note executed by Borrower in favor of Lender in the amount of Three Million One Hundred Seventy-Three Thousand Four Hundred Thirty-Seven Dollars (\$3,173,437), to evidence the County HOME Loan as well as any amendments to, modifications of, or restatements of said promissory note, substantially in the form attached hereto as Exhibit D, which is attached hereto and hereby incorporated into this County HOME Loan Agreement by this reference.

1.13 **“COUNTY HOME LOAN REGULATORY AGREEMENT”** means the agreement executed by Borrower and Lender, attached as Exhibit E, and recorded against the Property which regulates the use of the eleven (11) HOME-Assisted Units and seven (7) County-Assisted Units in the Project.

1.14 **“COUNTY MONITORING FEE”** (Fee) means a fee, in the amount of \$2,500 increasing annually based on increases in the consumer price index (CPI) which shall be paid to the County by the Project. The Fee shall be paid to the County annually ninety (90) days following each fiscal year of the Project. The initial Fee, in the amount of \$2,500, shall be paid ninety (90) days following the end of the fiscal year of the Project that occurs on or after the date that a final Certificate of Occupancy is issued by the City of Santa Maria Community Development Department, Building

Division. The Fee shall be paid annually for the Term defined at Section 1.20 of the County HOME Regulatory Agreement executed herewith.

1.15 **“FISCAL YEAR”** means the twelve (12) month accounting period, beginning January 1 and ending December 31, for which annual financial statements are regularly prepared.

1.16 **“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 federal or state environmental and health and safety laws and regulations, including without limitation petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards at the time of such use.

1.17 **“HOME AFFORDABILITY PERIOD”** means the period of time during which the HOME-Assisted Unit(s) must meet the affordability requirements imposed under the HOME Program, commencing upon project completion in conformance with 24 CFR 92.2 and 24 CFR 92.252(e) and terminating twenty (20) years from the date of the issuance of a certificate of occupancy issued for the Project plus six months.

1.18 **“HOME-ASSISTED UNIT”** means any one of the eleven (11) rental housing units on the Property designated by Borrower as the HOME-Assisted Unit(s) subject to the requirements of the County HOME Loan Regulatory Agreement (Exhibit E), which is attached hereto and hereby incorporated into this County HOME Loan Agreement by this reference. Notwithstanding the above, a HOME-Assisted Unit may not also be a “County-Assisted Unit” as defined herein in Section 1.7.

1.19 **“HOME FUNDS”** means funds provided to Borrower by Lender pursuant to the terms of this County HOME Loan Agreement and as defined in 24 CFR 92.2.

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

1.21 **“IN-LIEU FUNDS”** means funds set aside by Lender from fees paid by developers in-lieu of including affordable units in for-sale developments, as required by the Santa Barbara County Code, which funds have been placed in a trust for the purpose of providing affordable housing within Santa Barbara County.

1.22 **“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, which is attached hereto and hereby incorporated into this County HOME Loan Agreement by this reference.

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

1.24 **“LIMITED PARTNER”** means Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation, and its successors and assigns, as the entity that is providing a cash investment in the Project in return for the annual tax credits awarded to the Borrower

by the California Tax Credit Allocation Committee. The Limited Partner will retain a 99.99% ownership of the Project but will have no responsibility for the daily operations of the Project. The Limited Partner, and the Housing Authority of the County of Santa Barbara and Surf Development Company (the general partners which will each retain a 0.005% ownership of the Borrower), have entered into the Partnership Agreement.

1.25 **“LOW-INCOME HOUSEHOLD”** means a household, as defined in 24 CFR 92.2 and for the purposes of this Project, whose annual income does not exceed sixty percent (60%) of Area Median Income with adjustments for household size.

1.26 **“OPERATING EXPENSES”** means, actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance, and management of the Project, including but not limited to painting, cleaning, restoration, 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 as defined herein in Section 1.14, security, advertising, promotion and publicity, office, janitorial, cleaning and building supplies, lease payments if any, cash deposited into reserves for operating expenses and capital replacements pursuant to Section 2.12 or the terms of the other Project Loans or the Partnership Agreement, purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings, fees and expenses of accountants, attorneys, consultants and other professionals, and reasonable and actual costs of staff salaries for the delivery of social services and/or case management, including costs of tenant services in the estimated annual amount of \$36,500 (increasing 3% annually). The Operating Expenses shall be reported in the Annual Financial Statement.

1.27 **“PARTNERSHIP AGREEMENT”** means that certain Amended and Restated Partnership Agreement dated on or about the date hereof by and among the Limited Partner, the Housing Authority of the County of Santa Barbara and Surf Development Company.

1.28 **“PAYMENT DATE”** means ninety (90) days after the end of each fiscal year of the Project until the County HOME Loan is paid in full.

1.29 **“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 as defined in 24 CFR 92.2.

1.30 **“PROJECT LOANS”** means, collectively, (i) the Senior Loans, (ii) the permanent loan to be made by the California Community Reinvestment Corporation to the Borrower following completion of construction in the approximate original amount of \$11,900,000; (iii) the seller loan made by the Housing Authority of the County of Santa Barbara to Borrower in the approximate original amount of \$1,000,000; and (iv) the gap loan made by the Housing Authority of the County of Santa Barbara to Borrower in the approximate original amount of \$1,150,000.

