

FORM APPROVED COUNTY COUNSEL  
DATE 10/29/15  
BY: ANITA C. WILLIS

SUBMITTAL TO THE BOARD OF COMMISSIONERS  
HOUSING AUTHORITY  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

824



FROM: Housing Authority

SUBMITTAL DATE:  
November 5, 2015

SUBJECT: Approve the Affordable Housing Loan Agreement for the Use of Low-Moderate Income Housing Asset Funds for Vista Rio Apartments Affordable Rental Housing Project Located in the City of Jurupa Valley Between the Housing Authority of the County of Riverside and Jurupa Valley Vista Rio Partners, L.P., District 2, [\$1,898,214], Low-Moderate Income Housing Asset Funds 100%, No Further CEQA Action Required

RECOMMENDED MOTION: That the Board of Commissioners:

1. Affirm that the environmental effects of the Affordable Housing Loan Agreement for the use of Low-Moderate Income Housing Asset Funds (LMIHAF) for Vista Rio Apartments (Project) will not have a significant effect on the environment. Any potential significant effects of the Project have been adequately analyzed and addressed in Initial Study/Mitigated Negative Declaration Schedule # EA 1206001902 adopted by the County of Riverside Board of Supervisors on May 24, 2011. No substantial changes to the Project or circumstances under which the Project will be undertaken have occurred necessitating further environmental documentation;

(Continued)

Robert Field  
Executive Director

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 1,898,214	\$ 0	\$ 1,898,214	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	
SOURCE OF FUNDS: Low-Moderate Income Housing Asset Funds 100%				Budget Adjustment: No	
				For Fiscal Year: 2015/16	

C.E.O. RECOMMENDATION:

APPROVE

BY:   
Rohini Dasika

County Executive Office Signature

MINUTES OF THE HOUSING AUTHORITY BOARD OF COMMISSIONERS

On motion of Commissioner Benoit, seconded by Commissioner Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley  
Nays: None  
Absent: None  
Date: November 17, 2015  
xc: Housing Authority

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

Prev. Agn. Ref.: 10.4 of 6/17/14;  
10.1 of 2/10/15

District: 2

Agenda Number:

10-5

FISCAL PROCEDURES APPROVED  
PAUL ANGULO, CPA, AUDITOR-CONTROLLER  
BY:   
Susana Garcia-Bocanegra

Positions Added ☐ Change Order ☐  
A-30 ☐ 4/5 ☐ Vote ☐

**SUBMITTAL TO THE BOARD OF COMMISSIONERS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

Housing Authority

**FORM 11:** Approve the Affordable Housing Loan Agreement for the Use of Low-Moderate Income Housing Asset Funds for Vista Rio Apartments Affordable Rental Housing Project Located in the City of Jurupa Valley Between the Housing Authority of the County of Riverside and Jurupa Valley Vista Rio Partners, L.P., District 2, [\$1,898,214], Low-Moderate Income Housing Asset Funds 100%, No Further CEQA Action Required

**DATE:** November 5, 2015

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**RECOMMENDED MOTION:** (Continued)

2. Approve the attached Affordable Housing Loan Agreement Vista Rio Apartments in Jurupa Valley (Low and Moderate Income Housing Asset Funds) (Loan Agreement), including all attachments, between the Housing Authority of the County of Riverside (Housing Authority) and Jurupa Valley Vista Rio Partners, LP, a California Limited Partnership, providing a loan derived from the Housing Authority's Low and Moderate Income Housing Asset Fund in the amount of \$1,898,214 (LMIHAF Loan), to be used to finance a portion of the costs for the development of a 39 unit multi-family affordable housing rental project in the City of Jurupa Valley;
3. Approve the attached LMIHAF Loan Deed of Trust, LMIHAF Loan Promissory Note, Covenant Agreement and Payment Guaranty;
4. Approve and consent to the attached Assignment and Assumption Agreement between Palm Communities (as assignor) and Jurupa Valley Vista Rio Partners LP (as assignee);
5. Authorize the Chairman of the Board of Commissioners to execute the attached Loan Agreement and Covenant Agreement;
6. Authorize the Executive Director of the Housing Authority, or designee, to sign the consent attached to the Assignment and Assumption Agreement, subject to approval by County Counsel;
7. Authorize the Executive Director of the Housing Authority, or designee, to execute a Subordination Agreement subordinating the LMIHAF Loan Deed of Trust to a Deed of Trust for the benefit of the construction financing lender in an amount up to \$10,000,000, subject to approval by County Counsel;
8. Authorize the Executive Director of the Housing Authority, or designee, to execute a Subordination Agreement subordinating the LMIHAF Loan Deed of Trust for the benefit of the permanent financing lender in an amount up to \$2,000,000, subject to approval by County Counsel;
9. Authorize the Executive Director of the Housing Authority, or designee, to take all necessary steps to implement the Loan Agreement, LMIHAF Loan Promissory Note, LMIHAF Loan Deed of Trust, and Covenant Agreement, including but not limited to, signing subsequent necessary and relevant documents, subject to approval by County Counsel; and
10. Direct Housing Authority staff to file a Notice of Determination with the County Clerk within five days of the approval of the Loan Agreement.

**BACKGROUND:**

**SUMMARY** (Commences on Page 2)

# **SUBMITTAL TO THE BOARD OF COMMISSIONERS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

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**FORM 11:** Approve the Affordable Housing Loan Agreement for the Use of Low-Moderate Income Housing Asset Funds for Vista Rio Apartments Affordable Rental Housing Project Located in the City of Jurupa Valley Between the Housing Authority of the County of Riverside and Jurupa Valley Vista Rio Partners, L.P., District 2, [\$1,898,214], Low-Moderate Income Housing Asset Funds 100%, No Further CEQA Action Required

**DATE:** November 5, 2015

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## **BACKGROUND:**

### **SUMMARY**

On February 10, 2015 the Board of Commissioners of the Housing Authority of the County of Riverside (HACR) approved Resolution Number 2015-002 conditionally authorizing an amount not to exceed \$2,500,000 in financial assistance from the HACR's Low and Moderate Income Housing Asset Fund (LMIHAF) to Jurupa Valley Vista Rio Partners, LP, a California Limited Partnership (Developer) to be used to pay a portion of the costs for the construction of the Vista Rio Apartments Project (defined below).

In an effort to leverage state and federal resources, the County of Riverside Economic Development Agency (EDA) approved a Loan Agreement for the Use of HOME Investment Partnerships Program (HOME) funds in the amount of \$1,000,000 to be used to pay a portion of the construction costs for the Project. The EDA HOME loan will offset \$1,000,000 in the HACR's LMIHAF committed to the Project. In addition, on June 10, 2015, the Developer was notified by the California Tax Credit Allocation Committee that the Project was awarded tax credits which secured all sources of financing necessary for the construction of the Project.

Prior to the commitment of any financing, the HACR and Developer entered into a Ground Lease on June 17, 2014, which was amended on February 10, 2015 and then again on November 10, 2015 (collectively "Ground Lease") wherein the HACR conveyed a 99 year leasehold interest to Developer in approximately 3.87 acres of land located at 3901 Briggs Street, located in the City of Jurupa Valley between Mission Boulevard and Tilton Avenue, APN: 181-041-015-4 (Project Site). The Project will consist of 39 units, comprised of 26 two-bedroom units and 13 three-bedroom units. One two-bedroom unit will be set aside as a manager's unit. The two bedroom units are approximately 979 square feet and the three bedroom units are approximately 1257 square feet. The units will be rented to and occupied by qualified extremely low, very low and low income households. All units will be equipped with energy star appliances. On site amenities will include a 3,093 square foot community room, computer lab, exercise facility, game room, media room and a pool. On-site services will include literacy classes, computer training, after school programs and nutrition and wellness programs. Affordability restrictions recorded in connection with the Ground Lease restricts the affordability of 19 units within the Project for a period of no less than 55 years.

On June 7, 2011 the former Redevelopment Agency for the County of Riverside (RDA) entered into an Exclusive Negotiation Agreement (ENA) with an affiliate of Developer, Palm Communities, successor interest to Palm Desert Development Company, which provided for, among other things, predevelopment expenses related to the Project Site in the amount of \$618,000, of which \$398,214 was disbursed. Pursuant to the terms of the ENA, in the event the former RDA provided additional financing to pay for a portion of the Project development costs pursuant to a separate loan or development agreement, the Promissory Note evidencing such new development loan would also include the predevelopment loan disbursed to Developer pursuant to the ENA. The HACR has assumed all housing assets and housing functions of the former RDA pursuant to the Dissolution Act, including the former RDA's rights under the ENA. Developer has assumed all rights and obligations of Palm Communities, successor interest to Palm Desert Development Company, pursuant to an Assignment and Assumption Agreement which is attached. Staff recommends that the HACR approve the Assignment and Assumption Agreement and the attached Consent. Developer desires to move forward with a new loan agreement.

The Developer has satisfied all the conditions precedent to the loan of LMIHAF pursuant to Resolution No. Number 2015-002 and HACR staff recommends that the HACR and Developer enter into the attached  
(Continued)

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**DATE:** November 5, 2015

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**BACKGROUND:** (Continued)

**SUMMARY**

proposed Affordable Housing Loan Agreement Vista Rio Apartments in Jurupa Valley (Low and Moderate Income Housing Asset Funds) (Loan Agreement) which provides for, among other things, a loan in the amount of \$1,898,214 (which includes already disbursed predevelopment loan funds in the amount of \$398,214, plus a new loan in the amount of \$1,500,000) (LMIHAF Loan). The proposed LMIHAF Loan will be evidenced by a 55 year term residual receipts Promissory Note, and secured by, among other instruments, the proposed Leasehold Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents), Assignment of Rents and Leases, UCC-1 Fixture Filing, and Payment Guaranty (partial security), each instrument of which is attached to the Loan Agreement as an exhibit. In addition, the use and occupancy of the rental units will be restricted for a period of no less than 55 years, pursuant to the proposed Covenant Agreement, attached to the Loan Agreement. All security instruments recorded in connection with the Project will be recorded against the Developer's leasehold estate and not the HACR's fee interest.

The estimated total cost for the Project is \$11,788,744. In addition to the LMIHAF loan from the HACR in the amount of \$1,898,214 and EDA HOME funds in the amount of \$1,000,000, other sources of financing include a construction loan from JPMorgan Chase, N.A., in the approximate amount of \$7,046,146, a deferred developer fee in the amount of \$352,140 and a waiver of Developer Impact Fees by the City of Jurupa Valley in the amount of \$430,800, and Tax Credit Equity in the approximate amount of \$8,538,390, approximately \$1,492,244 of which shall be disbursed during the construction phase and the balance of which shall be used to pay of the construction loan from JPMorgan Chase, NA during the permanent phase.

The construction lender and permanent lender (collectively "Senior Lenders") will require, as a condition precedent to the funding of their respective loans, that the LMIHAF Loan is subordinated to their respective liens. HACR's affordability covenants will not be subordinated. Subordination of the LMIHAF Loan is necessary since an economically feasible alternative method of financing the Project on comparable terms is not available without subordination. As a result of such subordinations, the LMIHAF Loan will be in a junior lien position to the loans from the Senior Lenders. All subordination agreements shall be approved as to form by County Counsel.

The County of Riverside (County) Board Supervisors as the lead agency under the California Environmental Quality Act (CEQA) prior to the incorporation of the City of Jurupa Valley adopted a Mitigated Negative Declaration (MND) associated with Environmental Assessment No. 1206001902 for Mission Plaza on May 24, 2011. HACR as a Responsible Agency for purposes of CEQA, is now considering the commitment of \$1,898,214 in LMIHAF to be utilized for construction costs associated with the 39 dwelling units. HACR has considered the MND and associated environmental assessment which analyzed up to 301 residential dwelling units. No new information has become known since the adoption of the MND and the construction of the 39 units falls within the scope of the analysis. Furthermore, no substantial changes to the project or circumstances under which the project will be undertaken have occurred. Therefore, no new environmental documentation is required. HACR staff shall file a Notice of Determination with the County Clerk within 5 days of approval of the Loan Agreement.

County Counsel has reviewed and approved as to form the attached Assignment and Assumption Agreement (including the Consent) and the Loan Agreement, including all exhibits. Staff recommends approval of the

(Continued)

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**DATE:** November 5, 2015

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**BACKGROUND:** (Continued)

**SUMMARY**

attached Assignment and Assumption Agreement (including the Consent), and the attached Loan Agreement, including all exhibits.

**Impact on Citizens and Businesses**

The development and construction of the 39 unit multi-family affordable housing complex will have a positive impact on citizens and businesses. The project is expected to generate construction, maintenance, and property management jobs and provide affordable housing for residents in the County of Riverside.

Attachments:

- Affordable Housing Loan Agreement Vista Rio Apartments in Jurupa Valley (Low and Moderate Income Housing asset Funds), including all exhibits
- Notice of Determination
- Assignment and Assumption Agreement (including Housing Authority Consent)
- Site Map

NO FEE FOR RECORDING PURSUANT  
TO GOVERNMENT CODE SECTION 6103

Order No.  
Escrow No.  
Loan No.

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Housing Authority of the County of Riverside  
5555 Arlington Avenue  
Riverside, CA 92504  
Attn: Stephanie Adams

SPACE ABOVE THIS LINE FOR RECORDERS USE

AFFORDABLE HOUSING LOAN AGREEMENT  
VISTA RIO APARTMENTS IN JURUPA VALLEY  
(Low and Moderate Income Housing Asset Funds)

This AFFORDABLE HOUSING LOAN AGREEMENT VISTA RIO APARTMENTS IN JURUPA VALLEY (Low and Moderate Income Housing Asset Funds) ("Agreement") is made and entered into this 17<sup>th</sup> day of November, 2015 by and between THE HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE, a public entity corporate and politic, in its capacity as housing successor to the former Redevelopment Agency for the County of Riverside ("HOUSING AUTHORITY" or "Authority") and JURUPA VALLEY VISTA RIO PARTNERS LP, a California limited partnership ("Borrower"). HOUSING AUTHORITY and Borrower are collectively referred to herein as the "Parties" and individually as a "Party."

RECITALS:

WHEREAS, HOUSING AUTHORITY is a California housing authority acting under the California Housing Authorities Law, Part 2 of Division 4 of the Health and Safety Code ("Housing Authorities Law");

WHEREAS, the County of Riverside Redevelopment Agency ("RDA"), was duly created pursuant to California Community Redevelopment Law (Health and Safety Code Section 33000 et seq. the "CRL");

1 WHEREAS, Assembly Bill No. x1 26, as modified by Assembly Bill No. 1484  
2 (“Dissolution Act”), added parts 1.8 and 1.85 to Division 24 of the CRL. As a result, the RDA  
3 was dissolved on February 1, 2012 such that the RDA is now deemed a former redevelopment  
4 agency under Health and Safety Code Section 34173;

5 WHEREAS, pursuant to Health and Safety Code Section 34176 (a), County of  
6 Riverside Board of Supervisors Resolution No. 2012-035, and Housing Authority Board of  
7 Commissioners Resolution Nos. 2012-001 and 2012-005, all housing functions previously  
8 performed by the former RDA, including related rights, powers, duties, obligations and  
9 housing assets were transferred to Housing Authority, including, but not limited to that certain  
10 real property located at 3901 Briggs Street in the City of Jurupa, also known as Assessor Parcel  
11 Numbers 181-041-002, 181-041-004, and 181-041-008, as more specifically described in the  
12 legal description attached hereto as Exhibit “A” and incorporated herein by this reference  
13 (“Property”);

14 WHEREAS, HOUSING AUTHORITY (as “Housing Authority” therein) and  
15 Borrower (as “Tenant” herein) entered into that certain Ground Lease dated June 17, 2014 and  
16 recorded in the Official Records of the County of Riverside (“Official Records”) on February  
17 23, 2015 as Document No. 2015-0069888, as amended by that certain First Amendment to  
18 Ground Lease dated February 10, 2015 and recorded in the Official Records on February 23,  
19 2015 as Document No. 2015-0069890, as amended by that certain Second Amendment to  
20 Ground Lease dated November 10, 2015 and recorded on or about the date hereof in the  
21 Official Records (collectively, the “Ground Lease”) wherein, among other things, HOUSING  
22 AUTHORITY conveyed to Borrower a 99 year leasehold interest in the Property, as more  
23 specifically described in the legal description attached hereto as Exhibit “A” and incorporated  
24 herein by this reference (“Leasehold Estate”). During the Ground Lease term, Borrower will  
25 own the improvements on the Property;

26 WHEREAS, on June 7, 2011, prior to the formation of Borrower, the RDA  
27 entered into an Exclusive Negotiation Agreement and Predevelopment Loan (“ENA”) with  
28 Palm Communities, an affiliate of Borrower, to explore and negotiate in good faith a ground

1 lease and loan agreement, and to provide financing in the amount of \$618,000 to pay eligible  
2 predevelopment expenses. Palm Communities expended \$398,214 ("Predevelopment Loan") in  
3 predevelopment funds and assigned the ENA, including the obligation to pay the  
4 Predevelopment Loan to the HOUSING AUTHORITY, to Borrower pursuant to that certain  
5 Assignment and Assumption Agreement dated \_\_\_\_\_, 2015 and recorded on \_\_\_\_\_,  
6 2015 in the Official Records as Document No. \_\_\_\_\_;

7 WHEREAS, Borrower desires to develop and construct on the Leasehold Estate  
8 a thirty-nine (39) unit multi-family affordable rental housing complex, consisting of 27 two-  
9 bedroom units and 12 three-bedroom units (1 two-bedroom unit to be designated as a  
10 manager's unit), a portion of which shall be rented to and occupied by extremely low and very-  
11 low income households, for a period of no less than 55 years ("Project"), as more specifically  
12 set forth herein;

13 WHEREAS, HOUSING AUTHORITY desires to provide to Borrower financing  
14 necessary to pay a portion of the Development Costs (defined below) in the maximum total  
15 amount of One Million Eight Hundred Ninety Eight Thousand Two Hundred and Fourteen  
16 Dollars and No Cents (\$1,898,214.00) ("Authority Loan") for the development and  
17 construction of the Project and to maximize the affordability of the units, which Authority  
18 Loan amount shall also include the Predevelopment Loan amount which has already been  
19 disbursed to Borrower by the HOUSING AUTHORITY pursuant to the ENA. Authority  
20 represents to Borrower that all requirements of applicable law have been satisfied with respect  
21 to the lending of the \$1,500,000 portion of the Authority Loan contemplated herein and  
22 Authority has no actual knowledge of any further approvals required by the State of California  
23 to authorize the \$1,500,000 portion of the Authority Loan and the disbursement of such funds  
24 hereunder;

25 WHEREAS, the Authority Loan funds shall be derived from the HOUSING  
26 AUTHORITY'S Low and Moderate Income Housing Asset Fund as defined in CRL Sections  
27 34176 and 34176.1;

28 WHEREAS, the Authority Loan shall be evidenced by a Promissory Note and



secured by, among other instruments, a Leasehold Deed of Trust, Covenant Agreement, Assignment of Rents and UCC-1 Fixture Filing; and

WHEREAS, in furtherance of the public purposes set forth in the Housing Authorities Law and the CRL, the HOUSING AUTHORITY desires to provide the Authority Loan to Borrower to pay Development Costs for the Project, as more specifically described herein.

