



# AGENDA

## REGULAR MEETING OF THE HEMET HOUSING AUTHORITY

September 10, 2013

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### REGULAR SESSION

7:00 p.m.

City of Hemet City Council Chambers

450 E. Latham Avenue

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### Call to Order

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### Roll Call

ROLL CALL: Board Members Smith, Wright and Youssef, Vice Chairperson Milne and Chairperson Krupa

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### City Council Business

#### Notice to the Public

The Consent Calendar contains items which are typically routine in nature and will be enacted by one motion by the Board unless an item is removed for discussion by a member of the public, staff, or Board. If you wish to discuss a Consent Calendar item please come to the microphone and state the number of the item you wish to discuss. Then wait near the lectern. When the Chairperson calls your turn give your last name, and address, then begin speaking. You will have three minutes at that time to address the Board.

### Consent Calendar

1. **Approval of Minute** – July 23, 2013
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### Communications from the Public

Anyone who wishes to address the Housing Authority regarding items not on the agenda may do so at this time. As a courtesy, please complete a Request to Speak Form found at the Secretary's desk. Submit your completed form to the Secretary prior to the beginning of the meeting. Presentations are limited to three minutes in consideration of others who are here for agenda items. Please come forward to the lectern when the Chairperson calls upon you. When you are recognized, you may proceed with our comments.

***\*Notice: Members of the Public attending shall comply with the adopted Rules of Decorum in Resolution No. 4545. A copy of the Rules of Decorum are available from the Secretary.***

State law prohibits the Housing Authority from taking action or discussing any item not appearing on the agenda except for brief responses to statements made or questions posed by the public. In addition, they may, on their own initiative or in response to questions posed by the public, ask a question for clarification, provide a reference to staff or other resources for factual information, or request staff to report back to them at a subsequent meeting. Furthermore, a member of the Housing Authority or the Board itself may take action to direct staff to place a matter of business on a future agenda.

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## **Discussion/Action Item**

2. **Neighborhood Stabilization Program – Mobley Lane Revitalization –**  
Community Investment Director Jansons
- a. Adopt a resolution authorizing the execution of a Disposition, Development and loan agreement for the conveyance of real property to Riverside Housing Development Corporation; and
  - b. Authorize the Interim Executive Director and Chairperson of the Hemet Housing Authority to execute all agreements, in substantially the same form as presented to effect the revitalization program and transfer real property as recommended; and
  - c. Authorize the Interim Executive Director to make non-substantive changes to the revitalization plan documents as needed to affect the revitalization project; and
  - d. Authorize staff to amend the HUD NSP Action Plan for NSP1 and NSP3 to allow funds to be expended for NSP Eligible Use “E” category which is to “redevelop demolished or vacant properties”; and
  - e. Authorize staff to reallocate NSP amounts in both NSP1 & NSP3 Action Plans from Single Family Rehabilitation budget to the LH25 Multi-Family Acquisition Rehabilitation budget fund to a level sufficient for the implementation of the Mobley Lane Project as described in this Staff Report.
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## **Future Agenda Items**

If Members of Board have items for consideration at a future Housing Authority meeting, please state the agenda item to provide direction to the Executive Director.

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## **Adjournment**

Adjourn



# MINUTES

## REGULAR MEETING OF THE HEMET HOUSING AUTHORITY

July 23, 2013

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### REGULAR SESSION

**7:00 p.m.**

**City of Hemet Council Chambers**

**450 E. Latham Avenue**

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### Call to Order

Vice Chairperson Milne called the meeting to order at 7:45 p.m.

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### Roll Call

PRESENT: Board Members Smith, Wright, Youssef and Vice Chairperson Milne

ABSENT: Chairperson Krupa

**Board Member Youssef moved and Board Member Smith seconded a motion to excuse Chairperson Krupa. Motion carried 4-0.**

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### Consent Calendar

1. **Approval of Minutes – April 9, 2013**

**Board Member Wright moved and Board Member Smith seconded a motion to approve the Consent Calendar as presented. Motion carried 4-0.**

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### Communications from the Public

There were no communications from the public at this time.