1.31 **“PROPERTY”** means the property located at 201 & 205 N. Depot Street, Santa Maria, 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 Low-Income or Very Low-Income Household as defined in Sections 1.25 and 1.38 and as set forth in the County HOME Loan Regulatory Agreement. A Qualifying Household who meets the definition of Veteran must be given

a preference to be first considered for a vacancy or may be moved to the top of a waiting list, if applicable. "Veteran" is defined as the Head of Household or Spouse who has served in active duty in the United States Armed Forces for a minimum of six (6) continuous months and, if separated from military service, received other than dishonorable discharge. The veteran preference will also be given to a surviving spouse or registered domestic partner of a deceased veteran, as defined herein. Verification of veteran status will be by the submittal of a copy of the veteran's DD-214.

1.33 **"QUALIFYING RENT"** means the total monthly charges for rent, which shall not exceed either

a) a "Low HOME" Rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals fifty percent (50%) of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit and smaller and larger families, or

b) a "High HOME" Rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals sixty-five percent (65%) of the median income for the area, 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 on the date of this Agreement. 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 excess of annual Revenue over the sum of annual Operating Expenses as defined in Section 1.26 above, and any required debt service under the Senior Loans.

1.35 **"REVENUE"** means all income derived from the Project, including, but not limited to, rents from the units and income from laundry operations, vending machines, meeting space rental, storage, and parking.

1.36 **"SENIOR LOANS"** means that certain construction loan to be made by Wells Fargo Bank, N.A. in the approximate original principal amount of Twenty-One Million Eight Hundred Eleven Thousand One Hundred Six Dollars (\$21,811,106), which will convert to a permanent loan in the approximate amount of Eleven Million Nine Hundred Thousand Dollars (\$11,900,000).

1.37 **"TERM"** means the period of time commencing with the date of the County HOME Loan Note and terminating fifty-five (55) years from the date of the recordation of a notice of completion issued for the Project.

1.38 **"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 with adjustments for household size.

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 Three Million One Hundred Seventy-Three Thousand Four Hundred Thirty-Seven Dollars (\$3,173,437) and shall be evidenced by the County HOME Loan Note. In the event Lender is unable to secure HOME Funds or In-Lieu Funds for this County HOME Loan Agreement for any reason at any time during the course of construction, Lender shall not be obligated to make payments to Borrower until HOME Funds and In-Lieu Funds become available to Lender, and Borrower shall hold Lender harmless.

2.3 **INTEREST.** Subject to the provisions of Section 2.4, 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, 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) ten percent (10%) or (ii) the highest interest allowed by law, in addition to the interest rate in Section 2.3 above, from the date of the default until the date that the default is cured or the County HOME Loan is repaid in full. The default interest shall be paid monthly and is due to the County on the first day of each month.

2.5 **TERM OF COUNTY HOME LOAN.** The principal and interest of the County HOME Loan shall be due and payable on the earlier of: (a) fifty-five (55) years from the date of the recordation of a notice of completion issued for the Project, or (b) the date the Property is sold or otherwise transferred, except, if Borrower is a limited partnership and the affordability covenants are maintained for the duration of the original County HOME Affordability Period, for transfers permitted pursuant to the terms of the County HOME Loan Documents, or (c) Borrower has failed to commence construction as set forth in Section 4.1 of this County HOME Loan Agreement, or (d) an Event of Default by Borrower, as defined below in Section 8.1, which has not been cured as provided for below in Section 8.2. Annual loan payments on the County HOME Loan equal to the lesser of (a) an amount sufficient to fully amortize the County Home Loan over fifty-five (55) years or (b) the amount due pursuant to Section 2.9 hereof shall be made in accordance with Section 2.9 hereof. Upon the occurrence of an Event of Default by Borrower, as defined below in Section 8.1, which has not been cured as provided for below in Section 8.2, the principal and all current and accrued interest shall be due and payable in accordance with Section 8.3.

2.6 **USE OF HOME FUNDS.** HOME 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. Budget modifications may be approved in accordance with Section 9.3 of this Agreement; provided that costs are eligible under 24 CFR 92.206, and that the appropriate level of Environmental Review 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 remains applicable. HOME Funds shall be utilized for costs related to residential uses only and shall not be utilized for costs related to commercial uses or any other nonresidential uses associated with the Project.

2.7 **USE OF IN-LIEU FUNDS.** In-Lieu 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. Budget modifications may be approved in accordance with Section 9.3 of this Agreement. In-Lieu Funds shall be utilized for costs related to residential uses only and shall not be utilized for costs related to commercial uses or any other nonresidential uses associated with the Project.

2.8 **SECURITY.** Borrower shall secure its obligation to repay the County HOME Loan by executing a 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.

2.9 **REPAYMENT OF THE COUNTY HOME LOAN.** All accrued interest and principal shall be due and payable in accordance with the terms set forth in Section 2.5 and this Section 2.9.

No repayment is due under the County HOME Loan until construction of the Project is complete. Payments shall be made ninety (90) days following the end of each calendar year of the Project until the County HOME Loan is paid in full. Annual payments on the County HOME Loan shall be made from Residual Receipts to the extent that they are available. Residual receipts shall be paid in the following order: first, to the limited partner for any unpaid tax credit adjuster amount; second, to the limited partner to repay any limited partner loans; third, to pay any accrued but unpaid asset management fees payable to the Limited Partner in the annual amount of \$12,000 and increasing three percent (3%) annually; fourth, to replenish operating reserves in accordance with the terms of the Partnership Agreement; fifth, to the payment of outstanding deferred developer fee; sixth, to Borrower's general partners for the repayment of any operating deficit loans made to the Borrower pursuant to the Partnership Agreement; seventh, to the payment of any management fees deferred pursuant to the terms of the Partnership Agreement; eighth, to Borrower's administrative partner an annual asset management fee in an amount not to exceed \$12,000 per year, (plus any accrued fees from prior years) increasing three percent (3%) annually; and ninth, to the following loans, 1) fifty-percent (50%) of remaining residual receipts to the County HOME Loan pursuant to this County HOME Loan Agreement and County HOME Loan Promissory Note, executed herewith, and 2) fifty-percent (50%) of the remaining residual receipts to the Seller Carryback Loan from the Housing Authority of the County of Santa Barbara,. On or before each Payment Date the Borrower shall submit the Annual Financial Statement to Lender for the preceding 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.