NOW, THEREFORE, in consideration of the foregoing, and the promises and mutual covenants and conditions hereinafter set forth, the HOUSING AUTHORITY and Borrower hereby do agree as follows:

**PART 1. SUBJECT OF AGREEMENT**

**SECTION 101 PURPOSE OF AGREEMENT**

The purpose of this Agreement is to effectuate the Redevelopment Plan for the Jurupa Valley Redevelopment Project Area in the City of Jurupa Valley by providing part of the financing for the development, construction and use of the Leasehold Estate. The Leasehold Estate will be developed with thirty-nine (39) residential rental apartments 49% of which shall be made available at an Affordable Rent and occupied by Extremely Low and Very Low Income (as defined herein) households (along with one manager's unit made available at market rate rent), community space and related parking (collectively, the "Project"). The development and use of the Leasehold Estate pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Jurupa and County of Riverside and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

**SECTION 102 DEFINITIONS**

For purposes of this Agreement, the following capitalized terms shall have the following meaning:

"Affordability Period" means no less than fifty-five (55) years from the issuance of the last Notice of Completion for the Project (without regard to (i) the term of the Authority Promissory Note, or (ii) transfer of the ownership of the Project, Improvements and/or Leasehold).

1        "Affordable Rent" means rent, including a reasonable utility and parking allowance, that  
2 does not exceed the following respective amounts:

3           a.       for a Very Low Income household with an income not exceeding fifty percent  
4 (50%) of the Area Median Income, the product of thirty percent (30%) times fifty percent (50%)  
5 of the Area Median Income adjusted for family size appropriate for the unit;

6           b.       for a Very Low Income household with an income not exceeding fifty percent  
7 (50%) of the CTCAC Area Median Income, the product of thirty percent (30%) times fifty  
8 percent (50%) of the CTCAC Area Median Income adjusted for family size appropriate for the  
9 unit;

10          c.       for an Extremely Low Income household with an income not exceeding thirty  
11 percent (30%) of the Area Median Income, the product of thirty percent (30%) times thirty  
12 percent (30%) of the Area Median Income adjusted for family size appropriate for the unit;

13          d.       for an Extremely Low Income household with an income not exceeding thirty  
14 percent (30%) of the CTCAC Area Median Income, the product of thirty percent (30%) times  
15 thirty percent (30%) of the CTCAC Area Median Income adjusted for family size appropriate  
16 for the unit.

17        "Authority Executive Director" or "Executive Director" means the Executive Director of  
18 the Housing Authority of the County of Riverside or designee.

19        "Authority Loan Documents" means the Authority Loan Note, Authority Deed of Trust,  
20 Covenants, Assignment of Rents and UCC-1.

21        "Affiliate" means (1) any Person directly or indirectly controlling, controlled by or under  
22 common control with another Person; (2) any Person owning or controlling ten percent (10%) or  
23 more of the outstanding voting securities of such other Person; or (3) if that other Person is an  
24 officer, director, member or partner, any company for which such Person acts in any such  
25 capacity. The term "control" as used in the immediately preceding sentence, means the power to  
26 direct the management or the power to control election of the board of directors. It shall be a  
27 presumption that control with respect to a corporation or limited liability company is the right to  
28 exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights

1 attributable to the controlled corporation or limited liability company, and, with respect to any  
2 individual, partnership, trust, other entity or association, control is the possession, indirectly or  
3 directly, of the power to direct or cause the direction of the management or policies of the  
4 controlled entity. It shall also be a presumption that the managing General Partner of a limited  
5 partnership controls the limited partnership.

6 "Affordable Units" means the approximately 19 residential apartment units to be  
7 constructed on the Property by Borrower in accordance with this Agreement and the Scope of  
8 Development (Exhibit "A"). The Affordable Units shall be restricted by Borrower for rental to  
9 Extremely Low Income and Very Low Income at an Affordable Rent, in accordance with the  
10 terms and conditions of this Agreement and the Covenant Agreement (Exhibit "E").

11 "Area Median Income" means the median income of the Riverside-San Bernardino-  
12 Standard Metropolitan Statistical Area, adjusted for family size by the United States Department  
13 of Housing and Urban Development ("HUD") pursuant to Section 8 of the United States Housing  
14 Act of 1937, as determined by HUD and published from time to time by the California  
15 Department of Housing and Community Development.

16 "Assignment of Rents" means an instrument substantially in the form of the Assignment  
17 of Rents attached to this Agreement as Exhibit "D" and incorporated herein by this reference.  
18 The Assignment of Rents shall secure the Authority Promissory Note and be recorded against title  
19 to the Leasehold.

20 "Authority Deed of Trust" means the deed of trust to be recorded against title to the  
21 Leasehold. The Authority Loan Deed of Trust is attached hereto as Exhibit "E" and incorporated  
22 herein by this reference and shall be subordinate to the Senior Loan deed of trust.

23 "Authority Loan" means a loan to be made by Authority to BORROWER in the not to  
24 exceed amount of \$1,898,214, in which Authority is the initial maker of the loan. The Authority  
25 Loan is subject to the CRL. The Authority Loan shall be evidenced by the Authority Promissory  
26 Note (Exhibit \_\_\_\_ ) and secured by, among other things, an Authority Deed of Trust (Exhibit  
27 "D"), Assignment of Rents (Exhibit "G"), Covenant Agreement (Exhibit "E") and UCC-1  
28 (Exhibit "H").

1       “Authority Promissory Note” means the promissory note in favor of the Authority  
2       evidencing an Authority Loan, executed by Borrower. The Authority Promissory Note is attached  
3       hereto as Exhibit “F” and incorporated herein by this reference.

4       “City” means City of Jurupa Valley.

5       “Closing” or “Close of Escrow” means the finalization and recording of all Senior Loan  
6       Authority Loan, HOME Loan, and other necessary financing instruments and documents for the  
7       financing of the development and construction of the Project as set forth herein and in the Method  
8       of Financing.

9       “Closing Date” means the date on which the Closing has occurred.

10       “Completion” means the point in time at which all of the following have been satisfied: (a)  
11       issuance of a certificate of occupancy by the City of Jurupa Valley for all buildings required to be  
12       constructed pursuant to this Agreement, (b) recordation of a Notice of Completion pursuant to  
13       Civil Code section 8182, (c) submission to the Authority, of unconditional lien releases or  
14       waivers obtained by Borrower or Borrower’s agent, (d) certification by the City of Jurupa Valley  
15       Inspector that construction of the Improvements (with the exception of minor “punch list” items)  
16       has been completed in a good and workmanlike manner and substantially in accordance with the  
17       approved plans and specifications; (e) payment, settlement or other extinguishment, discharge,  
18       release, waiver, bonding or insuring against any mechanic’s liens that have been recorded or stop  
19       notices that have been delivered; and (f) the Property has been developed in accordance with this  
20       Agreement, the Scope of Development and plans approved by the Authority pursuant to this  
21       Agreement.

22       “Covenant Agreement” or “Covenant” means the Covenant Agreement (Including Rental  
23       Restrictions) to be recorded upon the occurrence of the Closing, substantially in the form attached  
24       to this Agreement as Exhibit “E” and incorporated herein by this reference.

25       “CTCAC” or “TCAC” means the California Tax Credit Allocation Committee.

26       “CTCAC Area Median Income” as used herein means the area median income for the  
27       County of Riverside determined in accordance with 26 USC 42 (g). In no event shall the (i)  
28       Affordable Rent for Extremely Low Income and Very Low Income households exceed the

product of thirty percent (30%) times fifty percent (50%) of Area Median Income, adjusted for household size.

“Development Costs” means the total cost of developing and constructing the Improvements located on the Property, as set forth in the Project Budget.

“Extremely Low Income” shall have the meaning set forth in California Health and Safety Code Section 50106.

“Force Majeure” or “Force Majeure Event” means any of the following events, provided that it actually delays and interferes with the timely performance of the matter to which it applies and despite the exercise of diligence and good business practices is or would be beyond the reasonable control of the party claiming such interference: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation including litigation challenging the validity of this transaction or any element thereof; unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other party; acts or failure to act of any Governmental Authority (except acts or failure to act of the Authority shall not excuse performance by the Authority); or the imposition of any applicable moratorium by a governmental authority; or any other causes which despite the exercise of diligence and good business practices are or would be beyond the reasonable control of the party claiming such delay and interference. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Event unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge of the event, the date the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within fifteen (15) days after it obtains actual knowledge of the event.

“Force Majeure Delay” means any delay in taking any action required by this Agreement, proximately caused by the occurrence of any Force Majeure Event.

“Governmental Approvals” means and include any and all general plan amendments, zoning approvals or changes, required approvals and certifications under the California

1 Environmental Quality Act, variances, conditional use permits, demolition permits,  
2 excavation/foundation permits, grading permits, building permits, inspection reports and  
3 approvals, certificates of occupancy, and other approvals, permits, certificates, authorizations,  
4 consents, orders, entitlements, filings or registrations, and actions of any nature whatsoever  
5 required from any Governmental Authority in order to commence and complete the construction  
6 of the Project.

7 “Governmental Authority” means the United States, the State of California, the City,  
8 County of Riverside or any other political subdivision in which the Property is located, and any  
9 court or political subdivision, agency or instrumentality having jurisdiction over the Property.

10 “HOME Loan” means the loan in the principal amount not to exceed One Million Dollars  
11 (\$1,000,000) to be issued by the County of Riverside to Borrower to finance a portion of the  
12 Development Costs. The HOME Loan funds are derived from the U.S. Department of Housing  
13 and Urban Development (HUD) pursuant to the HOME Investment Partnerships Act and HOME  
14 Investment Partnerships (“HOME”) Program, enacted under Title II of the Cranston-Gonzalez  
15 National Affordable Housing Act, as amended (commencing at 42 U.S.C. 12701 et seq.), and the  
16 implementing regulations thereto (24 CFR Part 92).

17 “Improvements” or “Project Improvements” means the improvements to be constructed on  
18 the Property, as more particularly described in the Scope of Development (Exhibit H attached  
19 hereto), including, more generally, that the project will consist of 27 two-bedroom units  
20 (approximately 979 square feet each) and 12 three-bedroom units (approximately 1257 square  
21 feet each) , approximately 3,093 square foot community room, computer lab, exercise facility,  
22 game room, media room and a pool, 80 parking spaces (2.0 space/ per unit) and appropriate  
23 landscaping, all in accordance with applicable City of Jurupa Valley requirements and codes. In  
24 addition, the Improvements shall comply with the current California Building Code that includes  
25 comprehensive accessibility and adaptability requirements for multifamily new construction  
26 development and all Governmental Approvals.

27 “Leasehold” or “Leasehold Estate” means that leasehold estate in the Property created by  
28 the execution of the Ground Lease.

1        "Low Income Housing Tax Credit" means the tax credit authorized by the Tax Reform  
2 Act of 1986, governed by Section 42 of the Internal Revenue Code, and administered by CTCAC.

3        "Method of Financing" means the Method of Financing attached hereto as Exhibit "I"  
4 and incorporated herein by this reference.

5        "Notice of Affordability Restrictions" refers to the Notice of Affordability Restrictions to  
6 be recorded in connection with the Affordable Units in the form as attached hereto as Exhibit "J"  
7 and incorporated herein by this reference.

8        "Partnership Agreement" shall mean the agreement governing Borrower and any  
9 amendments thereto entered into in connection with obtaining the Low Income Housing Tax  
10 Credits.

11        "Payment Guaranty" shall mean the Payment Guaranty executed by Danavon Horn, an  
12 individual ("Guarantor"), in favor of the HOUSING AUTHORITY, substantially conforming in  
13 form and substance to Exhibit "I" attached hereto and incorporated herein by this reference.

14        "Permitted Transfer" shall mean the following:

- 15            a. A conveyance of a security interest in the Leasehold in connection with any  
16            Senior Loan and any transfer of title by foreclosure, deed or other conveyance in  
17            lieu of foreclosure in connection therewith;
- 18            b. A conveyance of the Leasehold to any Affiliate, including, but not limited to, a  
19            conveyance to Borrower's General Partner or Affiliate assignee pursuant to an  
20            option agreement with Borrower, or the acquisition of the Tax Credit Equity  
21            Investor's interest in Borrower by an Affiliate;
- 22            c. The admission of limited partners to Borrower, or similar mechanism, and the  
23            purchase of any such limited partnership interest or interests by the General  
24            Partner;
- 25            d. The removal for cause of any General Partner by a limited partner of the  
26            Borrower, and the replacement thereof, pursuant to the Partnership Agreement,  
27            provided Housing Authority receives 5 business days advance written notice of  
28            such removal. Without limiting Borrower's obligation to provide advance notice

1 of such removal for cause of any General Partner by a limited partner and the  
2 replacement thereof set forth in the immediately preceding sentence, amendments  
3 to the Partnership Agreement required to effectuate the Permitted Transfer set  
4 forth in this clause (d) shall not require the consent of the Authority; provided,  
5 however, Borrower shall provide Authority with an executed copy of such  
6 amended agreement within 10 days of execution thereof;

7 e. The lease for occupancy of all or any part of the Improvements within the  
8 Leasehold;

9 f. The granting of easements or permits to facilitate the development of the Property  
10 in accordance with this Agreement; and

11 g. The withdrawal, removal and/or replacement of any limited partner of Borrower,  
12 provided that any substitute limited partner is reasonably acceptable to Housing  
13 Authority and is selected with reasonable promptness (provided, however, this  
14 subsection excludes transfers of the limited partner interest by the Tax Credit  
15 Equity Investor to Affiliates of the Tax Credit Equity Investor in accordance with  
16 the Partnership Agreement).

17 Any transfer described in (b), (c), (f) and (g) above shall be subject to the  
18 reasonable approval of documentation by the Housing Authority's Executive Director or  
19 designee for conformance with this Agreement.

20 "Permitted Transferee" shall mean the transferee of a Permitted Transfer.

21 "Permitted Mortgage" means a mortgage approved by the HOUSING AUTHORITY as a  
22 source of financing for the Project. All mortgages referred to on Exhibit "C" are Permitted  
23 Mortgages.

24 "Person" means an individual, partnership, limited partnership, trust, estate, association,  
25 corporation, limited liability company, or other entity, domestic or foreign.

26 "Predevelopment Loan" means the unsecured pre-development loan made by the  
27 HOUSING AUTHORITY, as housing successor to the former RDA, to Borrower in the amount  
28 of \$398,214.00. The Predevelopment Loan amount has already been disbursed to the Borrower



1 and shall be included as part of the Authority Loan amount.

2 “Project” refers to the construction of the Improvements on the Property.

3 “Project Budget” means the schedule of sources and uses attached to this Agreement as  
4 Exhibit “K” and incorporated herein by this reference.

5 “Rental Housing Units” means the 39 affordable housing rental units to be constructed and  
6 developed on the Leasehold pursuant to this Agreement, including, but not limited to the Scope of  
7 Development and Governmental Approvals. The Rental Housing Units consist of the Affordable  
8 Units and the Unrestricted Units.

9 “Senior Lender” means the maker of any Senior Loan or beneficiary of any Senior Loan  
10 Deed of Trust. The initial Senior lender is JPMorgan Chase Bank, N.A.

11 “Senior Loan” means the source of financing in the form of a Construction Loan, the  
12 Permanent Loan or any other loan, credit enhancement or construction period guaranty facility  
13 secured by a deed of trust or other instrument against the Leasehold to which the HOUSING  
14 AUTHORITY agrees to subordinate the Authority Deed of Trust and the other Authority Loan  
15 Documents.

16 “Schedule of Performance” means the document attached to this Agreement as Exhibit  
17 “L” and incorporated herein by this reference.

18 “Scope of Development” means the document attached to this Agreement as Exhibit “H”  
19 and incorporated herein by this reference.

20 “Subordination Agreement” means s subordination agreement substantially conforming in  
21 a form and substance approved by the Authority Executive Director, or designee, and County  
22 Counsel provided such subordination agreement subordination does not (i) adversely affect the  
23 receipt of any benefit or right of HOUSING AUTHORITY under this Agreement (including any  
24 attachments thereto), the Authority Promissory Note and/or the Authority Deed of Trust,  
25 including without limitation causing or requiring the subordination of the affordability covenants  
26 in the Covenants, or (ii) increase any HOUSING AUTHORITY obligation or liability under this  
27 Agreement (including any attachments thereto).

28 “Tax Credit Equity Investor” means a Person who will be a limited partner and will

1 contribute equity to Tenant in consideration of the Low Income Housing Tax Credits. Boston  
2 Capital Multifamily Tax Credit Fund II, A Massachusetts limited partnership, and its affiliates  
3 and assigns, is deemed a Tax Credit Equity Investor.

4 “Title Company” means First American Title Insurance Company or another title  
5 insurance company mutually acceptable to the Authority Executive Director and Borrower.

6 “UCC-1” means a financing statement, substantially in the form attached to this  
7 Agreement as Exhibit “H” and incorporated herein by this reference.

8 “Unrestricted Units” shall mean the 20 residential units of the Project that are not  
9 restricted to Very Low Income or Extremely Low Income tenants pursuant to this Agreement  
10 and the Covenants, provided such units may be income and rent restricted pursuant to the terms  
11 of the HOME Loan and the TCAC regulatory agreement.

12 “Very Low Income” shall have the meaning set forth in California Health and Safety Code  
13 Section 50105.

#### 14 SECTION 103 AUTHORITY

15 The HOUSING AUTHORITY is a public entity, corporate and politic,  
16 exercising governmental functions and powers, and organized and existing under the Housing  
17 Authorities Law. The HOUSING AUTHORITY is also the “housing successor” to the former  
18 RDA pursuant to California Health and Safety Code Section 34176. The address of  
19 HOUSING AUTHORITY for purposes of receiving notices pursuant to this Agreement is as  
20 follows: 5555 Arlington Avenue, Riverside, California 92504.

21 "HOUSING AUTHORITY" and "Authority" as used in this Agreement includes the  
22 Housing Authority of the County of Riverside and any assignee or successor to its rights,  
23 powers and responsibilities.

#### 24 SECTION 104 BORROWER

25 Borrower is Jurupa Valley Vista Rio Partners LP, a California limited  
26 partnership. Borrower’s administrative general partner is PC Jurupa Valley Vista Rio  
27 Borrowers LLC, a California limited liability corporation, the sole member of which is Palm  
28 Communities, a California Corporation, as its sole member and Housing Corporation of

America, a Utah non-profit public benefit corporation as its managing general partner. The address of Borrower for purposes of receiving notices pursuant to this Agreement is as follows:

Jurupa Valley Vista Rio Partners, LP  
Attn: Danavon Horn, President  
15635 Alton Parkway, Suite 375  
Irvine, CA 92618

With a copies to:

Administrative General Partner  
PC Jurupa Valley Vista Rio Developers LLC  
15635 Alton Parkway, Suite 375  
Irvine, CA 92618

Managing General Partner  
Housing Corporation of America, a non-profit corporation  
1592 South 1100 East  
Salt Lake City, UT 84105

Senior Lender  
JPMorgan Chase Bank, N.A.  
Community Development Banking  
300 South Grand Avenue, 4th Floor  
Los Angeles, CA 90071  
Attention: Raymond Junior

Tax Credit Equity Investor  
Boston Capital Multifamily Tax Credit  
Fund II, A limited partnership  
c/o Boston Capital Partners  
One Boston Place, Suite 2100  
Boston, MA 02108  
Attn: Vista Rio Asset Management

and

Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
Attn: Douglas W. Clapp, Esq.

Whenever the term "Borrower" is used herein, such term means and include the Borrower as of the date hereof, and any assignee of or successor to its rights, powers and

responsibilities permitted by this Agreement.

SECTION 105      Assignments and Transfers

a. Borrower represents and agrees that its undertakings pursuant to this Agreement are for the purpose of redeveloping and providing affordable housing on the Property, and not for speculation in land holding. Borrower further recognizes that the qualifications and identity of Borrower are of particular concern to the HOUSING AUTHORITY, in light of the following: (1) the importance of the redevelopment of the Property to the general welfare of the community; (2) the public assistance that has been made available by law and by the government for the purpose of making such redevelopment possible; and (3) the fact that a change in ownership or control of Borrower, or any other act or transaction involving or resulting in a significant change in ownership or control of Borrower, is for practical purposes a transfer or disposition of the property then owned by Borrower. Borrower further recognizes that it is because of such qualifications and identity that the HOUSING AUTHORITY is entering into the Agreement with Borrower. Therefore, no voluntary or involuntary successor in interest of Borrower shall acquire any rights or powers under this Agreement except as expressly set forth herein.

b. Except as provided for herein with respect to Permitted Transfers, until full reconveyance of the Authority Deed of Trust, Borrower shall not assign all or any part of this Agreement, or any interest herein, or convey any part of the Leasehold or the Improvements or any interest therein, without the prior written approval of the HOUSING AUTHORITY.

c. For the reasons cited above, Borrower represents and agrees for itself and any successor in interest that prior to full reconveyance of the Authority Deed of Trust, without the prior written approval of the HOUSING AUTHORITY, there shall be no significant change in the ownership of Borrower or in the relative proportions thereof, or with respect to the identity of the parties in control of Borrower or the degree thereof, by any method or means, except Permitted Transfers.

d. Any assignment or transfer of this Agreement or any interest herein, any conveyance of the Leasehold or the Improvements or any interest therein, or any significant

1 change in ownership of Borrower, other than a Permitted Transfer, shall require the HOUSING  
2 AUTHORITY's approval, which shall not be unreasonably withheld. To the extent the  
3 HOUSING AUTHORITY's approval of an assignment or transfer is required by this  
4 Agreement, in granting or withholding its approval, the HOUSING AUTHORITY shall base its  
5 decision upon the relevant experience, financial capability and reputation of the proposed  
6 assignee or transferee and the effect, if any, of such proposed transfer on the public purposes of  
7 this Agreement. In addition, except with respect to Permitted Transfers and Authority's  
8 reasonable review of documentation in connection therewith (with the exception of section (d)  
9 of the definition of "Permitted Transfers" where review of the documentation is not required),  
10 the HOUSING AUTHORITY shall not approve any assignment or transfer of this Agreement or  
11 any interest herein, any conveyance of the Leasehold or the Improvements or any interest  
12 therein, or any significant change in ownership of Borrower that results in payment of  
13 consideration to any Person prior to the Completion of the Project and that is not conditioned  
14 upon Completion of the Project.

15 e. Borrower shall promptly notify the HOUSING AUTHORITY of any and all  
16 changes whatsoever in the identity of the partners of Borrower, of which Borrower or any of its  
17 officers and/or partners have been notified or otherwise have knowledge or information. Except  
18 for Permitted Transfers, after notice and opportunity to cure, this Agreement may be terminated  
19 by the HOUSING AUTHORITY if there is any significant change (voluntary or involuntary) in  
20 partnership, management or control of Borrower (other than such changes occasioned by the  
21 death or incapacity of any individual) prior to full reconveyance of the Authority Deed of Trust.  
22 Except for Permitted Transfers, in the event, prior to full reconveyance of the Authority Deed of  
23 Trust, of the death or incapacity of any individual who owns or controls Borrower or the  
24 General Partner of Borrower, any resulting change in the management of the Project or the  
25 control of the day-to-day operations of the Property and the Affordable Units shall be subject to  
26 the HOUSING AUTHORITY's reasonable approval. The term "control" as used herein shall  
27 mean (i) with respect to a corporation or limited liability company is the right to exercise or  
28 control, directly or indirectly, 49% or more of the voting rights attributable to the controlled

corporation, and (ii) with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity.

f. The restrictions of this Section 105 shall terminate upon full reconveyance of the Authority Deed of Trust.

#### SECTION 106 Borrower's Representations and Warranties

As an inducement to the Authority to enter into this Agreement and consummate the transactions described herein, Borrower hereby represents and warrants to the Authority, which representations and warranties are true and correct as of the date of this Agreement and which shall survive the Close of Escrow:

(1) Borrower has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to satisfy all obligations of the Borrower in this Agreement or in any instrument or document referred to herein (referred to collectively as the "Borrower's Obligations");

(2) This Agreement and all documents required hereby to be executed by Borrower are, and shall be, valid, legally binding obligations of and enforceable against Borrower in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principles affecting or limiting the rights of contracting parties generally;

(3) There is no charter, bylaw, or capital stock provision of Borrower, and no provision of any indenture, instrument, or agreement, written or oral, to which Borrower is a party or which governs the actions of Borrower or which is otherwise binding upon Borrower or Borrower's property, nor is there any statute, rule or regulation, or any judgment, decree, or order of any court or agency binding on Borrower or Borrower's property which would be contravened by the execution, delivery or performance of any of Borrower's Obligations;

(4) There is no action, suit, or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of Borrower, threatened against or affecting Borrower, or any properties or rights of Borrower, which, if

adversely determined, would materially impair the right of Borrower to execute or perform any of the Borrower's Obligations, or would materially adversely affect the financial condition of Borrower;

(5) Neither the execution and delivery of this Agreement, including any attachments hereto or documents related to this Agreement, nor the incurrence of the Borrower's Obligations, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, the Partnership Agreement, lease or other agreements or instruments to which Borrower is a party;

(6) No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against Borrower, nor are any of such proceedings contemplated by Borrower;

(7) All reports, documents, instruments, information and forms of evidence delivered to the Authority concerning or required by this Agreement are accurate, correct and sufficiently complete to give the Authority true and accurate knowledge of their subject matter, and do not contain any misrepresentation or omission; and

(8) No representation, warranty or statement of Borrower in this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading.

Borrower's representations and warranties made in this Section 106 shall be continuing and shall be true and correct as of the date of the Close of Escrow with the same force and effect as if remade in a separate certificate at that time. The truth and accuracy of the Borrower's representations and warranties made herein shall constitute a condition for the benefit of the Authority to the performance of the Authority's obligations hereunder.

Borrower shall upon learning of any fact or condition which would cause any of the warranties and representations in this Section 106 not to be true as of Closing,

1 immediately give written notice of such fact or condition to HOUSING AUTHORITY.

2 SECTION 107 Method of Financing

3 a. The Development Costs for the Project shall be financed with a combination of  
4 sources of financing as provided in the Method of Financing, including any amendments or  
5 modifications thereto (Exhibit "D"), including, but not limited to the following intended sources:  
6 capital contributions from the Tax Credit Investor in the approximate amount of \$10,000,000  
7 (subject to reasonable adjustment pursuant to the terms of the Partnership Agreement), deferral  
8 of approximately \$ \_\_\_\_\_ of Borrower's Developer fee, waived Borrower Impact Fees,  
9 County of Riverside HOME Loan in the amount of \$1,000,000, Senior Loan in the approximate  
10 amount of \$10,000,000 and the Authority Loan.

11 b. Except as otherwise provided in this Agreement and in the Method of Financing,  
12 Borrower shall not refinance the Senior Loan and/or a Permanent Loan for the Affordable Units  
13 or place any additional financing on the Leasehold Estate without the advanced and express  
14 written consent of the Authority Executive Director or designee.

15 SECTION 108 Authority Assistance

16 a. Authority Predevelopment Loan

17 Pursuant to the ENA Borrower received a Predevelopment Loan from the RDA,  
18 predecessor in interest to the HOUSING AUTHORITY, in the total amount of \$398,214.00, to  
19 pay predevelopment expenses related to the Project. All Predevelopment Loan funds have been  
20 disbursed by HOUSING AUTHORITY to Borrower. Without limiting the indemnity set forth in  
21 Section 109 below, Borrower acknowledges and agrees that Borrower shall immediately repay to  
22 the HOUSING AUTHORITY the Predevelopment Loan funds, or any portion thereof, as  
23 demanded by the HOUSING AUTHORITY, in the event such a request for repayment of the  
24 aforementioned Predevelopment Loan funds, is demanded by the California Department of  
25 Finance, any other governmental entity with jurisdiction over the HOUSING AUTHORITY  
26 and/or Predevelopment Loan, or any other third party. Notwithstanding anything to the contrary  
27 contained herein, including Section 109 hereof, HOUSING AUTHORITY acknowledges and  
28 agrees that Borrower's failure to pay the aforementioned amounts (i) shall not result in



1 HOUSING AUTHORITY withholding or delaying the disbursement of the \$1,500,000 Portion  
2 of the Authority Loan (defined below), and (ii) shall not constitute an event of default hereunder.

3 Upon the Closing for the Authority Loan, all Authority Predevelopment Loan amounts  
4 owed by Borrower to the HOUSING AUTHORITY shall be included in the principal amount of  
5 the Authority Loan as a Development Cost. If this Agreement is terminated prior to the Closing  
6 for any reason, the outstanding principal balance and accrued interest of the Authority  
7 Predevelopment Loan shall be due and payable in full to the HOUSING AUTHORITY no later  
8 than thirty (30) days after termination of this Agreement.

9 b. Authority Loan. In accordance with and subject to the terms and conditions of  
10 this Agreement, including the Method of Financing (Exhibit "C"), the Authority agrees to lend to  
11 Borrower, and Borrower agrees to borrow from the Authority, the Authority Loan, as described  
12 in the Method of Financing, in an amount not to exceed ONE MILLION EIGHT HUNDRED  
13 NINETY EIGHT THOUSAND TWO HUNDRED AND FOURTEEN DOLLARS  
14 (\$1,898,214.00), inclusive of the HOUSING AUTHORITY Predevelopment Loan proceeds  
15 disbursed to Borrower for eligible predevelopment costs pursuant to the ENA. The Authority  
16 Loan shall be evidenced by the Authority Loan Note (Exhibit "F"), and repayment shall be  
17 secured by the Authority Deed of Trust (Exhibit "D"), Covenants (Exhibit "E"), Assignment of  
18 Rents (Exhibit "G"), and UCC-1 (Exhibit "H"). The HOUSING AUTHORITY represents and  
19 warrants that no portion of the Agency Loan will be funded or subsidized, in whole or in part,  
20 directly or indirectly, by the proceeds of any obligation, the interest on which is exempt from  
21 Internal Revenue Code or by any grant or loan funded by any federal funds.

22 c. Terms of Authority Loan

23 a. Principal. The principal of the HOUSING AUTHORITY Loan shall be  
24 \$1,898,214.00 and evidenced by a promissory note substantially conforming in form and  
25 Substance to the Authority Promissory Note attached hereto as Exhibit "F", executed by  
26 BORROWER in favor of HOUSING AUTHORITY. Only a portion of the Authority Loan in the  
27 maximum amount of \$1,500,000 ("\$1,500,000 Portion of Authority Loan") shall be disbursed to  
28

Borrower pursuant to this Agreement as the remaining balance in the amount of \$398,214 has already been disbursed to Borrower.

b. Interest. The interest rate shall be 3.00% per annum.

c. Maturity Date. the maturity date of the Authority Loan Note shall be the later to occur of (i) July 1, 2070 or (ii) fifty-five (55) years from the recordation of the Notice of Completion for the last building for which construction is completed for the Project.

d. Repayment. The Authority Promissory Note shall provide the following:

1. That the Authority Loan will accrue simple interest at a rate of three percent (3.00%) per annum, except in the case of default as hereinafter provided, and shall be repaid on an annual basis from the Project's Residual Receipts as defined herein;

2. The Authority Promissory Note shall be repaid according to the following:

(i) Fifty percent (50%) of the Project's Residual Receipts shall be used towards the payment of the Residual Receipts loans secured by the Project ("Public Agency Portion of Residual Receipts"), and the payment shall be prorated based on the percentage of each respective loan amount based upon the total amount of such loans, until the Authority Loan is repaid in full. The Residual Receipts payment split calculation is as follows: 35% of the Public Agency Portion of Residual Receipts shall be allocated to the County of Riverside's HOME Loan 35%, and 65% of the Public Agency Portion of Residual Receipts shall be allocated to the Authority Loan and

(ii) The remaining fifty percent (50%) of the Project's Residual Receipts will be retained by BORROWER.

3. Project Residual Receipts are defined as gross rental receipts, security deposits until applied, casualty insurance proceeds, equity contributions and loan

proceeds received, not including interest on required reserve accounts, less the following operating expenses:

- i) auditing and accounting fees;
- ii) a reasonable property management fee not to exceed \$55 per unit per month, increased annually by an amount equal to the increase in the Consumer Price Index (CPI), for the Los Angeles-Riverside-Orange County, CA Area;
- iii) operating expenses (any expense reasonably and normally incurred in carrying out the Project's day-to-day activities, which shall include administration, on-site management, utilities, on-site staff payroll, payroll taxes and maintenance);
- iv) replacement reserves, established in a separate account from operating reserves in an annual amount up to \$13,650;
- v) deferred developer fee;
- vi) operating reserves, in an annual amount up to \$84,795;
- vii) a Managing General Partner partnership management fee which shall be in the initial amount of \$25,000 and increased annually by an amount equivalent to the rise in the CPI, for the Los Angeles-Riverside-Orange County, CA Area;
- viii) a limited partner asset management fee not to exceed \$4,000 per year increased annually by an amount equivalent to the rise in CPI; and
- ix) payments of principal and interest on amortized loans and indebtedness senior to the HOUSING AUTHORITY Loan, which have been approved by HOUSING AUTHORITY (collectively, the "Senior Debt"); and
- x) The HOUSING AUTHORITY'S annual monitoring fee for ground lease in the amount of \$3900, increased annually by an amount equal to the increase of the Consumer Price Index (CPI), for the Los Angeles-Orange County-Riverside, CA Area. provided, however, that in the event of a decrease in the CPI, the County's annual monitoring fee shall remain the same as the immediate preceding year .

Residual Receipts shall be determined based on a review of certified financial statements for the Project. Annual audited financial statements shall be submitted within one hundred and twenty (120) days following the close of the project fiscal year commencing on April 1 of the first full calendar year following the recordation of the Notice of Completion. All outstanding principal along with accrued interest shall be due upon the first to occur of (i) July 1, 2073 or (ii) fifty-five (55) years from the recordation of the last Notice of Completions for the Project. The first payment shall be due on, the first July 1st in the first full calendar year following the date of the recordation of the Notice of Completion, to the extent of available Residual Receipts, as set forth above. Subsequent payments shall be made on July 1st thereafter to the extent of available Residual Receipts until the earlier of full repayment of the Authority Loan or the Authority Loan maturity date as set forth above;

d. Security. The Authority Loan shall be secured by a deed of trust recorded against the Leasehold substantially conforming in form and substance to the Authority deed of Trust attached hereto as Exhibit "D". The HOUSING AUTHORITY hereby agrees that the HOUSING AUTHORITY Deed of Trust and the terms of this Agreement shall be subordinated to: 1) a construction deed of trust in connection with a construction loan in the amount not to exceed \$10,000,000 (the "Senior Loan"). In addition, HOUSING AUTHORITY agrees to execute any and all documents reasonably necessary to effectuate subordination of the Authority Loan to a Senior Loan provided that any such subordination does not (i) adversely affect the receipt of any benefit or right of HOUSING AUTHORITY under this Agreement (including any attachments thereto) the Authority Promissory Note and/or the Authority Deed of Trust, including without limitation causing or requiring the subordination of the affordability covenants in the Covenants, or (ii) increase any HOUSING AUTHORITY obligation or liability under this Agreement (including any attachments thereto). Subordination of any future refinancing may be considered by HOUSING AUTHORITY upon BORROWER'S reasonable request.

f. Prepayment. Prepayment of Authority Loan principal and/or interest may occur at any time without penalty, provided however, such prepayment shall not release Borrower from complying with the affordability and use restrictions set forth in the Covenants until the term of

the Covenants has expired, and/or Borrowers obligations to comply with all laws and regulations relating to the operation of the Affordable Units.

g. Gap Assistance. The parties acknowledge that the Authority Loan is intended to be gap assistance, not to exceed the amount needed to bridge the gap between the total Development Cost (as defined herein and in the Method of Financing) and the maximum loans obtainable by Borrower plus Borrower's equity. In furtherance of this acknowledgement, Borrower agrees to the following conditions ("Conditions"):

1. The maximum amount of the Authority Loan shall not exceed ONE MILLION EIGHT HUNDRED NINETY-EIGHT THOUSAND TWO HUNDRED AND FOURTEEN DOLLARS (\$1,898,214). If there are any increases in Project's funding gap due to lower tax credit pricing or development cost increases, the additional gap shall be funded by Borrower through additional deferment of Borrower fees, Borrower Equity, or other non- HOUSING AUTHORITY sources. If Borrower proposes to redesign the Project or add new features to the Project which result in a cost savings, the Authority Loan shall be reduced to reflect such changes.