2.9.1 **DISPUTE RESOLUTION.** In the event that Lender determines that there is an understatement in the amount and payment of Residual Receipts due to Lender, Borrower shall promptly pay to Lender such understatement, but in any event, no later than within twenty (20) days of notice of such understatement. In the event that Lender determines that there has been an overpayment in the amount and payment of Residual Receipts due to Lender, Lender shall pay to Borrower the amount of overpayment promptly, but in any event, within twenty (20) days of such determination. If contested, Borrower has the right to pay under protest and request an audit by an independent CPA.

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 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. The proposed operating budget shall include scheduled payments to be made into operating and reserve accounts. If the amount of the proposed budget for the following fiscal year does not exceed the budget for the prior fiscal year by greater than five percent (5%), or any one line item has not increased by greater than ten percent (10%), the proposed budget shall be approved by Lender. In all other events, the Lender shall approve the budget in its reasonable discretion. The proposed operating budget shall include scheduled payments to be made into operating and replacement reserve accounts. Actual Operating Expenses incurred by Borrower shall not exceed one hundred twenty percent (120%) of the amount approved by Lender in the approved operating budget without Lender's prior written consent; except as necessary in order to correct defects or effectuate repairs which pose a risk to the health or safety of occupants of the Property.

2.12 OPERATING AND CAPITAL REPLACEMENT RESERVE FUNDS. Concurrently with the funding of the "Performance Installment" of the Limited Partner's capital contributions pursuant to the terms of the Partnership Agreement, Borrower shall fund a capital replacement reserve in the amount of not less than Three Hundred Dollars (\$300) per unit per year with a three percent (3%) annual increase, and shall capitalize an operating reserve in the amount of Six Hundred Fifty-Six Thousand Two Hundred Ninety-Three (\$656,293), or other amounts reasonably imposed by any lender or the Limited Partner. These reserve funds shall be held by Wells Fargo Bank, National Association or California Community Reinvestment Corporation pursuant to the loan documents executed in connection with the Senior Loans. The amount of Operating and Capital Replacement Reserve Funds required hereunder shall be deemed satisfied on a dollar-for-dollar basis by any such reserves required by and held with senior lenders. Reserve balances shall be provided in the Annual Financial Statement submitted to Lender annually.

ARTICLE 3 COUNTY HOME LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. Lender shall not be obligated to make any disbursements of HOME Funds or In-Lieu Funds or take any other action under the County HOME Loan Documents unless the following conditions precedent are satisfied prior to the disbursement of HOME Funds and In-Lieu 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 Three Million One Hundred Seventy-Three Thousand Four Hundred Thirty-Seven Dollars (\$3,173,437), from a title insurance company approved by the Lender in a form reasonably acceptable to Lender;

D. Borrower has provided to Lender 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 in accordance with Section 3.2 and Section 5.11 as applicable.

3.2 DISBURSEMENT OF FUNDS. Lender shall provide the HOME Funds and In-Lieu Funds to Borrower for development costs incurred by Borrower and approved by Lender in accordance with the Budget (Exhibit B). HOME Funds and In-Lieu Funds shall only be disbursed after the costs which are to be paid have been incurred. Borrower may not request disbursement of HOME Funds or In-Lieu Funds until needed for payment of those certain development costs as specified in the Budget (Exhibit B). Disbursement of HOME Funds shall not exceed a total of One Million Nine Hundred Ninety-Four Thousand Four Hundred Fifty-Nine Dollars (\$1,994,459), and disbursement of In-Lieu Funds shall not exceed a total of One Million One Hundred Seventy-Eight Thousand Nine Hundred Seventy-Eight Dollars (\$1,178,978).

HOME Funds and In-Lieu 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 ("Written Disbursement Requests") in writing no more frequently than one time per month. Written Disbursement Requests shall include itemized invoices corresponding to the Budget (Exhibit B). Borrower shall also attach copies of receipts or other acceptable proof of payment by Borrower and that demonstrates date of payment. Borrower shall also attach copies of certified payroll reports current to within twenty-one (21) calendar days of the date of the Written Disbursement Request documenting compliance with the Davis-Bacon Act, except for housing developments with fewer than twelve (12) HOME-Assisted Units and federal assistance is limited to HOME Funds, evidence of compliance with Section 3 of the Housing and Community Development Act of 1968 (12 USC, 1701u) and 24 CFR Part 135 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 comply with Federal, state and local regulations.

Written Disbursement Requests shall only be for items included in the Budget (Exhibit B). Changes in individual items comprising the Budget which exceed \$25,000 in any single instance or exceed \$75,000 in the aggregate shall require the prior written request of Borrower and the written approval of Lender. However, Lender's obligations shall in no event exceed the amount specified above in Section 2.2. Any costs in excess of this 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 Borrower has completed the construction of the Project and provided beneficiary data for the eleven (11) HOME-Assisted Unit(s) and seven (7) County-Assisted Units of the Project as required under the HOME Program; and 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 from the execution 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 and have the HOME-Assisted Units and County-Assisted Units occupied by eligible tenants, no later than eighteen (18) months after completion of construction in conformance with 24 CFR 92.252, subject to force majeure delays. Borrower shall provide proof of completion as evidenced by the recording of a notice of completion and securing certificate(s) of occupancy.