Borrower understands and agrees that the Borrower's performance of the Conditions are a material inducement to the Authority's execution of this Agreement and that in the event of any dispute between the parties, the Agreement shall be interpreted in a manner that furthers the intent of the Conditions for the benefit of the Authority.

h. Allocation of Costs. The proceeds of the Agency Loan shall be used exclusively to pay Development Costs for the Project, including related parking, as identified in the Project Budget (Attachment No. 7) and reasonably approved by the Authority Executive Director.

i. Disbursement of \$1,500,000 Portion of Authority Loan. Provided Borrower is not in default under this Agreement or any other Authority Loan Documents, the proceeds of the \$1,500,000 Portion of the Authority Loan shall be disbursed as follows:

1. HOUSING AUTHORITY shall pay BORROWER the \$1,500,000 Portion of

1 the Authority Loan on a "cost-as-incurred" basis for all eligible approved  
2 costs under the following schedule:

- 3 (a) Up to fifty percent (50%) of the \$1,500,000 Portion of the  
4 Authority Loan at the commencement of construction.
- 5 (b) Up to forty percent (40%) of the \$1,500,000 Portion of the  
6 Authority Loan upon fifty-one percent (51%) completion of  
7 Project, as certified and documented by the project architect.
- 8 (c) HOUSING AUTHORITY shall release final draw down of ten  
9 percent (10%) of the \$1,500,000 Portion of the Authority Loan  
10 following receipt of all of the items listed in **Section 108 e. 2.**

11 **Below.**

12 2. HOUSING AUTHORITY will retain ten percent (10%) of the \$1,500,000  
13 Portion of the Authority Loan and release final draw down of the \$1,500,000 Portion of  
14 the Authority Loan upon receipt of all of the following:

- 15 1) Conditional lien release from general contractor;
- 16 2) Recordation of Notice of Completion;
- 17 3) Issuance of Certificate of Occupancy;
- 18 4) Delivery to HOUSING AUTHORITY of architect certification  
19 identifying units that are accessible to individuals with mobility impairments and  
20 units that are accessible to individuals with sensory impairments in compliance  
21 with Section 504 of the Rehabilitation Act of 1973;
- 22 5) submission of a Project completion report including Tenant  
23 Checklist as shown in Exhibit "J" which is attached hereto and by this reference  
24 incorporated herein;
- 25 6) Tenant Selection Policy;
- 26 7) Management Plan;
- 27 8) final development costs; and
- 28

9) final sources and uses of funds. A final Certified Public Accountant's construction cost certification must be provided within 6 months of the Notice of Completion (but not as a condition to release the \$1,500,000 Portion of the Authority Loan retention).

J. Project Financing Contingency. This Agreement is expressly conditioned upon BORROWER's receipt, on or prior to January 1, 2016 of (i) such binding loan commitments for new loans as may be required by BORROWER, on terms and conditions acceptable to BORROWER, in its sole discretion, including, without limitation, (a) any conventional construction and/or permanent financing, including without limitation, a construction and/or permanent loan from an institutional construction lender (the "Senior Lien Holder"), and (b) a binding reservation of federal low income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (collectively, the "Project Financing"). Either HOUSING AUTHORITY or BORROWER may elect to terminate this Agreement with ten (10) days written notice to the other party if BORROWER fails to acquire the project financing as required by this **Section 108 j**. Upon such termination, this Agreement shall be null and void, and:

1. If BORROWER elects to terminate this Agreement, BORROWER shall be released and discharged by HOUSING AUTHORITY from its obligations under this Agreement, except as to those obligations which by their terms survive termination; or

2. If HOUSING AUTHORITY elects to terminate this Agreement, HOUSING AUTHORITY shall be released and discharged by BORROWER from its obligations under this Agreement, except as to those obligations which by their terms survive termination.

At that time all cost incurred by each party on the Project will be assumed respectively.

k. Letter to Proceed. BORROWER shall not initiate nor incur expenses for HOUSING AUTHORITY funded activity covered under the terms of this

Agreement prior to receiving written authorization to proceed.

1. Reallocation Of Funds. If Borrower fails to meet (1) the Construction Start Deadline as set forth in the Schedule of Performance (Exhibit "A"); (2) the Completion Deadline as set forth in the Schedule of Performance (Exhibit "A"); (3) the Lease Deadline as set forth in the Schedule of Performance ; or (4) the Project Financing Contingency in **Section 108 (J)**, all of which are herein (collectively, the "Performance Deadlines"), subject to the notice and cure periods as set forth in **Section 501** herein, then the Authority Loan funds as set forth in this Authority Loan may be reallocated by HOUSING AUTHORITY after at least thirty (30) days' prior written notice is given to BORROWER if Borrower fails to cure prior to the expiration of such deadlines. Upon such reallocation and repayment of funds, this Agreement shall be terminated and be of no further force and effect and Borrower shall be released and discharged from any obligations under this Agreement, except as to those obligations which survive termination by their terms.

#### Section 108.1 PAYMENT GUARANTY

As a condition precedent to the Close of Escrow and disbursement of the \$1,500,000 Portion of the Authority Loan by HOUSING AUTHORITY, Danavon Horn shall execute in favor of the HOUSING AUTHORITY a Payment Guaranty, substantially conforming in form and substance to the Payment Guaranty attached hereto as **Exhibit "I"** and incorporated herein by this reference, guaranteeing immediate payment to the HOUSING AUTHORITY of the Predevelopment Loan in the amount of \$ 398, 214, in the event such repayment is required by the California Department of Finance or any other governmental entity with jurisdiction over the Project, Predevelopment Loan and/or the HOUSING AUTHORITY, or pursuant to any legal action. The Payment Guaranty shall terminate upon approval of the Predevelopment Loan by the DOF and/or other required and necessary parties, as more specifically set forth in the Payment Guaranty.

#### Section 109 INDEMNIFICATION



Notwithstanding anything to the contrary in this Agreement, Borrower shall defend, indemnify and hold harmless HOUSING AUTHORITY, County of Riverside, its Agencies, Boards, Districts, Special Districts and Departments, their respective directors, officers, Board of Commissioners, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from and against any and all actions, third party claims, suits, causes of action, proceedings, demands, liabilities, loss, damages, injuries, challenges, cost and/or expense (including reasonable attorneys' fees and court costs), and/or demand for payment of the Predevelopment Loan (including related costs) (collectively, "Claims") arising from or as a result of or in any way connected with the following: (i) the ENA, (ii) disbursement, and/or use of any portion of the Predevelopment Loan funds and/or Authority Loan funds, (iii) classification of the Predevelopment Loan funds as a loan issued by the Housing Authority to the Borrower as provided in this Agreement and the Authority Note, (iv) identification of the Predevelopment Loan as a HOUSING AUTHORITY asset assumed from the former RDA, and/or (v) any liability to any third party or governmental entity arising out of related to any portion of the Predevelopment Loan amount. Borrower further agrees that such indemnification obligation shall include all fees and costs reasonably incurred in the defense of the Indemnified Parties by counsel selected by Borrower. With respect to any action or claim subject to indemnification herein by Borrower, Borrower shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of HOUSING AUTHORITY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Borrower's indemnification to Indemnitees as set forth herein. Borrower's indemnification obligations arising from clauses (iii),(iv) and (v) above related to the Predevelopment Loan will terminate upon written approval of the Predevelopment Loan by the DOF and/or any additional required and necessary third parties as determined by the HOUSING AUTHORITY.

All sums expended by HOUSING AUTHORITY on account of any of the foregoing, including, but not limited to HOUSING AUTHORITY payment of attorneys' fees, shall be

reimbursable on demand, and until reimbursed by Borrower pursuant hereto, shall be deemed additional principal evidenced by the Authority Promissory Note and shall bear interest at the default rate set forth therein. The obligations of the Borrower under this Section shall, notwithstanding anything to the contrary contained herein, in the Authority Promissory Note, Authority Deed of Trust, or any other Authority Loan Documents, constitute personal recourse undertakings, obligations and liabilities of Borrower until payoff of the Senior Loan and shall be secured by the Authority Deed of Trust.

Borrower's obligation hereunder shall be satisfied when Borrower has provided to Authority the appropriate form of dismissal relieving Authority and the other Indemnitees from any liability for the action or claim involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe Borrower's obligations to indemnify and hold harmless Indemnitees herein from third party claims.

Except as specifically set forth herein, the foregoing defense and indemnification obligations shall survive the termination of this Agreement and shall continue to remain in effect after any or all of the following events: Closing, Completion and issuance of the Notice of Completion for the Project and Certificate of Occupancy.

#### SECTION 110 Evidence of Financing

a. Not later than fifteen (15) days prior to the scheduled Closing Date and in no event later than as provided in the Schedule of Performance, Borrower shall submit to the HOUSING AUTHORITY evidence satisfactory to the HOUSING AUTHORITY that Borrower has obtained the financing necessary for the development of the Property in accordance with this Agreement. Such evidence of financing shall include the following:

1. A copy of all substantially complete loan documents relating to the Construction Loan (e.g., notes, deeds of trust, mortgages, indentures and loan agreements), including a final Project Budget approved by the Construction Lender, certified by Borrower to be a true and correct copy or copies thereof;

2. A copy of a loan commitment evidencing that the Permanent Loan will be available at Project completion, certified by Borrower to be a true and correct copy or copies thereof;
3. Evidence that Borrower has obtained a reservation of tax credits from TCAC;
4. A copy of the Partnership Agreement or other documentation acceptable to the Executive Director demonstrating the commitment of the Tax Credit Equity Investor to provide the capital contribution to Borrower, or a grant from CTCAC in lieu of tax credit equity, to demonstrate that Borrower has adequate equity funds committed to provide the amount of Borrower Equity required by the Method of Financing;
5. A copy of the commitments obtained by Borrower and the respective loan documents for the Construction Loan, and all other commitments described in the Method of Financing, to finance the development and construction of the Improvements, each certified by Borrower to be true and correct copies thereof and each, as applicable, conforming to the HOUSING AUTHORITY requirements set forth herein.
6. Documentation acceptable to the Authority Executive Director of other sources of capital sufficient to demonstrate that the Borrower has adequate equity funds committed to provide the amount of Borrower Equity required by the Method of Financing;
7. A copy of the contract between Borrower and the general contractor or major subcontractors for the construction of the Improvements, certified by Borrower to be a true and correct copy thereof;
8. A copy of a final Project Budget approved by the Authority Executive Director; and
9. All other documents reasonably requested by the Agency Executive Director.

b. The Authority Executive Director shall approve or disapprove such evidence of financing within the time established in the Schedule of Performance (Exhibit "A"). Such approval shall not be unreasonably withheld. If the Authority shall disapprove any such evidence of financing, the Authority shall do so by written notice to Borrower stating the reasons for such disapproval.

## **PART 2 CLOSING OF AUTHORITY LOAN**

### **SECTION 201 Escrow**

a. HOUSING AUTHORITY agrees to open an escrow in the County of Riverside with the Escrow Agent no later than the applicable dates established in the Schedule of Performance.

Sections 201 through 207 (inclusive) of this Agreement shall constitute the joint escrow instructions of HOUSING AUTHORITY and Borrower with respect to the Authority Loan, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow.

Housing Authority and Borrower shall provide such additional escrow instructions as shall be necessary to close the escrow with respect to the Authority Loan, and consistent with this Agreement. The Escrow Agent hereby is empowered to act under such instructions, and upon indicating its acceptance thereof in writing, delivered to HOUSING AUTHORITY and to Borrower within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

Upon receipt by the Escrow Agent of all executed and acknowledged documents, as required by the Method of Financing, the Escrow Agent shall record all documents in accordance with Section 202 and Section 207. of this Agreement when all of the conditions precedent to the close of the Authority Loan have been satisfied, or waived by the Authority Executive Director in writing, in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law. Any insurance policies governing the Property or any portion thereof are not to be transferred.

1           b.       Borrower shall pay in escrow to the Escrow Agent the following fees, charges and  
2 costs promptly after the Escrow Agent has notified Borrower of the amount of such fees, charges  
3 and costs, but not earlier than 3 days prior to the scheduled date for the Closing:

- 4                   1.       The escrow fee;
- 5                   2.       The premium for Authority's Title Policy, including any endorsements  
6                           required by the Authority Executive Director, as set forth in Section 207  
7                           of this Agreement; and
- 8                   3.       Recording fees.

9           c.       Housing Authority shall pay in escrow to the Escrow Agent the following fees,  
10 charges and costs promptly after the Escrow Agent has notified Housing Authority of the amount  
11 of such fees, charges and costs, but not earlier than 3 days prior to the scheduled date for the  
12 Closing:

- 13                   1.       Any State, County or City documentary stamps or transfer tax.

14           d.       The Escrow Agent is authorized and directed to do all of the following:

- 15                   1.       Pay, and charge Authority and Borrower, respectively, for any fees,  
16                           charges and costs payable under this Section 201. Before such payments  
17                           are made, the Escrow Agent shall notify Housing Authority and Borrower  
18                           of the fees, charges and costs necessary to clear title and close the escrow  
19                           in the form of a closing statement approved and executed by both  
20                           Borrower and HOUSING AUTHORITY (the "Settlement Statement").
- 21                   2.       Disburse funds in accordance with the Settlement Statement and deliver  
22                           the Authority Note and other documents to the parties entitled thereto  
23                           when the conditions of this escrow have been fulfilled by HOUSING  
24                           AUTHORITY and Borrower or waived by the party benefitting therefrom.
- 25                   3.       Record any instruments delivered through this escrow in accordance with  
26                           the terms and provisions of this Agreement.

1 e. All funds received in this escrow shall be deposited by the Escrow Agent in a  
2 fully government insured general escrow account with any state or national bank doing business  
3 in the State of California and reasonably approved by Borrower and Housing Authority.

4 f. If this escrow is not in a condition to close on or before the scheduled Closing  
5 Date set forth in the Schedule of Performance, then either party who then shall have fully  
6 performed the acts to be performed before the Closing may, in writing, demand the return of its  
7 money, papers or documents from the Escrow Agent. No demand for return shall be recognized  
8 until 10 days after the Escrow Agent (or the party making such demand) shall have mailed copies  
9 of such demand to the other party or parties at the address of its principal place of business.  
10 Objections, if any, shall be raised by written notice to the Escrow Agent and to the other party  
11 within the 10-day period, in which event the Escrow Agent is authorized to hold all money,  
12 papers and documents with respect to the Property until instructed by a mutual agreement of the  
13 Parties or, upon failure thereof, by a court of competent jurisdiction. If no such demands are  
14 made, then the escrow shall be closed as soon as possible.

15 g. If objections are raised as above provided for, then the Escrow Agent shall not be  
16 obligated to return any such money, papers or documents except upon the written instructions of  
17 both HOUSING AUTHORITY and Borrower, or until the party entitled thereto has been  
18 determined by a final decision of a court of competent jurisdiction. If no such objections are  
19 made within said 10-day period, then the Escrow Agent shall immediately return the demanded  
20 money, papers or documents.

21 h. The Parties understand they may be required to execute additional standard form  
22 escrow instructions required by the Escrow Agent ("General Instructions"). In the event of a  
23 conflict between this Agreement and any such General Instructions, this Agreement shall control.  
24 The Parties agree, however, that they would refuse to execute General Instructions which  
25 (i) purport to relieve the Escrow Agent of liability for negligence or intentional wrong-doing,  
26 (ii) excuse the Escrow Agent from strict compliance with each and all of the provisions of this  
27 document and the General Instructions or (iii) purport to authorize the Escrow Agent to follow  
28 the instructions or directive of any person not a direct signatory party to this Agreement. Any

amendment to the escrow instructions shall be in writing and executed by both HOUSING AUTHORITY and Borrower. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

i. HOUSING AUTHORITY and Borrower shall each pay their legal and professional fees and fees of other consultants incurred by HOUSING AUTHORITY and Borrower in connection with the Closing, respectively.

j. All communications from the Escrow Agent to HOUSING AUTHORITY or Borrower shall be directed to the addresses set forth in Sections 103 and 104 of this Agreement, and in the manner set forth in Section 601 of this Agreement for notices between the Parties.

#### SECTION 202 Recordation of Documents

HOUSING AUTHORITY and Borrower, respectively, agree to perform all acts necessary to achieve recordation and delivery of documents in sufficient time for escrow to be closed in accordance with the foregoing provisions.

a. The following documents shall be recorded in the following order ("Recorded Documents") against the Leasehold Estate upon the Closing:

ORDER OF RECORDATION	DOCUMENT NAME
1	Covenant Agreement
2	Senior Loan security instruments and Subordination Agreement (against Leasehold)
3	Authority Deed of Trust, Assignment of Rents, Subordination Agreement, and UCC-1 Financing Statement (against Leasehold)
4	Tax Credit Regulatory Agreement (against Leasehold)
5	HOME Loan security instruments (against Leasehold)

c. All documents to be recorded shall be recorded in the Official Records.

d. In the event that Borrower subdivides the Property into a vertical subdivision, the Recorded Documents shall be recorded against each parcel that comprises the vertical subdivision in the same order as set forth under subsection (a), above.

SECTION 203 Exceptions

a. Within 10 days after the execution of this Agreement by Housing Authority, Housing Authority shall cause the Title Company to deliver to Housing Authority a preliminary report or pro forma title policy (the "Report") with respect to title to the Property, together with copies of the documents underlying the exceptions (the "Exceptions") set forth in the Report. Housing Authority shall have the right to reasonably approve or disapprove the Exceptions; provided, however, that Housing Authority hereby approves the following Exceptions:

1. The Redevelopment Plan and any related Exceptions; and
2. The lien of any non-delinquent property taxes and assessments.

b. Housing Authority shall have 30 days from the date of its receipt of the Report to give written notice to Borrower of Housing Authority's approval or disapproval of any of such Exceptions set forth in the Report. If Housing Authority notifies Borrower of its disapproval of any Exceptions in the Report, then Borrower shall have the right, but not the obligation, within 30 days after receipt of such notification, to provide reasonably acceptable assurances to Housing Authority that such Exception(s) will be removed on or before the Close of Escrow. If Borrower does not provide such assurances to Housing Authority within such 30-day period, then Housing Authority shall have 5 days after the first to occur of the expiration of such 30-day period or receipt of election by Borrower to not provide such assurances, to elect to terminate this Agreement by giving Borrower written notice of termination. If Housing Authority does not make such election within said 5-day period, then Housing Authority shall be deemed to have elected not to proceed with the transaction due to the disapproved Exception(s). The Exceptions to title approved by Housing Authority as provided herein together with those which are set forth in this Agreement, and those which are otherwise consistent with this Agreement and which are acceptable to Housing Authority, shall hereinafter collectively be referred to as the "Approved Title Conditions." Housing Authority shall have the right to approve or disapprove any further Exceptions reported by the Title Company after Housing Authority has approved the Approved Title Conditions for the Property (which are not created by Housing Authority). Borrower shall



not create and shall use its best efforts not to allow any new exceptions to title following the Effective Date of this Agreement without the prior written approval of the Housing Authority.

SECTION 205      Housing Authority's Title Policy

Concurrent with recordation of the Authority Deed of Trust, the Title Company shall provide and deliver Housing Authority's Title Policy to Housing Authority. Borrower shall be responsible for paying the title insurance premiums for Housing Authority's Title Policy, including any special coverage or endorsements thereto reasonably required by the Housing Authority Executive Director. Housing Authority shall have no responsibility for paying the cost of any portion of the premium for Housing Authority's Title Policy.