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

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 the applicable work or service 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 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 construction lender pursuant to their construction loan shall be provided to the County immediately upon completion of the construction inspection report throughout the course of construction.

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 during construction work hours.

4.7 **CONSTRUCTION RESPONSIBILITIES.** Borrower shall be solely responsible for all aspects of Borrower's conduct 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 to Lender, 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 to comply 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 numbers and type of accessibility features of those units.

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 Prevention Act (42 USC 4821, et seq.), California OSHA, California Health and Safety Code, and all other applicable Federal, state and County 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 the following, 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. International Energy Conservation Code and applicable Federal, state and local energy conservation codes; and
- E. Property standards 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 will be 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.

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 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 include, but are not limited to, the following:

A. Uniform Guidance. The applicable policies, guidelines, and requirements of 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 under this County HOME Loan Agreement, as required pursuant to 24 CFR 135.38:

“1. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

3. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

4. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

5. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).”

I. Minority and Women's Business Enterprise. 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.

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

K. 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 generated from the System for Award Management (SAM) at www.sam.gov.

L. 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.

M. 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.

N. HUD Regulations. Any other HUD regulations present or as may be amended or added in the future 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 this shall constitute an Event of Default, and be subject to Borrower's cure rights. 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/or 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 of provisions of this County HOME Loan Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the Project or this County HOME Loan Agreement which is caused by: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; quarantine restrictions; or freight embargoes or other events beyond the reasonable control of the party claiming the delay. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause, and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified in Exhibit B, attached hereto and incorporated herein, any unavoidable delay notwithstanding. Times of performance under this County HOME Loan Agreement may also be extended for any cause for any period of time by the mutual written agreement of Lender and Borrower.

ARTICLE 5 OPERATION

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

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

Borrower agrees that during the term of the HOME Regulatory Agreement, Lender shall have the right to review, approve and request reasonable material changes to the Management Plan as described in Section 5.2, below, and Exhibit G attached hereto and incorporated herein, operation of the Project and property management entity, in order to preserve the affordability, physical appearance and condition of the Project. Any changes not disapproved by Borrower within thirty (30) days after receipt of such changes shall be deemed approved. Lender hereby approves that certain Form of Management Plan as incorporated herein and attached hereto as Exhibit G. Notwithstanding the above, County reserves the right to require changes necessary to conform to HUD regulatory requirements.

5.2 **MANAGEMENT PLAN.** In the leasing and operation of the Project, Borrower shall submit its Management Plan for the Project, in a format substantially similar to the outline attached hereto as Exhibit G and incorporated herein, for approval by Lender upon Project completion, as defined herein at Section 4.2. Any material changes to the Management Plan require prior written approval from Lender.

5.3 **AFFIRMATIVE MARKETING PLAN.** In the marketing of the Project, Borrower shall comply with the affirmative marketing provisions of the Management Plan as defined herein at Section

5.2. The Management Plan shall include information on affirmative marketing efforts and compliance with fair housing laws. Any material changes to the Management Plan require prior written approval from Lender. At a minimum the Project must meet the affirmative marketing requirements set forth in 24 CFR 92.351 and any modifications thereto.

5.4 **TENANT SELECTION.** In the selection of tenants, Borrower shall incorporate written tenant selection provisions in the Management Plan which, at a minimum, meet the requirements for tenant selection set out in 24 CFR 92.253(d) and any modifications thereto. A Veteran's preference must be applied pursuant to Section 1.32 as described above. Any material changes to the Management Plan require prior written approval from Lender.

Borrower shall rent the HOME-Assisted Unit(s) and County-Assisted Unit(s) to any Qualifying Household according to the tenant selection plan. Borrower shall verify the 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 applicants for HOME-Assisted Units and County-Assisted Units shall be certified by Borrower no earlier than six (6) months prior to the Qualifying Household's occupancy of a HOME-Assisted Unit or County-Assisted Unit, and recertified annually thereafter by Borrower. If the size of a Qualifying Household occupying a HOME-Assisted Unit or County-Assisted Unit changes, Borrower may request additional information and documentation to determine eligibility.

A. Initial Annual Income Verification. Before the Qualifying Household occupies a HOME-Assisted Unit or County-Assisted Unit, the Borrower shall verify that the Annual Income provided in an Annual Income certification 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 in the Project files.

B. Annual Income Recertification. At the time of 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 or County-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 Lender's review and approval. The term of the initial lease shall be for no less than one year unless a shorter term is requested by the tenant occupying a HOME-Assisted Unit or County Assisted Unit, and shall not contain any provision which is prohibited by 24 CFR Section 92.253(b), and any modifications thereto. No rent increase shall occur at any time during the term of the lease. Any termination of the lease or refusal to renew must be in conformance with 24 CFR 92.253(c), and any modifications thereto, and must be preceded by not less than thirty (30) days written notice to the tenant by the Borrower specifying the grounds for the action. Borrower shall submit

its proposed rents and utility allowance schedule to Lender for review and approval at least thirty (30) days prior to leasing the HOME-Assisted Unit(s) and County-Assisted Unit(s) in the Project. Within eighteen (18) months of completion of construction as defined in Section 4.2, Borrower shall lease the eleven (11) HOME-Assisted Unit(s) and seven (7) County-Assisted Unit(s) and provide Lender with detailed occupancy data and demographic information on the tenant(s) of the HOME-Assisted Unit(s) and County-Assisted Unit(s).

5.7 AFFORDABILITY RESTRICTIONS. Eleven (11) units in the Project shall be designated by Borrower as HOME-Assisted Unit(s), and seven (7) units in the Project shall be designated by Borrower as County-Assisted Unit(s), for a total of eighteen (18) Assisted Units. The HOME-Assisted Unit(s) and County-Assisted Unit(s) 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 Unit(s) and County-Assisted Unit(s) shall be designated as “floating” so that the unit(s) designated as HOME-Assisted and/or County-Assisted under the County HOME Loan Regulatory Agreement may change over time, as long as the total number and type of HOME-Assisted Units and County-Assisted Units in the Project remains constant.
- B. Be similarly constructed and of comparable quality to all other units in the Project;
- C. Be dispersed throughout the Project; and
- D. Provide tenants access 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 AND COUNTY_ASSISTED UNITS. Rents for HOME-Assisted Units and County-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, County HOME Loan Note, County HOME Loan Deed of Trust, County HOME Loan Regulatory Agreement, and any other agreements in connection with the County HOME Loan which affect the Property are to be resolved by applying the more restrictive covenants or restrictions which affect the Property.

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 HOME Funds and In-Lieu Funds disbursed to Borrower pursuant to the County HOME Loan Documents. Borrower agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures for construction costs drawn from HOME Funds and In-Lieu Funds, and to keep all invoices, receipts, and other documents related to expenditures for construction costs for said HOME Funds and In-Lieu Funds for five (5) years after recordation of a notice of completion issued for the Project. Tenant income, rent, unit inspection information, and all records related to any revenue received

by the Project must be kept for the most recent five (5) years, until five (5) years after the HOME affordability period ends. Records must be kept accurate and current.

Borrower shall promptly comply with all requirements and conditions of the County HOME Loan Documents relating to notices, extensions, and other events required to be reported or requested. Borrower shall promptly supply, upon the request of Lender, any and all information and documentation which involves the Project and cooperate with Lender in the development of the Project.

Borrower shall submit to Lender:

- Monthly written Project construction progress reports and updated construction schedule within ten (10) calendar days following the end of each month, commencing with the execution of this County HOME Loan Agreement and concluding upon the completion of the Project.
- 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 the eleven (11) HOME-Assisted Unit(s) sufficient to close out the Project in the federal Integrated Disbursement and Information System within ten (10) days following the execution of the eleventh (11th) lease for a HOME-Assisted Unit.

5.12 **AUDITS.** Borrower shall conduct annual audits in accordance with 2 CFR Part 200 and 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 with respect to all matters covered by these County HOME Loan Documents 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.

Lender shall notify Borrower of any records it deems insufficient. Borrower shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by Lender in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Borrower shall submit a written request to Lender for an extension. Lender shall respond to extension requests within fifteen (15) days. Borrower shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

5.13 **ENCUMBRANCE OF PROPERTY.** Except as otherwise provided in this County HOME Loan Agreement or the Loan Documents, 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 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 of this County HOME Loan Agreement, including the sale or transfer of any general partnership interests, without the prior written consent of Lender. Notwithstanding the foregoing, the execution of and transfer of the Property and/or Project to the Borrower's general

partner(s) pursuant to a purchase option and/or right of first refusal agreement following the expiration of the tax credit compliance period shall be expressly permitted hereunder.

5.15 REMOVAL OF GENERAL PARTNER(S); TRANSFER OF LIMITED PARTNERSHIP INTERESTS. Notwithstanding anything to the contrary contained in this County HOME Loan Agreement, the County Promissory Note or the County Regulatory Agreement, no consent shall be required from the Lender if the: (i) Limited Partner removes the Borrower's general partner(s) (the "General Partner(s)") for cause in accordance with the Borrower's partnership agreement ("Partnership Agreement") and replaces it or them with an entity related to or affiliated with the Limited Partner (the "Related Entity"); or (ii) Limited Partner transfers or assigns its interest in Borrower; provided, however, if the replacement General Partner(s) is an entity other than a Related Entity, then the consent, which shall not be unreasonably withheld or unduly delayed, of the Lender shall be required.

5.16 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 any funds or other forms of assurance Lender determines, in good faith from time to time, appropriate to protect Lender from the consequences of the contest being unsuccessful.

5.17 DAMAGE TO PROPERTY. If any building 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 said buildings or improvements consistent with the original plans and specifications for the Project if Borrower reasonably determines that such restoration or repair is economically feasible. 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, subject to any extensions of time granted pursuant to the provisions of Section 4.14. Subject to Borrower's election to rebuild, all insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration to the extent such insurance proceeds are available and permitted for such use by all lenders.

If Borrower determines that restoration or repair is not economically feasible, then Lender may declare an Event of Default pursuant to Section 8.1.G below. Upon request by Lender to repay principal and interest, Borrower shall apply insurance proceeds thereto, subject to the rights of Senior Lenders.

5.18 EQUAL EMPLOYMENT OPPORTUNITY. Borrower and all contractors, subcontractors, and professional service providers for the Project shall comply with all requirements concerning equal employment opportunity. Borrower and all contractors, subcontractors, and professional service providers for the Project shall comply with all requirements concerning equal opportunities for business 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 "Standard Indemnification and Insurance Provisions" 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.

6.3 **NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No officials, employees and 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 to the best of its knowledge, as of the date of this County HOME Loan Agreement and except as previously disclosed and acknowledged in writing by Lender or as disclosed by the environmental reports regarding 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 Federal or State law; (b) the Property is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions (“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 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 on or under the Property requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by Borrower (after verification of the veracity of such knowledge to Lender’s reasonable satisfaction) that the Property does not comply with any Hazardous Materials Laws; (c) the receipt by Borrower of written 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 therewith.