SECTION 206      Recordation of Housing Authority Deed of Trust

Borrower shall execute and deposit the Housing Authority Promissory Note with the Escrow Agent at least 1 business day before the Close of Escrow. The Escrow Agent shall deliver the Housing Authority Promissory Note to Housing Authority immediately following the delivery to Housing Authority of Housing Authority's Title Policy or confirmation that the Title Company is irrevocably committed to issue Housing Authority's Title Policy and the recording of the Housing Authority Deed of Trust in the Official Records.

SECTION 207      Conditions Precedent to Closing of Authority Loan

The Closing and the obligations of the Authority and Borrower hereunder are subject to the satisfaction prior to the Closing (unless otherwise provided or waived in writing by the Authority Executive Director), of the following conditions, and the obligations of the parties with respect to such conditions are as follows:

a.                      BORROWER executes this Agreement and delivers to Housing Authority for recordation in Official Records.

b.      Housing Authority's Title Policy Title Company shall be irrevocably committed to issue the Housing Authority's ALTA Title Policy in the amount of the Authority Loan (\$1,898,214) insuring the Authority Loan Deed of Trust as a second priority lien on the Leasehold, subordinate only to the Deed of Trust securing the Senior Loan, as provided in this Agreement.

1 c. Final Construction Drawings Borrower shall have submitted, and Authority's  
2 Executive Director shall have approved, Final Construction Drawings.

3 d. Project Budget Borrower shall have delivered to the Housing Authority, and  
4 Authority's Executive Director shall have approved, a final Project Budget or any revisions to  
5 the Project Budget attached to this Agreement as Exhibit "A", demonstrating to the satisfaction  
6 of the Authority's Executive Director the availability of sufficient funds to pay all Development  
7 Costs.

8 e. Construction Contract Borrower shall have delivered to the Housing Authority's,  
9 and Authority's Executive Director shall have approved, a general construction contract,  
10 covering all construction required by this Agreement and the approved final construction  
11 drawings, in an amount that is consistent with the final Housing Authority's -approved Project  
12 Budget, together with a construction schedule showing a detailed trade-by-trade breakdown of  
13 the estimated periods of commencement and completion of construction and complete  
14 fixturation of the development of the Property, demonstrating that construction will be  
15 completed within the time provided in the Schedule of Performance, and such contract shall have  
16 been executed by each of the parties thereto. Borrower shall also have delivered to Authority  
17 documentation evidencing a Payment and Performance Bond or letter of credit to secure  
18 performance under the construction contract for the Project issued by a bonding company or  
19 financial institution reasonably approved by HOUSING AUTHORITY. The bonds shall name  
20 Housing Authority of the County of Riverside as Co-Obligee.

21 f. Evidence of Financing Borrower shall have obtained and submitted to the  
22 Housing Authority's, and Authority's Executive Director shall have approved, all approvals or  
23 other evidences of lender commitments described in Section 110 herein and in the Method of  
24 Financing, and the Authority Executive Director shall have approved such evidence relating to  
25 the Construction Loan, Low Income Housing Tax Credit syndication and other Borrower Equity  
26 or any other funding sources set forth in the Method of Financing. BORROWER provides  
27 satisfactory evidence that it has all the financing documents required to cause the proceeds of the  
28 construction loan and the equity investment from the Tax Credit Equity Investor to be committed

1 and available, in an amount sufficient, when combined with the County of Riverside HOME  
2 Loan and HOUSING AUTHORITY Loan, to pay all Development Costs as set forth in the  
3 Authority approved Project Budget.

4 h. Limited Partnership. Borrower shall have submitted to the Housing Authority, and  
5 Authority Executive Director shall have approved the Partnership Agreement (but only with  
6 respect to whether such Partnership Agreement is consistent with this Agreement and its  
7 attachments, including, but not limited to the Method of Financing and the Authority Promissory  
8 Note).

9 i. Insurance Borrower shall have submitted to the Housing Authority, and Authority  
10 Executive Director shall have approved, evidence of the Insurance Policies required by this  
11 Agreement.

12 j. Other Agreements Borrower shall have submitted to Housing Authority, and  
13 Authority's Executive Director shall have approved each of the agreements described in Part 4 of  
14 this Agreement, and each of such agreements shall have been executed by each of the parties  
15 thereto, as appropriate.

16 k. Permits Borrower shall have delivered to Authority satisfactory evidence that it  
17 has secured any and all land use entitlements, permits, approvals required for construction of the  
18 Improvements and the Project pursuant to the applicable rules and regulations of, the Housing  
19 Authority of the County of Riverside, the City of Jurupa Valley, or any other governmental  
20 agency affected by such construction work. BORROWER shall, without limitation, secure all  
21 entitlement, change of zone, lot line adjustment, any and all necessary studies required including  
22 but not limited to archaeological, cultural, environmental, traffic studies and lead-based paint  
23 surveys, as applicable, and required, and pay all costs, charges and fees associated therewith, all  
24 conditions precedent to the issuance of all permits necessary for the construction of the  
25 development and all such permits are available for issuance, other than payment of fees.

26 l. Prevailing Wages. If Davis Bacon and/or prevailing wages are required to be  
27 paid, BORROWER hires a qualified professional firm to review and monitor Davis Bacon and/or  
28 prevailing wage compliance for all submissions of contractors certified payrolls to HOUSING

1 AUTHORITY. In the event that the Project requires prevailing wages, BORROWER shall  
2 comply with any applicable labor regulations and all other State Laws in connection with the  
3 construction of the improvements which compromise the Project, including if applicable,  
4 requirements relating to prevailing wages. BORROWER agrees and acknowledges that it is the  
5 responsibility of BORROWER to obtain legal determination, at BORROWER's sole cost and  
6 expense, as to whether prevailing wages must be paid during the construction of the Project. If  
7 the Project is subject to prevailing wage, then BORROWER shall be solely responsible to pay its  
8 contractors and subcontractors the required prevailing wage rates. BORROWER agrees to  
9 indemnify, defend, and hold HOUSING AUTHORITY harmless from and against any and all  
10 liability arising out of and related to BORROWER's failure to comply with any and all  
11 applicable Davis Bacon and/or prevailing wage requirements.

12 m. Resident Marketing and Selection Plan (benefits Agency). Borrower shall have  
13 delivered to the Housing Authority, and the Authority's Executive Director shall have approved,  
14 a resident marketing and selection plan for the Affordable Units, as required by this Agreement.

15 n. Borrower Formation Documents Borrower shall have delivered to the HOUSING  
16 AUTHORITY documentation relating to the partnership status of Borrower, as the case may be  
17 (and its general partners, and if Borrower is a limited liability company, its members), including,  
18 without limitation and as applicable: Partnership Agreement and any amendments thereto;  
19 articles of incorporation; State of California Limited Liability Company Articles of Incorporation  
20 (LLC-1), Statement of Information and Operating Agreement (including any amendments  
21 thereto); copies of all resolutions or other necessary actions taken by such entity to authorize the  
22 execution of this Agreement and related documents; a certificate of status issued by the  
23 California Secretary of State; and a copy of any Fictitious Business Name Statement, if any, as  
24 published and filed with the Clerk of Riverside County.

25 o. Joint Supplemental Escrow Instructions Housing Authority and Borrower shall  
26 have prepared such joint supplemental instructions for the Escrow Agent as may be necessary to  
27 close the transaction contemplated herein.

1 p. Documents (benefits Borrower and Agency, as applicable). Agency, Borrower,  
2 and other parties, as appropriate, shall have executed, in recordable form as necessary, and  
3 delivered into escrow where appropriate, the following documents:

- 4 1. Authority Deed of Trust, substantially conforming in form and substance to the  
5 Leasehold Deed of Trust with Assignment of Rents attached hereto as Exhibit  
6 "D", and in recordable form, and delivers such document to the Housing  
7 Authority for recordation in the Official Records.
- 8 2. The Authority Promissory Note, substantially conforming in form and substance  
9 to the Promissory Note attached hereto as Exhibit "F" and delivers to the Housing  
10 Authority.
- 11 3. The Covenant Agreement, substantially conforming in form and substance to the  
12 Covenant Agreement attached hereto as Exhibit "E" and incorporated herein by  
13 this reference, in recordable form, and delivers to the Housing Authority for  
14 recordation in the Official Records.
- 15 4. The Assignment of Rents substantially conforming in form and substance to the  
16 Covenant Agreement attached hereto as Exhibit "E" and incorporated herein by  
17 this reference, in recordable form, and delivers to the Housing Authority for  
18 recordation in the Official Records.

19 q. Property Manager. Borrower shall have prepared and delivered to the Housing  
20 Authority, and the Authority's Executive Director shall have approved, the property manager for  
21 the Affordable Units and the Management Plan as required by the Covenants.

22 r. Representations, Warranties and Covenants Borrower shall have duly performed  
23 each and every obligation to be performed by Borrower hereunder and Borrower's  
24 representations, warranties and covenants set forth in this Agreement shall be true and correct as  
25 of the date of the Closing.

26 s. Deliveries Housing Authority shall have delivered the items and funds to be  
27 delivered by Housing Authority, when and as required in this Agreement.

28 t. Recording Documents. The Escrow Agency shall have accepted such supplemental

1 recording instructions as may have been prepared by the Housing Authority.

2 u. Borrower is not in default under the terms of this Agreement.

3 SECTION 208 Disbursements; Other Actions to be taken by the Escrow Agent

4 Upon the Closing, Escrow Agent shall promptly undertake all of the following in the  
5 manner herein below indicated:

- 6 a. Deliver the Authority Promissory Note to Housing Authority.
- 7 b. Cause the Authority Deed of Trust and other recordable Authority Loan  
8 Documents, the recordable Senior Loan documents and any other documents  
9 which the Parties may mutually direct, to be recorded in the Official Records, and  
10 obtain conformed copies thereof for distribution to Housing Authority and  
11 Borrower.
- 12 c. Direct the Title Company to issue Housing Authority's Title Policy to Housing  
13 Authority.
- 14 d. Prepare and distribute to Borrower and Housing Authority each, copies of both  
15 parties' escrow closing statements and a complete copy of all documents handled  
16 by escrow.

17 Escrow Agent agrees that release of Authority Loan proceeds by Housing Authority to  
18 Borrower shall irrevocably commit Escrow Agent, on behalf of Title Company, to issue the  
19 Authority's Title Policy in accordance with this Agreement.

20 SECTION 209 Failure of Conditions to Closing

21 a. In the event that any of the conditions precedent to the Close of Escrow are not  
22 timely satisfied or waived, for a reason other than the default of Housing Authority or Borrower,  
23 the following shall apply:

- 24 1. Either party shall have the right to terminate this Agreement, the escrow  
25 and the rights and obligations of Housing Authority and Borrower  
26 hereunder to the extent that such party is intended to be benefited by the  
27 applicable condition precedent, except as otherwise provided herein;  
28

2. If this Agreement is terminated as provided herein, then Escrow Agent is hereby instructed to promptly return to Borrower and Housing Authority all funds, if any, and documents deposited by them, respectively, into escrow which are held by Escrow Agent on the date of said termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under this Section 208); and

3. If this Agreement is terminated as provided herein, then neither party shall have any further rights or obligations hereunder except those that survive termination of this Agreement as expressly provided herein.

b. Cancellation Fees and Expenses. In the event that the escrow terminates in accordance with this Section 209.a. of this Agreement, the cancellation charges, if any, required to be paid by and to Escrow Agent and the Title Company shall be borne by Borrower and all other charges shall be borne by the party incurring same.

#### SECTION 210 Condition of the Property

##### SECTION 210.1 Hazardous Substances

a. "Hazardous Substance" as used in this Agreement means any substance, material or waste which is or becomes regulated by the United States government, the State of California, or any local or other governmental authority, including, without limitation, (i) any material, substance or waste which is defined as "extremely hazardous substances", "hazardous substances", "hazardous materials", "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601, et seq., the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended, 49 U.S.C. sections 5101, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. sections 6901, et seq.; and those substances defined as "hazardous waste" in section 25117 of the California Health and Safety Code, as "infectious waste" in section 27054.4 of the California Health and Safety Code, or as "hazardous substances" in section 25316 of the California Health and Safety Code, or "hazardous material"

as defined in section 353 of the California Vehicle Code, or “hazardous substance” as defined in Section 33459(c) of the California Health and Safety Code; and in the regulations adopted and publications promulgated pursuant to said laws; (ii) petroleum, asbestos or any polychlorinated biphenyl; and (iii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, treatment or disposal, or is defined as “hazardous” or is harmful to the environment or capable of posing a risk of injury to public health and safety. “Hazardous Substances” do not include materials customarily used in the construction, development, operation or maintenance of real estate, provided such substances are used in accordance with all applicable laws and regulations.

b. Borrower hereby represents and warrants that the development, construction and uses of the Leasehold permitted under this Agreement (i) will comply with all applicable environmental laws; and (ii) do not require the presence of any Hazardous Substance on the Property.

Section 210.2      Environmental Indemnity

Borrower agrees to indemnify, protect, defend, save and hold harmless Housing Authority, the County of Riverside and their respective Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, Board of Commissioners, elected and appointed officials, employees, agents, representatives and attorneys, from and against any and all debts, duties, obligations (including any remediation obligations or clean-up costs imposed by any Governmental Restrictions), liabilities, suits, claims, demands, penalties, fines, causes of action, damages, losses, costs and expenses, including, without limitation, attorneys’ fees and expenses (and including any allocable costs of any of the foregoing parties’ in-house counsel) arising on or accruing as a result of the presence, use, storage, handling, treatment, generation, release, discharge, refining, manufacturing, dumping or disposal of any Hazardous Substances or other kinds of contamination or pollutants of any kind into the air, soil, groundwater or surface water on, under, in or about the Leasehold (whether legal or illegal,



accidental or intentional), that is caused by Borrower or its representatives. The indemnity provided in this Section 210.2 shall survive the Termination of this Agreement.

### PART 3 DEVELOPMENT OF PROPERTY

#### SECTION 301 Land Use Approvals

It is the responsibility of Borrower, without cost to Housing Authority, to ensure that zoning of the Property and all applicable City land use requirements will permit development of the Property and construction of the Improvements and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement. Nothing contained herein shall be deemed to entitle Borrower to any City or County of Riverside permit or other City or County of Riverside approval necessary for the development of the Property, or waive any applicable City or County of Riverside requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Borrower, (b) supersede, nullify or amend any condition which may be imposed by the City in connection with approval of the development described herein, (c) guarantee to Borrower or any other party any profits from the development of the Property, or (d) amend any City or County laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864.

Borrower shall provide Housing Authority with copies of all City-approved plans for the Project within fifteen (15) days following the written request of Housing Authority.

#### SECTION 302 Scope of Development

The Property shall be developed in one phase in accordance with and within the parameters established in the Scope of Development (Exhibit "A"). Borrower is responsible for determining and obtaining all necessary easements for any adjacent properties owned by Housing Authority, County or a private owner.

#### SECTION 303 Basic Concept and Schematic Drawings

a. Borrower shall prepare and submit basic concept and schematic drawings and related documents for the development of the Property to the Housing Authority for review and written approval within the time established in the Schedule of Performance. Basic concept and schematic drawings shall include a site plan, elevations and sections of the Improvements as they are to be

1 developed and constructed on the Property. Borrower shall consult with and seek the  
2 recommendations of property management and community service providers with experience  
3 relating to similar developments before submission of the basic concept and schematic drawings to  
4 the Housing Authority.

5 b. The Property shall be developed as established in the basic concept and schematic  
6 drawings and related documents except as changes may be mutually agreed upon between Borrower  
7 and the Executive Director or designee. Any such changes shall be within the limitations of the  
8 Scope of Development.

9 SECTION 304 Landscaping and Grading Plans

10 a. Borrower shall prepare and submit to the Housing Authority for its approval  
11 preliminary and final landscaping and preliminary and finish grading plans for the Property. These  
12 plans shall be prepared and submitted within the times established in the Schedule of Performance.

13 b. The landscaping plans shall be prepared by a professional landscape architect and the  
14 grading plans shall be prepared by a licensed civil engineer. Such landscape architect and/or civil  
15 engineer may be the same firm as Borrower's architect. Within the times established in the Schedule  
16 of Performance, Borrower shall submit to the Housing Authority for approval the name and  
17 qualifications of its architect, landscape architect and civil engineer.

18 SECTION 305 Construction Drawings and Related Documents

19 a. Borrower shall prepare and submit construction drawings and related documents  
20 (collectively called the "Plans") to the Housing Authority for review (including but not limited to  
21 architectural review), and written approval in the times established in the Schedule of Performance.  
22 Such construction drawings and related documents shall be submitted as 50% and Final Construction  
23 Drawings. Final Construction Drawings are hereby defined as those in sufficient detail to obtain a  
24 building permit.

25 b. Approval of progressively more detailed Plans will be promptly granted by the  
26 Executive Director or designee if developed as a logical evolution of Plans theretofore approved.  
27 Any items so submitted and approved by the Executive Director or designee shall not be subject to  
28 subsequent disapproval.

1 c. During the preparation of all Plans, the Executive Director or designee and Borrower  
2 shall hold regular progress meetings to coordinate the preparation of, submission to, and review of  
3 Plans and related documents by the Executive Director or designee. The Executive Director or  
4 designee and Borrower shall communicate and consult informally as frequently as is necessary to  
5 insure that the formal submittal of any documents to the Housing Authority can receive prompt and  
6 speedy consideration.

7 d. If any revisions or corrections of Plans approved by the Housing Authority shall be  
8 required by any government official, department, or bureau having jurisdiction over the development  
9 of the Property, Borrower and the Executive Director or designee shall cooperate in efforts to obtain  
10 waiver of such requirements or to develop a mutually acceptable alternative.

11 SECTION 306 Housing Authority Approval of Plans

12 a. Subject to the terms of this Agreement, the Housing Authority shall have the right to  
13 review (including without limitation architectural review) and approve or disapprove all Plans and  
14 submissions, including any proposed substantial changes to any such Plans or submissions approved  
15 by Housing Authority. Upon receipt of any disapproval, Borrower shall revise the Plans, and shall  
16 resubmit to the Executive Director or designee as soon as possible after receipt of the notice of  
17 disapproval. The Housing Authority shall approve or disapprove the Plans referred to in this  
18 Agreement within the times established in the Schedule of Performance. Any disapproval shall state  
19 in writing the reasons for disapproval and the changes which the Executive Director or designee  
20 requests to be made. Such reasons and such changes must be consistent with the Scope of  
21 Development and any items previously approved hereunder. Borrower, upon receipt of a disapproval  
22 based upon powers reserved by the Housing Authority hereunder shall revise the Plans, and shall  
23 resubmit to the Executive Director or designee as soon as possible after receipt of the notice of  
24 disapproval.

25 b. If Borrower desires to make any substantial change in the Final Construction  
26 Drawings after their approval, such proposed change shall be submitted to the Executive Director or  
27 designee for approval.

28 SECTION 307 Cost of Construction

The cost of demolishing any improvements on the Property and developing the Property and constructing the Improvements, including any offsite or onsite improvements required by the City in connection therewith, shall be the sole financial responsibility of Borrower, without any cost to Housing Authority, subject to the terms of this Agreement. Borrower shall also obtain performance, material and labor, and payment bonds for the Project, in the amount required by any lenders to the Project and determined by Housing Authority and shall furnish Housing Authority with copies thereof prior to the commencement of such construction.

SECTION 308 General Contractor Disclosure.

HOUSING AUTHORITY and BORROWER hereby acknowledge the general contractor for the Project is affiliated with the Borrower.

SECTION 309 Reserved.

SECTION 310 Environmental Review. BORROWER must comply with the California Environmental Quality Act (CEQA) and its implementation regulations.

SECTION 311 Schedule of Performance

a. Each party to this Agreement shall perform the obligations to be performed by such party pursuant to this Agreement within the respective times provided in the Schedule of Performance, and if no such time is provided, within a reasonable time. The Schedule of Performance shall be subject to amendment from time to time upon the mutual agreement of the Housing Authority and Borrower. Housing Authority's Executive Director, or designee, on behalf of Housing Authority and without referring such matter to the Housing Authority's Board of Commissioners extend all pending deadlines in the Schedule of Performance on two (2) or fewer occasions, so long as the aggregate duration of such administrative time extensions is no greater than ninety (90) days.

b. After the Effective Date, Borrower shall promptly begin and thereafter diligently prosecute to completion the construction of the Improvements as provided herein and in the Scope of Development.

c. During periods of construction, Borrower shall submit to the Housing Authority a written report of the progress of construction when and as reasonably requested by the Housing

1 Authority, but not more frequently than once every quarter. The report shall be in such form and  
2 detail as may be reasonably required by the Housing Authority and shall include a reasonable number  
3 of construction photographs (if requested) taken since the last report by Borrower.

4 d. Nondiscrimination.

5 Borrower shall not discriminate on the basis of race, gender, religion, national origin, ethnicity,  
6 sexual orientation, age or disability in the solicitation, selection, hiring or treatment of any  
7 contractors or consultants, to participate in subcontracting/subconsulting opportunities. Borrower  
8 understands and agrees that violation of this clause shall be considered a material breach of this  
9 Agreement and may result in termination, debarment or other sanctions. This language shall be  
10 incorporated into all contracts between Borrower and any contractor, consultant, subcontractor,  
11 subconsultants, vendors and suppliers. Borrower shall comply with the provisions of the California  
12 Fair Employment and Housing Act (Government Code Sections 12900 et seq.), the Federal Civil  
13 Rights Act of 1964 (P.L. 88-352), as amended, and all Administrative Rules and Regulations issued  
14 pursuant to said Acts and Orders with respect to its use of the Leasehold.

15 SECTION 312 Indemnification and Insurance

16 Without limiting any other Borrower indemnities set forth herein, Borrower shall  
17 indemnify and hold harmless the Authority, County of Riverside, its Agencies, Boards, Districts,  
18 Special Districts and Departments, their respective directors, officers, Board of Commissioners,  
19 elected and appointed officials, employees, agents and representatives (individually and  
20 collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based on  
21 asserted upon any services of Borrower, its officers, employees, subcontractors, agents or  
22 representatives arising out of or in any way relating to this Agreement, including but not limited  
23 to property damage, bodily injury, or death or any other element of any kind or nature whatsoever  
24 arising from the performance of Borrower, its officers, employees, subcontractors, agents or  
25 representatives Indemnitors from this Agreement. Borrower shall defend, at its sole expense, all  
26 costs and fees including, but not limited, to attorney fees, cost of investigation, defense and  
27 settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or  
28 omissions.

1 With respect to any action or claim subject to indemnification herein by Borrower,  
2 Borrower shall, at their sole cost, have the right to use counsel of their own choice and shall have  
3 the right to adjust, settle, or compromise any such action or claim without the prior consent of  
4 Authority; provided, however, that any such adjustment, settlement or compromise in no manner  
5 whatsoever limits or circumscribes Borrower's indemnification to Indemnitees as set forth herein.

6 Borrower's obligation hereunder shall be satisfied when Borrower has provided to  
7 Authority the appropriate form of dismissal relieving Authority and the other Indemnitees from  
8 any liability for the action or claim involved.

9 The specified insurance limits required in this Agreement shall in no way limit or  
10 circumscribe Borrower's obligations to indemnify and hold harmless Indemnitees herein from  
11 third party claims.

12 In the event there is conflict between this clause and California Civil Code Section 2782,  
13 this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not  
14 relieve Borrower from indemnifying Authority to the fullest extent allowed by law.

15 The foregoing indemnity shall continue to remain in effect after the Completion.

16 Without limiting or diminishing Borrower's obligation to indemnify or hold Authority  
17 harmless, Borrower shall procure and maintain or cause to be maintained, at its sole cost and  
18 expense, the following insurance coverage's during the term of this Agreement.

19 a) **Worker's Compensation Insurance.** If Borrower has employees as defined by  
20 the State of California, Borrower shall maintain statutory Workers' Compensation Insurance  
21 (Coverage A) as prescribed by the laws of the State of California. Policy shall include  
22 Employers' Liability (Coverage B) including Occupational Disease with limits not less than  
23 \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor  
24 of the Authority, and, if applicable, to provide a Borrowed Servant/Alternate Employer  
25 Endorsement.

26 b) **Commercial General Liability Insurance.** Commercial General Liability  
27 insurance coverage, including but not limited to, premises liability, contractual liability, products  
28 and completed operations liability, personal and advertising injury, and cross liability coverage,

1 covering claims which may arise from or out of Borrower's performance of its obligations  
2 hereunder. Policy shall name the Authority, County of Riverside, its Agencies, Districts, Special  
3 Districts, and Departments, their respective directors, officers, Board of Commissioners,  
4 employees, elected or appointed officials, agents or representatives as Additional Insured.  
5 Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit.  
6 If such insurance contains a general aggregate limit, it shall apply separately to this agreement or  
7 be no less than two (2) times the occurrence limit.

8       c)     **Vehicle Liability Insurance.** If vehicles or mobile equipment are used in the  
9 performance of the obligations under this Agreement, then Borrower shall maintain liability  
10 insurance for all owned, non-owned or hired vehicles so used in an amount not less than  
11 \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate  
12 limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence  
13 limit. Policy shall name the Authority, County of Riverside, its Agencies, Districts, Special  
14 Districts, and Departments, their respective directors, officers, Board of Commissioners,  
15 employees, elected or appointed officials, agents or representatives as Additional Insured or  
16 provide similar evidence of coverage approved by County's Risk Manager ("Risk Manager").

17       d)     **Property (Physical Damage).** Borrower shall provide a policy of all-risk  
18 property insurance coverage for the full replacement value of all Borrower's equipment,  
19 improvements/alterations, temporary structures, and systems, including without limitation, items  
20 owned by others in the Borrower's care, custody or control, used on the Property or other  
21 Authority-owned property, or used in any way connected with the performance of the work  
22 required pursuant to this Agreement.

23       e)     **Builder's All Risk (Course of Construction) Insurance.** Borrower shall provide  
24 a policy of Builder's All Risk (Course of Construction) insurance coverage including (if the work  
25 is located in an earthquake or flood zone or if required on financed or bond financing  
26 arrangements) coverage for earthquake and flood, covering the Authority, Borrower and every  
27 subcontractor, of every tier, for the entire Project, including property to be used in the  
28 construction of the work while such property is at off-site storage locations or while in transit or

temporary off-site storage. Such policy shall include, but not be limited to, coverage for fire, collapse, faulty workmanship, debris removal, expediting expense, fire department service charges, valuable papers and records, trees, grass, shrubbery and plants. If scaffolding, falsework and temporary buildings are insured separately by the Borrower or others, evidence of such separate coverage shall be provided to Authority prior to the start of the work. Such policy shall be written on a completed value form. Such policy shall also provide coverage for temporary structures (on-site offices, etc.), fixtures, machinery and equipment being installed as part of the work. Borrower shall be responsible for any and all deductibles under such policy. Upon request by Authority, Borrower shall declare all terms, conditions, coverages and limits of such policy. If the Authority so provides, in its sole discretion, the All Risk (Course of Construction) insurance for the Project, then Borrower shall assume the cost of any and all applicable policy deductibles (currently, \$50,000 per occurrence) and shall insure its own machinery, equipment, tools, etc. from any loss of any nature whatsoever.

**f) General Insurance Provisions – All Lines.**

1. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by Risk Manager. If Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2. Borrower's insurance carrier(s) must declare its insurance self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of Risk Manager. Upon notification of self-insured retention unacceptable to Authority, and at the election of Risk Manager, Borrower's carriers shall either: (a) reduce or eliminate such self-insured retention, or (b) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3. Borrower shall cause Borrower's insurance carrier(s) to furnish the Authority with copies of the Certificate(s) of Insurance and Endorsements effecting coverage as required



1 herein, and 2) if requested to do so orally or in writing by Risk Manager, provide copies of  
2 policies including all Endorsements and all attachments thereto, showing such insurance is in full  
3 force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant  
4 of the insurance carrier(s) that thirty (30) days written notice shall be given to the Authority prior  
5 to any material modification, cancellation, expiration or reduction in coverage of such insurance.  
6 Borrower shall not continue operations until Authority has been furnished Certificate(s) of  
7 Insurance and copies of endorsements and if requested, copies of policies of insurance including  
8 all endorsements and any and all other attachments as required herein. An individual authorized  
9 by the insurance carrier to do so, on its behalf, shall sign the original endorsements for each  
10 policy and the Certificate of Insurance.

11 4. It is understood and agreed to by the parties hereto that Borrower's insurance  
12 shall be construed as primary insurance, and Authority's insurance and/or deductibles and/or self-  
13 insured retention's or self-insured programs shall not be construed as contributory.

14 5. If, during the term of this Agreement or any extension thereof, there is a  
15 material change in the scope of services or there is a material change in the equipment to be used  
16 in the performance of the scope of work which will add additional exposures (such as the use of  
17 aircraft, watercraft, cranes, etc.), then Authority reserves the right to adjust the types of insurance  
18 required under this Agreement and the monetary limits of liability for the insurance coverage's  
19 currently required herein, if, in Risk Manager's reasonable judgment, the amount or type of  
20 insurance carried by Borrower has become inadequate.

21 6. Borrower shall pass down the insurance obligations contained herein to all tiers  
22 of subcontractors.

23 7. Borrower agrees to notify Authority of any claim by a third party or any  
24 incident or event that may give rise to a claim arising from the performance of the Agreement.

25 SECTION 313 Notice of Job Availability

26 Borrower is required, and shall require Borrower's contractor, and cause Borrower's contractor to  
27 notify any subcontractor, to notify the Riverside County Workforce Development Center and the  
28

1 Riverside County Greater Avenues for Independence (GAIN) program of any and all job openings  
2 related to the development and construction of the Project.

3 SECTION 314 Local, State and Federal Laws

4 The Borrower shall carry out development and construction (as defined by applicable law) of the  
5 Improvements on the Property, including, without limitation, any and all public works, (as defined by  
6 applicable law), if any, in conformity with all applicable local, state and federal laws, including,  
7 without limitation, all applicable federal and state labor laws (including, without limitation, any  
8 applicable requirement to pay state prevailing wages). Borrower hereby agrees that Borrower shall  
9 have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or  
10 identifications which may be required by Labor Code Sections 1726 and 1781, as the same may be  
11 enacted, adopted or amended from time to time, or any other provision of law. Borrower hereby  
12 agrees that Borrower shall have the obligation to provide and maintain any and all bonds to secure  
13 the payment of contractors (including the payment of wages to workers performing any public work)  
14 which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted,  
15 adopted or amended from time to time, or any other provision of law, to the extent required by law.  
16 Borrower shall indemnify, protect, defend and hold harmless Housing Authority, the County of  
17 Riverside and their respective Agencies, Districts, Special Districts and Departments, their respective  
18 directors, officers, Board of Supervisors, Board of Commissioners, elected and appointed officials,  
19 employees, agents, representatives and attorneys, with counsel reasonably acceptable to Housing  
20 Authority, from and against any and all loss, liability, damage, claim, cost, expense, and/or  
21 "increased costs" (including labor costs, penalties, reasonable attorneys' fees, court and litigation  
22 costs, and fees of expert witnesses) which, in connection with the development and/or construction  
23 (as defined by applicable law) of the Improvements, including, without limitation, any and all public  
24 works (if any) (as defined by applicable law), results or arises in any way from any of the following:  
25 (1) the noncompliance by Borrower of any applicable local, state and/or federal law, including,  
26 without limitation, any applicable federal and/or state labor laws (including, without limitation, if  
27 applicable, the requirement to pay state prevailing wages); (2) the implementation of Chapter 804,  
28 Statutes of 2003; (3) the implementation of Sections 1726 and 1781 of the Labor Code, as the same

1 may be enacted, adopted or amended from time to time, or any other similar law; (4) failure by  
2 Borrower to provide any required disclosure representation, statement, rebidding and/or  
3 identification which may be **required** by Labor Code Sections 1726 and 1781, as the same may be  
4 enacted, adopted or amended from time to time, or any other provision of law; and/or (5) failure by  
5 Borrower to provide and maintain any and all bonds to secure the payment of contractors (including  
6 the payment of wages to workers performing any public work) which may be required by the Civil  
7 Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time,  
8 or any other provision of law. Borrower hereby expressly acknowledges and agrees that neither  
9 Housing Authority, County nor City has ever previously affirmatively represented to the Borrower or  
10 its contractor(s) for the Improvements in writing or otherwise, that the work to be covered by the bid  
11 or contract is not a "public work," as defined in Section 1720 of the Labor Code. It is agreed by the  
12 parties that, in connection with the development and construction (as defined by applicable law) of  
13 the Improvements, including, without limitation, any public work (as defined by applicable law), if  
14 any, Borrower shall bear all risks of payment or non-payment of state prevailing wages and/or the  
15 implementation of Chapter 804, Statutes of 2003 and/or Labor Code Sections 1726 and 1781, as the  
16 same may be enacted, adopted or amended from time to time, and/or any other provision of law.  
17 "Increased costs" as used in this Section shall have the meaning ascribed to it in Labor Code Section  
18 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity  
19 shall survive termination of this Agreement and shall continue after Completion. Borrower shall  
20 provide documentation of a Payment and Performance Bond or Letter of Credit to secure  
21 performance under the construction contract issued by a bonding company or financial institution  
22 reasonably approved by Housing Authority. The bond shall name Housing Authority as co-obligee.

23       SECTION 315       Notice of Non-Responsibility

24 Housing Authority shall, at any and all times during the term of this Agreement, have the right to  
25 post and maintain on the Property, and record against the Property, as required by law, any notice or  
26 notices of non-responsibility provided for by the mechanics' lien laws of the State of California;  
27 provided, however, upon the written request of the Housing Authority, Borrower shall, on behalf of  
28

1 the Housing Authority, post and maintain on the Property, and record against the Property, all notices  
2 of non-responsibility provided for by the mechanics' lien laws of the State of California.

3           SECTION 316           Permits

4 Before commencement of demolition, construction or development of any buildings, structures or  
5 other work of improvement upon any portion of the Property, Borrower shall, at its own expense,  
6 secure or cause to be secured, any and all permits which may be required by the City or any other  
7 governmental agency affected by such construction, development or work.

8           SECTION 317           Rights of Access

9 Commencing upon the Effective Date, representatives of the Housing Authority and the County shall  
10 have the reasonable right of access to the Property, upon 24 hours' written notice to Borrower  
11 (except in the case of an emergency, in which case Housing Authority shall provide such notice as  
12 may be practical under the circumstances), without charges or fees, at normal construction hours  
13 during the period of construction for the purposes of this Agreement, including, but not limited to,  
14 the inspection of the work being performed in constructing the Improvements. Such representatives  
15 of the Housing Authority or the County shall be those who are so identified in writing by the  
16 Executive Director of the Housing Authority.

17           SECTION 318           Disclaimer of Responsibility by Housing Authority

18 The Housing Authority neither undertakes nor assumes nor will have any responsibility or duty to  
19 Borrower or to any third party to review, inspect, supervise, pass judgment upon or inform Borrower  
20 or any third party of any matter in connection with the development or construction of the  
21 Improvements, whether regarding the quality, adequacy or suitability of the plans, any labor, service,  
22 equipment or material furnished to the Property, any person furnishing the same, or otherwise.  
23 Borrower and all third parties shall rely upon its or their own judgment regarding such matters, and  
24 any review, inspection, supervision, exercise of judgment or information supplied to Borrower or to  
25 any third party by the Housing Authority in connection with such matter is for the public purpose of  
26 redeveloping the Property, and neither Borrower (except for the purposes set forth in this Agreement)  
27 nor any third party is entitled to rely thereon. The Housing Authority shall not be responsible for any  
28 of the work of construction, improvement or development of the Property.

1           SECTION 319           Prohibition against Transfer

2           a.       Prior to the full reconveyance of the Authority Deed of Trust, Borrower  
3 shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or  
4 any right herein, nor make any total or partial sale, transfer, conveyance or assignment of the  
5 whole or any part of the Property, or the Improvements or Leasehold thereon, without prior  
6 written approval of the Authority. This prohibition shall not be deemed to prevent the granting  
7 of easements or permits to facilitate the development or operation of the Property, nor shall it  
8 prohibit Permitted Transfers.

9           b.       Except as permitted by Section 319, paragraph a. above, in the event Borrower  
10 does assign this Agreement or any of the rights herein, or does sell, transfer, convey or assign the  
11 Property or Leasehold or the buildings or structures thereon prior to Completion without the  
12 approval of the Authority, subject to the notice and cure provisions of Section 501, the Authority  
13 shall have the right to terminate this Agreement.

14           c.       In the absence of a specific written agreement by the Authority, and except as  
15 otherwise provided in this Agreement, no such sale, transfer, conveyance or assignment of this  
16 Agreement, Leasehold or the Property (or any portion thereof), or approval by the Authority of  
17 any such sale, transfer, conveyance or assignment, shall be deemed to relieve Borrower or any  
18 other party from any obligations under this Agreement.

19           SECTION 320           Completion

20 Following completion of such facilities and any other improvements for the Project, Borrower  
21 shall submit to Housing Authority: a complete set of "As Built" drawings showing every detail,  
22 latent or otherwise, of such improvements, alterations and fixtures, including, but not limited to,  
23 electrical circuitry and plumbing for the Project.

24           SECTION 321           Lender Not Obligated to Construct Improvements

25 No lender shall be obligated by the provisions of this Agreement to construct or complete the  
26 Improvements or to guarantee such construction or completion. Nothing in this Agreement shall  
27 be deemed or construed to permit, or authorize any such lender to devote the Property to any  
28

1 uses, or to construct any improvements thereon, other than those uses or improvements provided  
2 for or authorized by this Agreement.