7.3 **USE AND OPERATION OF PROPERTY.** Neither 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. Borrower shall comply and cause the Project to comply with Hazardous Materials Laws.

7.4 **REMEDIAL ACTIONS.** If Borrower has actual knowledge of the presence of any Hazardous Materials on or under the Property, Borrower shall take, at no cost or expense to Lender, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, 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 any funds or other forms of assurance that Lender in good faith from time to time determines appropriate to protect Lender from the consequences of the 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 the conditions of this section.

7.6 **ENVIRONMENTAL INDEMNITY.** Without limiting or otherwise affecting the standard indemnity and insurance provisions set forth in Article 6 and/or Exhibit F, Borrower shall defend, indemnify, and hold Lender free and harmless against any claims, demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and reasonable attorney's fees, that Lender may directly or indirectly 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 HOME Funds or In-Lieu 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, subject to the right to contest set forth in this Agreement; (6) Borrower's default under other debt secured by the Property after the applicable notice and cure periods have expired;

B. Construction. (1) Borrower's substantial deviation from the budget specified in Exhibit B (Budget), without Lender's prior written consent (to the extent Lender's consent is required hereunder); (2) Borrower's use of defective or unauthorized materials or defective workmanship in constructing the Project; (3) Borrower's failure to commence or complete construction pursuant to Sections 4.1 and 4.2 herein, subject to force majeure delays; (4) the cessation of construction prior to completion of the Project for a period of more than thirty (30) consecutive calendar days without proper written approval from Lender, subject to force majeure delays; (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 federal, state, or local laws or Lender policies governing 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 approval that are prohibited under this County HOME Loan Agreement or that have the effect of reducing the priority of or invalidating the County HOME Loan Deed of Trust;

D. General performance of County HOME Loan obligations. Any substantial breach by Borrower beyond applicable notice and cure periods of any material obligations on Borrower imposed in the County HOME Loan Documents;

E. General performance of other obligations. Any substantial or continuous breach by Borrower beyond applicable notice and cure periods of any material obligations on Borrower imposed by any other agreements, including any grant agreements, with respect to the financing, construction, or operation of the Project or the Property, only if Lender is a party to such agreement and such breach materially impairs Lender's security;

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 the County HOME Loan Documents, or any certificates, documents, or schedules supplied to Lender by 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 the 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 HOME Program requirements including, but not limited to, the provisions of Section 4.12 and the County HOME Loan Regulatory Agreement pursuant to the HOME Investment Partnerships Program Final Rule at 24 CFR Part 92, and including other Federal requirements 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 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.

K. Relocation Benefits. Failure to make any payments requested by Lender pursuant to Section 4.13 above.

8.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For all Events of Default, Lender shall give written notice to Borrower (with copy to the Limited Partner) of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Event of Default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days from the date of the notice or the date the notice was refused, by which such action to cure must be taken or if a cure is not possible within thirty (30) days, to begin such cure and diligently prosecute such cure to completion which shall, in any event, not exceed one hundred eighty (180) days from the date of notice to cure. The Lender has the sole but reasonable discretion to determine whatever additional reasonable time is needed to cure. Notwithstanding anything to the contrary contained in the County HOME Loan Documents, Lender hereby agrees that any cure of any default made or tendered by Borrower's Limited Partners 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.

8.3 LENDER'S REMEDIES. Upon the happening of an Event of Default by Borrower and a failure to cure said Event of Default within the timeframe specified in Section 8.2 above, Lender's obligation to disburse HOME Funds and In-Lieu 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 its sole discretion:

A. Terminate this County HOME Loan Agreement, in which event the entire principal amount outstanding and all accrued 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 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 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 necessary in its judgment to complete construction of the Project, including without limitation (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 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 render the Property suitable for occupancy);

F. Order immediate stoppage of construction work and demand that any condition leading to the 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 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 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 Default by Borrower and failure to cure as provided in Section 8.2.

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 these County HOME Loan Documents and to otherwise carry out the Project, (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 executing and delivering the County HOME Loan Documents are authorized to execute and deliver such documents on behalf of Borrower, (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 material 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 Agreement, collect loan repayments, and perform loan and Project monitoring functions and other administrative duties.

9.3 **CHANGES OR AMENDMENTS.** Any changes to this Agreement may only be made through a written amendment to this Agreement executed by Lender and Borrower. Such amendments

shall make specific reference to this Agreement, and be signed by a duly authorized representative of each party. Such amendments shall not invalidate any parts of this Agreement that are not changed by the amendment, nor relieve or release Lender or Borrower from its obligations under this Agreement that are not changed by the amendment. Borrower agrees to not unreasonably withhold its approval of any amendments proposed by Lender 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.

The Director of the County Community Services Department or designee is authorized to approve at his or her discretion and execute amendments on behalf of County to make any one or more of the following changes:

9.3.1 Changes to the 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 of the Community Services Department and County Counsel and which do not adversely affect the County's rights, responsibilities, or interests in this County HOME Loan Agreement.

9.4 **MONITORING AND EVALUATION.** Except as otherwise provided for in this County HOME Loan Agreement, Borrower shall maintain and submit records to Lender within ten (10) business days of Lender's request 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 that the prohibition in this Section is followed. 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" will 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.** This County HOME Loan Agreement shall commence on the date set forth above and remain in full force and effect throughout the term of the County HOME Loan.

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 these County HOME Loan Documents.

9.12 **CONSENTS AND APPROVALS.** Any consent or approval of Lender or Borrower required under the County HOME Loan Documents shall not be unreasonably withheld. Any approval required under the County HOME Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

9.13 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between Borrower and Lender shall be sufficiently given 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, 2nd 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 Residences at Depot Street, L.P.
c/o Surf Development Company
815 West Ocean Avenue
Lompoc, CA 93436
Attn: President

And: Wells Fargo Affordable Housing Community Development Corporation
301 S. College Street
MAC D1053-170
Charlotte, NC 28288
Attn: Director of Tax Credit Asset Management

With copy to: Mark S. Manion
Price, Postel & Parma, LLP
200 E. Carrillo St., Suite 400
Santa Barbara, CA 93101

9.14 **BINDING UPON SUCCESSORS.** All provisions of these County HOME Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this section does not waive the prohibition on assignment of this County HOME Loan Agreement by Borrower without Lender's consent.

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 provided for herein) or any third party with respect to the Project, the Property, or the County HOME Loan.

9.16 **ASSIGNMENT AND ASSUMPTION.** Except as otherwise permitted hereunder, Borrower shall not assign any of its interests under this County HOME Loan Agreement or the County HOME Loan Documents to any other party, except as specifically permitted under the terms of the County HOME Loan Documents, without the prior written consent of Lender. Any unauthorized assignment shall be voidable at the sole discretion of Lender.

9.17 **WAIVER.** Any waiver by Lender of any obligation in these County HOME Loan Documents must be in writing. 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 the County HOME Loan Documents or applicable law. Any extension of time granted to Borrower to perform any obligation under the 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 future waivers.

9.18 **INTEGRATION.** This County HOME Loan Agreement and the other County HOME Loan Documents, including exhibits, executed by Borrower for the Property, contain the entire agreement of the parties and supersede any and all prior negotiations.

9.19 **OTHER AGREEMENTS.** Borrower represents that it has not entered into any agreements that are inconsistent with the terms of the County HOME Loan Documents. Borrower shall not enter into any agreements that are inconsistent with the terms of the County HOME Loan Documents without an express waiver by Lender in writing.

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

9.21 **COUNTERPARTS.** This 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.

Exhibits

- A: Legal Description of the Property
- B: 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
- G: Management Plan

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

APPROVED AS TO ACCOUNTING FORM:

THEODORE FALLATI, CPA, CPFO
AUDITOR-CONTROLLER

By: 
Deputy

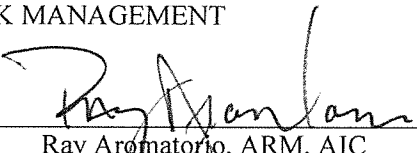
APPROVED AS TO FORM:

COUNTY COUNSEL

By: 
Deputy County Counsel

APPROVED AS TO FORM:

RISK MANAGEMENT

By: 
Ray Aromatorio, ARM, AIC
Risk Manager

COUNTY:

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

By: _____
Das Williams, Chair
Board of Supervisors

By: 
George Chappian, Director
Community Services Dept.

BORROWER:

THE RESIDENCES AT DEPOT STREET, L.P.

By: SURF DEVELOPMENT COMPANY, a
California nonprofit public benefit corporation,
its managing general partner


Raymond F. Down, President

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

By: Housing Authority of the County of Santa
Barbara, a public body, corporate and politic, its
managing member



Robert P. Havlicek Jr., Executive Director

EXHIBIT A

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL A:

PARCELS 1 AND 2 OF PARCEL MAP 6009, IN THE CITY OF SANTA MARIA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK _____, PAGES _____ TO _____, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B:

NON-EXCLUSIVE AND EXCLUSIVE EASEMENTS APPURTENANT TO PARCELS 1 AND 2 OF PARCEL MAP 6009, IN THE CITY OF SANTA MARIA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK _____, PAGES _____ TO _____, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, ABOVE, OVER AND ACROSS PARCELS 3 OF PARCEL MAP 6009 AND PARCEL 1 OF PARCEL MAP 5967, FOR PURPOSES OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS, EGRESS, PARKING, DRAINAGE, UTILITIES AND OTHER EASEMENTS AS SET FORTH IN THAT CERTAIN GREAT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS AND MAINTENANCE DATED _____, 2018 AND RECORDED IN THE OFFICIAL RECORDS ON _____, 2018 AS INSTRUMENT NO. 2018-_____.

APN: _____

EXHIBIT B

BUDGET

See Attached

EXHIBIT B
BUDGET

The completion date of the Project will be determined by the date of the recording of a notice of completion recorded for the Project and is estimated to be on or about October 1, 2019. Absent a notice of completion, the date of the final certificate of occupancy issued by the City of Santa Maria Community Development Department, Building Division.

The completion date of the Project will be determined by the date of the recording of a notice of completion recorded for the Project and is estimated to be on or about October 1, 2019. Absent a notice of completion, the date of the final certificate of occupancy issued by the City of Santa Maria Community Development Department, Building Division.

EXHIBIT C

COUNTY HOME LOAN DEED OF TRUST

See Attached

EXHIBIT D

COUNTY HOME LOAN PROMISSORY NOTE

See Attached

EXHIBIT E

COUNTY HOME LOAN REGULATORY AGREEMENT

See Attached

EXHIBIT F

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS

See Attached

EXHIBIT F

Indemnification and Insurance Requirements (For Service Contracts Not Requiring Professional Liability Insurance)

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 prohibited by law. CONTRACTOR's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

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 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 \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** 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.

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 if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance 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 grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but 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. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
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.
10. **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 special 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 G
FORM OF MANAGEMENT PLAN

See Attached

SAMPLE MANAGEMENT PLAN

The foundation of any successful residential project is a sound Management Plan. In preparing the Management Plan, it is important for the owner to consider potential problems that may arise during the initial rent-up and throughout the continued operation of the project. The development of this plan should be a cooperative effort between the owner and/or property manager. The Management Plan must ensure compliance with applicable State and Federal laws.