3           SECTION 322           Notice of Default to Lenders; Right of Lender to Cure Defaults.

4 Whenever the Housing Authority shall deliver any notice or demand to Borrower with respect to  
5 any breach or default by Borrower in completion of construction of the Improvements, the  
6 Housing Authority shall at the same time deliver to each Senior Lender of record a copy of such  
7 notice or demand. Each such Senior Lender shall (insofar as the rights of the Housing Authority  
8 are concerned) have the right at its option within sixty (60) days after the receipt of the notice, to  
9 cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to  
10 the security interest debt and the lien of its security interest. If such default shall be a default  
11 which can only be remedied or cured by such Senior Lender upon obtaining possession of the  
12 Property, such Senior Lender shall seek to obtain possession with diligence and continuity  
13 through a receiver or otherwise, and shall remedy or cure such default within sixty (60) days  
14 after obtaining possession; provided that in the case of a default which cannot with diligence be  
15 remedied or cured, or the remedy or cure of which cannot be commenced within such sixty (60)  
16 day period, such Senior Lender shall have such additional time as reasonably necessary to  
17 remedy or cure such default with diligence and continuity not to exceed ninety (90) days; and  
18 provided further that such Senior Lender shall not be required to remedy or cure any non-curable  
19 default of Borrower. Any Senior Lender who forecloses on its Senior Loan, or is assigned or  
20 otherwise succeeds to Borrower's rights under this Agreement, shall have the right to undertake  
21 or continue the construction or completion of the Improvements upon execution of a written  
22 Lease with the Housing Authority by which such Senior Lender expressly assumes Borrower's  
23 rights and obligations under this Agreement.

24           SECTION 323           Failure of Lender to Complete Improvements

25 In any case where, ninety (90) after default by Borrower, the holder of any mortgage, deed of  
26 trust or other security interest creating a lien or encumbrance upon the Property (or portion  
27 thereof) has not elected to completed construction of the Improvements, or, if it has elected to  
28 complete the Improvements, it has not proceeded diligently with construction, the Housing

Authority shall have the right, but not the obligation, to purchase the mortgage, deed of trust or other security interest by payment to the holder of the full amount of the unpaid principal debt, plus any accrued and unpaid interest secured by the mortgage instrument approved by the Housing Authority.

SECTION 324      Right of the Housing Authority to Cure Defaults.

In the event of a default or breach by Borrower of a Senior Loan prior to Completion and prior to completion of a foreclosure by a Senior Lender, and the Senior Lender has not commenced to complete the development, the Housing Authority may cure the default at any time prior to completion by a Senior Lender of any foreclosure under its Senior deed of trust. In such event, the Housing Authority shall be entitled to reimbursement from Borrower of all costs and expenses incurred by the Housing Authority in curing the default. The Housing Authority shall also be entitled to a lien upon the Leasehold to the extent of such costs and disbursements.

SECTION 325      Right of the Housing Authority to Satisfy Other Liens on the Property.

Prior to Completion and after Borrower has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on its interest in the Leasehold, the Housing Authority shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require Borrower to pay or make provisions for the payment of any tax, assessment, lien or charge so long as Borrower in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Property to forfeiture or sale. In such event, the Housing Authority shall be entitled to reimbursement from Borrower of all costs and expenses incurred by the Housing Authority in satisfying any such liens or encumbrances. The Housing Authority shall also be entitled to a lien upon the Leasehold to the extent of such costs and expenses.

**PART 4.      USE OF THE PROPERTY**

SECTION 401      Uses

a.      Borrower covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, for the duration of the Affordability Period

1 that Borrower, such successors and such assignees shall use the Property only for the uses  
2 specified in the Redevelopment Plan, any development agreements entered into between the City  
3 and Borrower, this Agreement (including without limitation the Scope of Development (Exhibit  
4 "A"), the Covenants (Exhibit "E") and Governmental Approvals. No change in the use of the  
5 Property shall be permitted without the prior written approval of Housing Authority.

6 b. Notwithstanding the generality of Section 401(a), Borrower, its successors and  
7 assigns, shall use the Property only for the uses permitted in this Agreement, specifically  
8 including the following: (i) residential rental uses, with respect to the Affordable Units, and (ii)  
9 parking and ancillary uses consistent with this Agreement.

10 c. The Project shall remain in compliance with all applicable Federal, State and local  
11 codes, laws, regulations and ordinances for the duration of this Agreement and the Affordability  
12 Period.

13 d. Residential Uses. For a period consisting of fifty-five (55) years from the  
14 recordation in the Official Records of the Notice of Completion for the last building for which  
15 construction is completed for the Project, or (ii) July 1, 2073, whichever is later, without regard  
16 to the term of the Authority Loan, repayment of the Authority Loan, or the transfer of ownership  
17 of the Project, Improvements, and/or the Leasehold, Borrower on behalf of itself and its  
18 successors, assigns, and each successor in interest to Borrower's interest in the Property or any  
19 part thereof, hereby covenants and agrees as follows:

20 (1) All of the Affordable Units shall be available to Very Low Income, and  
21 Extremely Low Income households at an Affordable Rent in accordance with the Schedule of  
22 Affordable Rents attached to Exhibit "'G'" of the Covenants (Exhibit "E"), and the rent  
23 limitations set forth in California Health and Safety Code Sections 50053 b(1) and 50053 b(2), as  
24 may be amended from time to time;

25 (2) BORROWER agrees that nineteen (19) of the Rental Housing Units  
26 defined herein as the Affordable Units, shall be rented to and occupied exclusively by  
27 extremely low and very low income households. Of the nineteen (19) Affordable Units six (6)  
28 units shall be rented to and occupied by households whose incomes do not exceed thirty percent



(30%) of the median family income for the County of Riverside, adjusted by family size at the time of occupancy (4-two bedroom units and 2-three bedroom units). In addition, thirteen (13) of the Affordable Units shall be rented to and occupied by households whose incomes do not exceed fifty percent (50%) of the median family income for the County of Riverside, adjusted by family size at the time of occupancy (7-two bedroom units and 6-three bedroom units).

(3) The maximum incomes of all tenants eligible to rent an Affordable Unit shall be determined on the basis of the Area Median Income for County of Riverside.

(4) Subject to any applicable state or federal fair housing laws, Borrower agrees that among Very Low Income, and Extremely Low Income households who are otherwise eligible to rent an Affordable Unit, Borrower shall make reasonable efforts to give first priority to those persons who have been displaced by any redevelopment project within the County of Riverside over other eligible persons. The Borrower agrees that prior to the initial rent-up of the Affordable Units, Borrower shall consult with and obtain the approval of the Housing Authority in developing a fair marketing plan for renting the Affordable Units.

(5) No officer, employee, agent, official or consultant of Borrower may occupy any of the Affordable Units.

d. Parking. During the Covenant Period, Borrower on behalf of itself and its successors, assigns, and each successor in interest to Borrower's interest in the Property or any part thereof, hereby covenants and agrees that the Affordable Rent for each of the Affordable Units shall include one (1) non-tandem parking space located on the Leasehold in close proximity to the Affordable Units at no extra charge to the occupants or tenants.

#### SECTION 402 Maintenance

In addition to the property maintenance requirements set forth in the Covenant Agreement, Borrower covenants and agrees (for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof) that prior to the construction of the Improvements, Borrower shall maintain and secure the Property in accordance with reasonable vacant property management practices, and upon and after completion of construction of the Improvements, Borrower, its successors and assigns, shall maintain the Property and any improvements thereon

1 and the landscaping on the Property in a manner consistent with community standards which will  
2 uphold the value of the Property, in accordance with this Agreement, and applicable provisions of  
3 the City of Jurupa Valley Municipal Code and the County of Riverside Municipal Code (the  
4 "Codes"), and the following follows:

5 (a) Exterior Maintenance. All exterior, painted surfaces of any structures located on  
6 the Property shall be maintained at all times in a clean and presentable manner. Any defacing  
7 marks shall be cleaned or removed within a reasonable time.

8 (b) Front and Side Exteriors. Borrower shall, at all times, maintain the front exterior  
9 and any visible side exteriors and yards, if any, in a clean, safe and presentable manner, free and  
10 clear of trash and/or debris.

11 (c) Graffiti Removal. All graffiti, and defacement of any type, including marks,  
12 words and pictures, must be removed from the Property and any necessary painting or repair  
13 completed within a reasonable time, but in no event more than one (1) week after notice to a  
14 Purchaser from Authority.

15 (d) Landscaping. All landscaping surrounding the Property shall be maintained in a  
16 manner consistent with the Codes and any rules, regulations and standards adopted pursuant to the  
17 Code. In addition, for example, the yard areas shall not contain the following: (i) lawns with  
18 grasses in excess of nine (9) inches in height; (ii) trees, shrubbery, lawns or other plant life which  
19 are dying from a lack of water or other necessary maintenance; (iii) trees and shrubbery grown  
20 uncontrolled without proper pruning; (iv) vegetation so overgrown as to be likely to harbor rats or  
21 vermin; (v) dead, decayed or diseased trees, weeds and other vegetation; and (vi) inoperative  
22 irrigation systems.

23 (e) Maintenance by Borrower. Borrower shall, at his, her or their sole cost and  
24 expense, maintain and repair the Property and the improvements thereon, keeping the same in  
25 good condition and making all repairs as may be required by this Agreement and the Code.

26 (f) Damage and Destruction Affecting Property -- Duty to Rebuild. If all or any  
27 portion of the Property and the improvements thereon is damaged or destroyed by fire or other  
28 casualty, it shall be the duty of Borrower to rebuild, repair or reconstruct the Property in a timely

manner to restore it to Code compliance condition or the condition required by the City.

(g) Variance in Exterior Appearance and Design. If the Property is damaged or destroyed by casualty, Borrower may not, without the prior written consent of the Authority, reconstruct, rebuild or repair the Property in a manner which will provide substantially different exterior appearance and Property design from that which existed prior to the date of the casualty.

(h) Time Limitation. In the event of damage or destruction due to casualty, Borrower shall be obligated to proceed with all due diligence to commence reconstruction within two (2) months after the damage occurs and to complete reconstruction within a reasonable time after damage occurs, unless prevented by causes beyond the reasonable control of Borrower as reasonably determined by Authority.

(i) Inspection. In the event the Authority, in the sole discretion of the Authority Executive Director, determines that the Borrower has failed to maintain the Property, the Authority, or its designee, on two (2) weeks' prior written notice of any noted code violations and maintenance deficiencies (collectively, the "Deficiencies"), shall have the right, but not the obligation, to enter the Property, correct any Deficiency, and hold the Borrower responsible for the cost thereof. Any cost incurred by the Borrower to cure any such Deficiency, until paid, shall constitute a lien on the Property pursuant to Civil Code Section 2881.

#### SECTION 403 Obligation to Refrain from Discrimination

Borrower covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Borrower itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. Borrower, specifically and more particularly, covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be

no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Borrower or any person claiming under or through it, him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the preceding paragraph.

**SECTION 404    Form of Nondiscrimination and Nonsegregation Clauses**

Borrower covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof or interest therein, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Borrower, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property. All deeds, leases or contracts shall contain or be subject to substantially the following non-discrimination or non-segregation clauses:

a.     In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on

1 account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as  
2 those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of  
3 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale,  
4 lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed,  
5 nor shall the grantee or any person claiming under or through him or her, establish or permit any  
6 practice or practices of discrimination or segregation with reference to the selection, location,  
7 number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises  
8 herein conveyed. The foregoing covenants shall run with the land.”

9 Notwithstanding the preceding paragraph, the provisions relating to discrimination on the  
10 basis of familial status shall not be construed to apply to housing for older persons, as defined in  
11 Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4,  
12 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)  
13 of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section  
14 12955 of the Government Code shall also apply to the preceding paragraph.

15 b. In leases: “The lessee herein covenants by and for himself or herself, his or her  
16 heirs, executors, administrators, and assigns, and all persons claiming under or through him or  
17 her, and this Agreement is made and accepted upon and subject to the following conditions:

18 That there shall be no discrimination against or segregation of any person or group of  
19 persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the  
20 Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision  
21 (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the  
22 Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or  
23 enjoyment of the premises herein leased nor shall the lessee himself or herself, or any  
24 person claiming under or through him or her, establish or permit any such practice or  
25 practices of discrimination or segregation with reference to the selection, location,  
26 number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the  
27 premises herein leased.”  
28

1           Notwithstanding the preceding paragraph, the provisions relating to  
2 discrimination on the basis of familial status shall not be construed to apply to housing  
3 for older persons, as defined in Section 12955.9 of the Government Code nor be  
4 construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code,  
5 relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of  
6 the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government  
7 Code shall also apply to the preceding paragraph.

8           c. In contracts: "There shall be no discrimination against or segregation of any  
9 person or group of persons, on account of any basis listed in subdivision (a) or (d)  
10 of Section 12955 of the Government Code, as those bases are defined in Sections  
11 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section  
12 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease,  
13 transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee  
14 itself or any person claiming under or through him or her, establish or permit any  
15 such practice or practices of discrimination or segregation with reference to the  
16 selection, location, number, use, or occupancy, of tenants, lessees, sublessees,  
17 subtenants, or vendees of the land."

18           SECTION 405   Effect and Duration of Covenants

19           The covenants established in this Agreement shall run with the land, without regard to  
20 technical classification and designation, and shall be for the benefit and in favor of and  
21 enforceable against the original Borrower and successors in interest by the Housing Authority or  
22 the City. Unless set forth otherwise, the covenants described in this Part 4 shall commence upon  
23 the Closing and shall be set forth in the Covenants (Exhibit "E") and shall remain in effect  
24 during the periods specified therein.

25           SECTION 406   Covenants

26           As a material part of the consideration for this Agreement, Borrower covenants and  
27 agrees for itself, its successors, its assigns and every successor in interest to the Property or any  
28 part thereof, that, as a condition precedent to the Closing, Borrower shall execute in recordable

1 form the Covenants in substantially the form appended to this Agreement as Exhibit "E" and  
2 incorporated herein by this reference. The Covenants and the Notice of Affordability  
3 Restrictions (Exhibit "E") shall be recorded against the Leasehold in first priority position senior  
4 to all liens and encumbrances (including, without limitation, any Senior Loan). As a condition  
5 precedent to the Closing, Borrower shall obtain and cause to be recorded (as applicable), at  
6 Borrower's sole cost and expense, any instruments necessary and/or appropriate to subordinate  
7 to the Covenants (to the reasonable satisfaction of Housing Authority Executive Director) any  
8 deeds of trust, mortgages, security instruments, other liens, leases, subleases, and/or other  
9 agreements affecting title to or possession of or providing a security interest in Property which  
10 otherwise are or might be senior to the Covenants.

11 **SECTION 407 Project Monitoring and Evaluation**

12 BORROWER shall submit a Tenant Checklist Form, as specifically identified in **Exhibit "J"**,  
13 which is attached hereto and by this reference incorporated herein, to HOUSING  
14 AUTHORITY, upon completion of the construction, summarizing the number and percentage  
15 of very low and extremely-low income households who are tenants. BORROWER shall  
16 maintain financial, programmatic, statistical and other supporting records of its operations and  
17 financial activities, including the submission of the form on a semi-annual basis on or before  
18 September 30th and March 31st. Except as otherwise provided for in this Agreement,  
19 BORROWER shall maintain and submit records to HOUSING AUTHORITY within ten (10)  
20 business days of HOUSING AUTHORITY's request. Records must clearly document  
21 BORROWER's performance under each requirement of HOUSING AUTHORITY documents.  
22 A list of document submissions and timeline are shown in the Schedule of Performance.

23 **SECTION 408 Notice of Affordability Restrictions.**

24 As a condition to the Closing, Housing Authority (and Borrower if requested by Housing  
25 Authority) shall execute and cause the recordation of the Notice of Affordability Restrictions  
26 substantially in the form attached to this Agreement as Exhibit "J". The Notice of Affordability  
27 Restrictions shall be recorded against the Property pursuant to California Health and Safety Code  
28 Section 33334.3(f).

1                   SECTION 409Other Agreements and Documents

2           In addition to the various document submission requirements set forth herein, Borrower  
3 shall also submit to Housing Authority, for review and written approval by Housing Authority's  
4 Executive Director, each and every other material agreement, instrument and/or document  
5 entered into or proposed to be entered into by Borrower in connection with the Project and the  
6 Property for the sole purpose of ensuring that said agreement, instrument and/or document is  
7 consistent with the terms and conditions of this Agreement and all documents executed in  
8 connection herewith. If the Housing Authority fails to approve such agreement, instrument  
9 and/or document within fifteen (15) business days of receipt of such said agreement, instrument  
10 and/or document, Housing Authority shall provide Borrower with a written statement of its  
11 reasons within that fifteen (15) business day period.

12                   SECTION 410Annual Operating Budget

13           Borrower shall prepare an annual budget for the operation of the Project for each Fiscal  
14 Year (the "Annual Operating Budget") beginning after the Project has reached Completion. By  
15 no later than thirty (30) days after the Project reaches Completion, Borrower shall prepare a  
16 proposed Annual Operating Budget for the remainder of that Fiscal Year. Thereafter, by no later  
17 than November 1 of each year, Borrower shall prepare an Annual Operating Budget for the next  
18 Fiscal Year and shall submit a copy to the Housing Authority for its review and approval. If the  
19 Housing Authority fails to approve an Annual Operating Budget within fifteen (15) business  
20 days of receipt of such budget, Housing Authority shall provide Borrower with a written  
21 statement of its reasons within that fifteen (15) business day period. If requested by the Housing  
22 Authority, the Borrower shall meet with the Housing Authority at a mutually convenient time  
23 and place to discuss the Annual Operating Budget. If, after approval of the Annual Operating  
24 Budget by the Housing Authority, Borrower determines that the Annual Operating Budget needs  
25 to be amended for reasons that were not reasonably foreseeable when the Annual Operating  
26 Budget was prepared, Borrower may submit an amended Annual Operating Budget to Housing  
27 Authority, which amended Annual Operating Budget shall be approved or disapproved by the  
28 Housing Authority in the same manner as the original Annual Operating Budget.



1                   SECTION 411 Operating and Replacement Reserve Accounts

2           Subject to the rights of any Senior Lender, the Housing Authority shall have  
3 approval rights over any operating and/or replacement reserve account requirements and all  
4 withdrawals from such operating and/or replacement reserve accounts.

5 PART 5.       DEFAULTS AND REMEDIES

6                   SECTION 501 Defaults - General

7           a.       Subject to the extensions of time set forth in Section 604, failure or delay by  
8 either party to perform any term or provision of this Agreement constitutes a default under this  
9 Agreement. The party who fails or delays must commence to cure, correct or remedy such failure  
10 or delay and shall complete such cure, correction or remedy with reasonable diligence.