The owner/property manager should retain a copy of the Management Plan, the initial rental development application, and any revisions. The plan should be updated whenever an important element changes. Use the following outline to write the Management Plan. Owners and agents must expand upon these guidelines to address the specific needs of an individual project. The Plan should include at a minimum:

I. Description of Project

- A. Name of owner.
- B. Name and location of project.
- C. Number of units by bedroom size.
- D. Schedule of rents and utility allowances used in project.
- E. Occupancy types:
 - 1. Number of market rate units.
 - 2. Number of units restricted to 60% or less of the area median income.
 - 3. Number of units restricted to 50% or less of the area median income.
 - 4. Number of units restricted at any other income levels.
 - 5. Number of special needs units:
 - a. Persons with disabilities.
 - b. Senior Citizens (including age limits).
 - c. Homeless Persons.
 - d. Persons/families at or below 30% of the area median income.

II. Management Company Organization

- A. An organizational chart should note lines of authority and responsibility including, but not limited to:
 - 1. Name, telephone and fax number of the management agent.
 - 2. Name, telephone and fax number of the contact person for the agent.
- B. Company hiring policies must be in conformance with applicable equal opportunity requirements of local, State and Federal laws. This will be monitored by AHFC staff.
- C. A general policy statement regarding the delegation of authority to the agent by the owner for managerial responsibilities for the project.

III. On-Site Staffing Requirements

The plan should describe on-site staffing requirements responsible for marketing, management and maintenance of the project. This description should include, at a minimum:

- A. The criteria used in selecting employees;
- B. Training for on-site employees;
- C. Methods of monitoring performance and accountability of on-site staff;
- D. Days/hours staff will be available for general tenant questions;
- E. Days/hours staff will be available for maintenance issues;

- F. A description of day to day management operations;
- G. Fulfillment of Affirmative Marketing Plan requirements, as described in Exhibit 3; and,
- H. HOME-funded projects: when an applicant or tenant requires an accessible feature or policy modification to accommodate a disability, the Management Plan must identify how such feature or policy modification will be accomplished, unless doing so would result in a fundamental alternation in the nature of its program or an undue financial and administrative burden.

IV. Resident Selection Criteria

- A. Description of the Target Population
- B. Marketing Procedures
 - 1. Describe all marketing tools to be used. If applicable, frequency of use - model apartment, newspaper advertising, signs, brochures, community contacts, etc.
 - 2. Indicate how the project will be marketed to attract a sufficient number of low-income residents.
 - 3. Describe marketing techniques that will be employed to inform the minority population of the availability of the housing.
 - 4. Explain how information and rental applications are to be made available to the public prior to the opening of the project.
 - 5. Describe procedures to maintain maximum occupancy beyond initial rent-up.
 - 6. Explain how, when an accessible unit becomes vacant, the unit will first be offered to any current occupant of the project requiring the accessibility feature, and second, be offered to any eligible qualified applicant on the waiting list requiring the accessibility features.
 - 7. If the lease includes a provision that requires a non-disabled family occupying an accessible unit to move if a family with a disability needing that size unit applies and there is an appropriately sized non-accessible unit available for the relocating family, explain how this process will be accomplished. (This is a recommended lease provision, but it is not required).
- C. Selection of Residents

The initial selection of residents is one of the most important activities that the owner will perform. The future stability and success of the project are dependent on this process. If the applicants are not properly screened at this stage and the owner offers apartments to those who are not qualified residents, the owner will encounter many problems during occupancy that will absorb far more time than initially spent in the resident selection process. The owner must be consistent in applying the resident selection criteria. An owner of rental housing must adopt written tenant selection policies and criteria that:

 - 1. Are consistent with the purpose of providing housing for very low-income and low-income families;
 - 2. Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease, including;
 - a. Minimum and maximum income limits; and,
 - b. Ability to pay rent and comply with lease terms.
 - 3. Applications received should be date and time stamped.
 - 4. Preferences observed in the housing project, as well as the methodology utilized to implement such preferences, shall be clearly stated in the Management Plan.
 - 5. In accordance with Section 504, when an accessible unit becomes vacant, before offering the unit to an individual without a disability, offer the unit: first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features. For Low Income

Housing Tax Credit projects, restrictions may apply regarding re-verification of the tenant's income if the vacated unit is in a separate building, see Post-Development Compliance Procedures Manual for information on tenant moves.

6. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable, observing any preferences or exceptions that may be established in (4) or (5) above.
7. Give prompt written notification to any rejected applicant, including the reason for rejection.

D. Resident Application

The owner and agent must devise and follow a consistent method of accepting and processing applications for all applicants. (Include documentation of information required for assessing affirmative marketing requirements, per Exhibit 3, Part II).

The owner or agent may ask applicants for information that demonstrates that they can meet the obligations of tenancy including financial information, references, prior tenancy history, etc. However, housing providers may not inquire into the nature and severity of an applicant or tenant's disability, nor may they ask persons with disabilities questions not asked of all applicants, apply different types of screening criteria, or assess an applicant's ability to live independently.

The owner or agent may ask if the applicant qualifies for a housing program or unit designed for persons with a disability, when the housing program or unit is designed for such persons.

V. **Corrective and Preventive Maintenance Procedures**

- A. A description of the project's Maintenance and Repair Plan (i.e., maintenance/inspections schedules, budgeting, etc.).
- B. The frequency that staff will perform unit "housekeeping" or "safety" unit inspections. Current recommendation is at least twice a year.