11           b.       The injured party shall give written notice of default to the party in default,  
12 specifying the default complained of by the injured party. Failure or delay in giving such notice  
13 shall not constitute a waiver of any default, nor shall it change the time of default. Except as  
14 otherwise expressly provided in this Agreement, any failures or delays by either party in  
15 asserting any of its rights and remedies as to any default shall not operate as a waiver of any  
16 default or of any such rights or remedies. Delays by either party in asserting any of its rights and  
17 remedies shall not deprive either party of its right to institute and maintain any actions or  
18 proceedings which it may deem necessary to protect, assert or enforce any such rights or  
19 remedies.

20           c.       If a monetary event of default occurs, prior to exercising any remedies hereunder,  
21 the injured party shall give the party in default written notice of such default. The party in default  
22 shall have a period of ten (10) calendar days after such notice is received or deemed received  
23 within which to cure the default prior to exercise of remedies by the injured party.

24           d.       If a non-monetary event of default occurs, prior to exercising any remedies  
25 hereunder, the injured party shall give the party in default notice of such default. If the default is  
26 reasonably capable of being cured within thirty (30) calendar days after such notice is received  
27 or deemed received, the party in default shall have such period to effect a cure prior to exercise  
28 of remedies by the injured party. If the default is such that it is not reasonably capable of being

1 cured within thirty (30) days after such notice is received, and the party in default (1) initiates  
2 corrective action within said period, and (2) diligently, continually, and in good faith works to  
3 effect a cure as soon as possible, then the party in default shall have such additional time as is  
4 reasonably necessary to cure the default prior to exercise of any remedies by the injured party,  
5 but in any event no more than one hundred and twenty (120) days of receipt of such notice of  
6 default from the injured party.

7 e. If Borrower fails to take corrective action or cure the default within a reasonable  
8 time, the Housing Authority shall deliver written notice thereof to each of the Senior Lenders  
9 and, as provided in paragraph f., below, the Tax Credit Equity Investor. The Tax Credit Equity  
10 Investor may take such action, including removing and replacing the general partner of Borrower  
11 with a substitute general partner, who shall effect a cure within a reasonable time thereafter in  
12 accordance with the foregoing provisions. The Housing Authority agrees to accept cures tendered  
13 by any Senior Lender or Tax Credit Equity Investor within the cure periods provided herein;  
14 provided, however, in no event shall the Housing Authority be precluded from exercising remedies  
15 if its rights become or are about to become materially jeopardized by any failure to cure a default  
16 or the default is not cured within one hundred twenty (120) days after the first notice of default  
17 is given.

18 f. After Borrower gives written notice to Housing Authority of the admission to  
19 Borrower's limited partnership of the Tax Credit Equity Investor, Housing Authority shall send to  
20 the Tax Credit Equity Investor a copy of all notices of default and all other notices that Housing  
21 Authority sends to Borrower, at the address for the Tax Credit Equity Investor as provided in  
22 Section 104 above.

23 SECTION 502 Institution of Legal Actions

24 In addition to any other rights or remedies (and except as otherwise provided in this  
25 Agreement), either party may institute legal action to cure, correct or remedy any default, to  
26 recover damages for any default, or to obtain any other remedy consistent with the purpose of  
27 this Agreement. Such legal actions must be instituted in the Superior Court of the County of  
28 Riverside, State of California, in any other appropriate court of that county.

1 SECTION 503 Applicable Law

2 The laws of the State of California shall govern the interpretation and enforcement of this  
3 Agreement.

4 SECTION 504 Acceptance of Service of Process

5 a. In the event that any legal action is commenced by Borrower against the Housing  
6 Authority, service of process on the Housing Authority shall be made by personal service upon the  
7 Executive Director of the Housing Authority, or in such other manner as may be provided by law.

8 b. In the event that any legal action is commenced by the Housing Authority against  
9 Borrower, service of process on Borrower shall be made by personal service upon Borrower (or  
10 upon the General Partner or managing member, as applicable, or any officer of the General  
11 Partner or managing member, as applicable) and shall be valid whether made within or without  
12 the State of California, or in such manner as may be provided by law.

13 SECTION 505 Rights and Remedies Are Cumulative

14 Except with respect to rights and remedies expressly declared to be exclusive in this  
15 Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party  
16 of one or more of such rights or remedies shall not preclude the exercise by it, at the same or  
17 different times, of any other rights or remedies for the same default or any other default by the  
18 other party.

19 SECTION 506 Damages

20 Subject to the notice and cure provisions of Section 501, if either party defaults with  
21 regard to any of the provisions of this Agreement, the non-defaulting party shall serve written  
22 notice of such default upon the defaulting party. If the default is not cured within the time  
23 provided in Section 501, the defaulting party shall be liable to the non-defaulting party for any  
24 damages caused by such default, and the non-defaulting party may thereafter (but not before)  
25 commence an action for damages against the defaulting party with respect to such default.

26 SECTION 507 Specific Performance

27 Subject to the notice and cure provisions of Section 501, if either party defaults with  
28 regard to any of the provisions of this Agreement, the non-defaulting party shall serve written

1 notice of such default upon the defaulting party. If the default is not cured within the time  
2 provided in Section 501, the non-defaulting party, at its option, may thereafter (but not before)  
3 commence an action for specific performance of the terms of this Agreement pertaining to such  
4 default.

5                   SECTION 508   Termination by Either Party

6           Prior to the Closing, either party shall have the right to terminate this Agreement, by  
7 providing written notice to the other party and Escrow Agent if escrow has been opened, in the  
8 event of a failure of any condition precedent to the occurrence of the Closing as set forth in  
9 Section 208, provided that such condition is for the benefit of and such failure is outside the  
10 control and without the fault of the party seeking to terminate this Agreement. Upon any such  
11 termination, neither the Housing Authority nor Borrower shall have any further rights against or  
12 liability to the other under this Agreement.

13                   SECTION 509   Termination by Borrower

14           Prior to the Closing, subject to the notice and cure provisions of Section 501 and provided  
15 that Borrower is not in default of this Agreement (including, without limitation, timely applying  
16 to CTCAC), Borrower shall have the right to terminate this Agreement, by providing written  
17 notice to the Housing Authority, in the event of a default by Housing Authority pursuant to this  
18 Agreement.

19                   SECTION 510 Termination by Housing Authority

20           a.     Subject to the notice and cure provisions of Section 501, in addition to other  
21 rights and remedies at law and equity Housing Authority shall have the right, prior to the Closing,  
22 to terminate this Agreement in the event of a default by Borrower or failure of any condition  
23 precedent to the occurrence of the Closing, including but not limited to the following:

24                   (1)     Borrower does not succeed in its application for Low Income Housing Tax  
25 Credits within the time frame set forth in the Schedule of Performance; or

26                   (2)     Borrower fails to submit to the Housing Authority evidence of financing  
27 commitments or fails to satisfy any other condition precedent to the occurrence of the Closing as  
28

provided in Sections and 510 herein and in the Method of Financing (Exhibit "C") within the time established therefor in the Schedule of Performance (Exhibit "A"); or

(3) Borrower fails to timely and diligently apply for in good faith for other funding sources for the Improvements within the time established therefore in the Schedule of Performance;

(4) Borrower (or any successor in interest) assigns or attempts to assign this Agreement or any right herein, or transfers or assigns any of Borrower's rights in and to the Property (or any portion thereof on interest therein) or the Leasehold Estate (or any portion thereof on interest therein), except as permitted by this Agreement; or

(5) there is substantial change in the ownership of Borrower, or with respect to the identity of the parties in control of Borrower, or the degree thereof contrary to the provisions of Section 105 hereof;

(6) Borrower fails to submit any of the plans, drawings and related documents required by this Agreement by the respective dates provided in this Agreement therefore; or

(7) there is any other material default by Borrower under the terms of this Agreement which is not cured within the time provided herein.

b. In addition to other rights and remedies at law and equity, after the Closing, but before Completion, and subject to the notice and cure provisions of Section 501, Housing Authority shall have the additional right to terminate this Agreement in the event any of the following defaults shall occur:

(1) Borrower fails to commence construction of the Improvements as required by this Agreement and such breach is not cured within the time provided in Section 501 of this Agreement, provided that Borrower shall not have obtained an extension or postponement to which Borrower may be entitled pursuant to Section 604 hereof; or

(2) Borrower abandons or substantially suspends construction of the Improvements and such breach is not cured within the time provided in Section 501 of this Agreement, provided Borrower has not obtained an extension or postponement to which Borrower may be entitled to pursuant to Section 604 hereof; or

(3) Borrower assigns or attempts to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of the Property or Leasehold Estate, or any respective parts thereof, in violation of this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement; or

(4) Borrower is in material default of any term or provision of the Ground Lease, and such breach is not cured within the time period set forth therein; or

(5) Borrower otherwise materially breaches this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement; or

(6) Borrower otherwise materially breaches the Senior Loan Documents, the HOME Loan documents, or any other security instrument secured against the Leasehold, and such breach is not cured within the time period provided in the respective documents.

#### SECTION 511 Additional Events of Default

In addition to the events of default set forth elsewhere in this Agreement, the following shall also constitute events of default by Borrower under this Agreement, and, after notice and opportunity to cure, Housing Authority shall have the right to exercise all remedies available to it under the law and in equity, including, but not limitation termination of this Agreement:

BORROWER's or any agent of BORROWER's use of LMIHAF funds for uses inconsistent with terms and restrictions set forth in this Agreement; (2) BORROWER's or any agent of the BORROWER's failure to make any payment of any assessment or tax due under this Agreement:

- 1) Discrimination by BORROWER or BORROWER's agent on the basis of characteristics prohibited by this Agreement or applicable law; (2) the imposition of any encumbrances or liens on the Project (other than the Permitted Liens) without HOUSING AUTHORITY's prior written approval that are prohibited under this Agreement or that have the effect of reducing the priority or invalidating the HOUSING AUTHORITY Deed of Trust; (3) any material adverse change in the condition of BORROWER or the Project or permanent financing or funding for the Project that gives HOUSING AUTHORITY reasonable cause to believe that the Project cannot be operated according

1 to the terms of this Agreement; (4) the BORROWER's or any agent of the  
2 BORROWER's use of LMIHAF funds for costs other than costs or for uses inconsistent  
3 with terms and restrictions set forth in this Agreement; or (5) BORROWER's failure to  
4 obtain and maintain the insurance coverage required under this Agreement;

5 2) Any continuous or repeated breach by BORROWER or BORROWER's agents of any  
6 material obligations on BORROWER imposed in the Agreement;

7 3) Any continuous or repeated breach by BORROWER or BORROWER's agents of any  
8 material obligations on the Project imposed by any other agreement with respect to the  
9 financing, development, or operation of the Project; whether or not HOUSING  
10 AUTHORITY is a party to such agreement; but only following any applicable notice  
11 and cure periods with respect to any such obligation;

12 4) Any breach by BORROWER or BORROWER'S agents of any housing affordability  
13 requirements imposed in this Agreement;

14 5) In the event that the Project is materially damaged or destroyed by fire or other casualty,  
15 and BORROWER receives an award or insurance proceeds sufficient for the repair or  
16 reconstruction of the Project and fails to make such repair or reconstruction within a  
17 reasonable time; or

18 6) BORROWER's or any general partner of the BORROWER's (1) filing for bankruptcy,  
19 dissolution, or reorganization, or failure to obtain a full dismissal of any such  
20 involuntary filing brought by another party before the earlier of final relief or thirty (30)  
21 days after such filing; (2) making a general assignment for the benefit of creditors; (3)  
22 applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to  
23 obtain a full dismissal of any such involuntary application brought by another party  
24 before the earlier of final relief or sixty (60) days after such filing; (4) insolvency; or (5)  
25 failure, inability or admission in writing of its inability to pay its debts as they become  
26 due.

27 **PART 6 GENERAL PROVISIONS**

28 **SECTION 601 Notices, Demands and Communications between the Parties**

1 Formal notices, demands and communications between the Authority and the Borrower  
2 shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return  
3 receipt requested, to the principal offices of the Authority and the Borrower, as designated in  
4 Sections 103 and 104 hereof. Such written notices, demands and communications may be sent in  
5 the same manner to such other addresses as either party may from time to time designate by mail  
6 as provided in this Section 601. Any notice that is transmitted by electronic facsimile  
7 transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its  
8 transmission; any notice that is personally delivered (including by means of professional  
9 messenger service, courier service such as United Parcel Service or Federal Express, or by U.S.  
10 Postal Service), shall be deemed received on the documented date of receipt by the recipient; and  
11 any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall  
12 be deemed received on the date of receipt thereof.

13 **SECTION 602** **Conflicts of Interest**

14 (a) No member, official or employee of the Authority shall have any personal interest,  
15 direct or indirect, in this Agreement nor shall any such member, official or employee participate  
16 in any decision relating to the Agreement which affects his personal interests or the interests of  
17 any corporation, partnership or association in which he is, directly or indirectly, interested.

18 (b) The Borrower warrants that it has not paid or given, and will not pay or give, any  
19 third party any money or other consideration for obtaining this Agreement.

20 **SECTION 603** **Nonliability of Authority Officials and Employees**

21 No member, official, employee or consultant of the Authority shall be personally liable to the  
22 Borrower, or any successor in interest, in the event of any default or breach by the Authority or  
23 for any amount which may become due to the Borrower or to its successor, or on any obligations  
24 under the terms of this Agreement.

25 **SECTION 604** **Force Majeure**

26 In addition to specific provisions of this Agreement, performance by either party hereunder shall  
27 not be deemed to be in default where delays or defaults are due to Force Majeure Events.

28 **SECTION 605** **Inspection and Maintenance of Books and Records**



BORROWER shall maintain financial, programmatic, statistical, and other supporting records of its operations and financial activities. Said records shall be retained for no less than five (5) years after the Project completion date. Records of individual tenant income verifications, project rents, and project inspections must be retained for the most recent five (5) year period, until five (5) years after the affordability period terminates, and records shall be open to inspection and audit by authorized representatives of HOUSING AUTHORITY, County of Riverside and the Comptroller General of the United States during regular working hours. HOUSING AUTHORITY, County of Riverside and the Comptroller General, or any of their representatives, have the right of access with at least forty-eight (48) hours prior notice, to any pertinent books, documents, papers, or other records of BORROWER, in order to make audits, examinations, excerpts and transcripts. If any litigation, claim, negotiation, audit, or other action has been started before the expiration of the regular period specified, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

**SECTION 606      Approvals; Non-Substantive Amendments**

(a) Except as otherwise expressly provided in this Agreement, approvals required of Authority or Borrower in this Agreement, including the attachments hereto, shall not be unreasonably withheld or delayed. All approvals shall be in writing. Failure by either party to approve a matter within the time provided for approval of the matter shall not be deemed disapproval, and failure by either party to disapprove a matter within the time provided for approval of the matter shall not be deemed an approval.

(b) Except as otherwise expressly provided in this Agreement, approvals required of the Authority shall be deemed granted by the written approval of the Authority Executive Director or designee. Notwithstanding the foregoing, the Authority Executive Director may, in his or her sole discretion, refer to the governing body of the Authority any item requiring Authority approval; otherwise, "Authority approval" means and refers to approval by the Authority Executive Director or designee.

(c) The Authority Executive Director or designee shall have the right to make non-substantive changes to the attachments to this Agreement in order to ensure that all such attachments are consistent with the terms and provisions of this Agreement.

**SECTION 607      Real Estate Commissions**

Neither the Authority nor the Borrower shall be liable for any real estate commissions, brokerage fees or finder's fees which may arise from the sale of the Property to the Borrower. The Authority and the Borrower each represent to the other that it has employed no broker, agent, or finder in connection with this transaction.

**SECTION 608      INDEPENDENT CONTRACTOR.**

BORROWER and its agents, servants shall not act as, shall not be, nor shall they in any manner be construed and employees shall act at all times in an independent capacity during the term of this Agreement, and to be agents, officers, or employees of HOUSING AUTHORITY.

**SECTION 609      RESTRICTIONS TO RUN WITH THE LAND.**

HOUSING AUTHORITY and BORROWER hereby declare their express intent that the restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property until the expiration of this Agreement. Each and every contract, deed or other instrument hereafter executed covering and conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to the restrictions, regardless whether such restrictions are set forth in such contract, deed of trust instrument.

**SECTION 610      MEDIA RELEASES.**

BORROWER agrees to allow HOUSING AUTHORITY to coordinate all media releases regarding the Project, with prior approval of BORROWER. Any publicity generated by BORROWER for the Project must make reference to the contribution of HOUSING AUTHORITY in making the Project possible. HOUSING AUTHORITY's name shall be prominently displayed in all pieces of publicity generated by BORROWER, including, but not limited to, flyers, press releases, posters, signs, brochures, and public service announcements.

BORROWER agrees to cooperate with HOUSING AUTHORITY in any HOUSING AUTHORITY-generated publicity or promotional activities with respect to the Project.

**SECTION 611      Further Assurances**

The Borrower shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form, as the Authority may from time to time find necessary or appropriate to effectuate its purposes in entering into this Agreement.

**SECTION 612      Construction and Interpretation of Agreement**

(a) The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(b) If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

(c) The captions of the articles, sections, and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(d) References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) means, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

(e) As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

**SECTION 613      Time of Essence**

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

**SECTION 614      No Partnership**

Nothing contained in this Agreement shall be deemed or construed to create a lending partnership, other partnership, joint venture, or any other relationship between the parties hereto other than purchaser and seller and lender and borrower according to the provisions contained herein, or cause Authority to be responsible in any way for the debts or obligations of Borrower, or any other party.

**SECTION 615      Compliance with Law**

Borrower agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Property, and the Improvements, as well as operations conducted thereon. The judgment of any court of competent jurisdiction, or the admission of Borrower or any lessee or permittee in any action or proceeding against them, or any of them, whether Authority be a party thereto or not, that Borrower, lessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between Authority and Borrower.

**SECTION 616      Binding Effect**

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

**SECTION 617      No Third Party Beneficiaries**

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of Authority and Borrower, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

**SECTION 618      Authority to Sign**

Borrower hereby represents that the persons executing this Agreement on behalf of Borrower have full authority to do so and to bind Borrower to perform pursuant to the terms and conditions of this Agreement.

**SECTION 619      Incorporation by Reference**

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

**SECTION 620      Counterparts**

This Agreement and any attachment to be executed by the parties may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

**PART 7      ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS**

(a) This Agreement shall be executed in three duplicate originals each of which is deemed to be an original. This Agreement, including all attachments hereto and exhibits appended to such attachments shall constitute the entire understanding and agreement of the parties.

(b) This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Property.

(c) All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Authority or the Borrower, and all amendments hereto must be in writing and signed by the appropriate authorities of the Authority and the Borrower. This

1 Agreement and any provisions hereof may be amended by mutual written agreement by the  
2 Borrower and the Authority.

3 **PART 8 EFFECTIVE DATE OF AGREEMENT**

4 This Agreement shall be dated for reference purposes as of the date set forth in the introductory  
5 paragraph hereof, but shall not be effective until approved by the Board of Commissioners  
6 (“Board”) and executed by the Chairman of the Board (“Effective Date”).

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