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### Discussion/Action Item

2. **Neighborhood Stabilization Program: Mobley Lane Revitalization –**  
Community Investment Director Jansons

- a. Authorize the Interim Executive Director and Chairperson to execute all agreements, in substantially the same form as presented to effect the revitalization program and transfer real property as recommended; and

- b. Authorize the Interim Executive Director to make non-substantive changes to the revitalization plan documents as needed to advance the revitalization project.

**John Jansons, Community Investment Director**, staff is recommending that the Board continue this to a future meeting.

**Vice Chairperson Milne moved and Board Member Youssef seconded a motion to continue this item. Motion carried 4-0.**

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### **Future Agenda Items**

There were no future agenda items requested at this time.

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### **Adjournment**

Adjourned at 7:50 p.m.



*Housing Authority  
Staff Report*

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TO: Honorable Chairperson Krupa and Hemet Housing Authority  
FROM: Ronald E. Bradley, Interim Executive Director *RB*  
DATE: September 10, 2013  
RE: Consideration of Hemet Housing Authority Resolution Bill No. 2013-001  
Authorizing Neighborhood Stabilization Program - Mobley Lane Revitalization

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**RECOMMENDATION:**

That the Hemet Housing Authority:

1. Approve Hemet Housing Authority Resolution Bill No. 2013-001; and
2. Authorize the Interim Executive Director and Chairperson of the Hemet Housing Authority of the City of Hemet to execute all agreements, in substantially the same form as presented to effect the revitalization program and transfer real property as recommended; and
3. Authorize the Interim Executive Director to make non-substantive changes to the revitalization plan documents as needed to affect the revitalization project.
4. Authorize Staff to amend the HUD NSP Action Plan for NSP1 & NSP3 to allow funds to be expended for NSP Eligible Use "E" category which is to "redevelop demolished or vacant properties."
5. Authorize Staff to reallocate NSP amounts in both NSP1 & NSP3 Action Plans from Single Family Rehabilitation budget to the LH25 Multi-Family Acquisition Rehabilitation budget fund to a level sufficient for the implementation of the Mobley Lane Project as described in this Staff Report.

**BACKGROUND:**

On April 9, 2013, City Staff, Adam Eliason, the City's Neighborhood Stabilization Program (NSP) consultant and Bruce Kulpa, Executive Director of the Riverside Housing Development Corporation (RHDC) presented the Hemet Housing Authority (HHA) a NSP achievement plan and a revitalization plan for the Mobley Lane project.

At the April 9, 2013 meeting, the HHA approved the NSP Achievement Plan, the Mobley Revitalization Plan and authorized HHA and City staff to prepare all documents and contracts necessary to advance the revitalization program.

As the City's approved Development Partner, Riverside Housing Development Corporation

(RHDC) is a non-profit, affordable housing development organization created in 1991. Their mission includes renovating blighted properties and making them available for purchase or lease to low-income households. Since 2004, they have acquired, rehabilitated, and managed over 300 multi-family units, primarily in the cities of Riverside and Moreno Valley and in unincorporated Riverside County in east Hemet. RHDC recently completed a major renovation just outside the City limits on Orange Blossom Drive near Stanford. RHDC continues to acquire and revitalize additional properties in this neighborhood successfully. Overall, using their expertise and team approach, RHDC has acquired, rehabilitated, and managed 175 units in the past 24 months to transform neighborhoods and improve the quality of life in many communities.

Burke Williams and Sorenson (using their affordable housing experts) prepared the necessary documents in close coordination with City staff, CivicStone, HUD Technical Advisor and RHDC to initiate the revitalization project previously approved by the City to achieve NSP compliance and revitalize Mobley Lane.

**DISCUSSION:**

The April 2013 HHA meeting approved a preliminary budget expenditure of \$900,000 in NSP funds. Since that time Staff has been confirmed with HUD that this project will require Davis Bacon prevailing wages for the labor of the Mobley Lane project. The management, monitoring and increased wages resulting from Davis Bacon represents a 25% increase in the overall project budget. This change results in the NSP grant funding amount increasing to \$1,219,000.

In addition, a \$252,000 NSP loan will replace a short term conventional loan that RHDC was going to obtain to fill the gap between the NSP grant and the amount needed to complete the project. This NSP loan will earn interest at a rate comparable to that of the conventional loan and will be repaid with interest at the completion of the construction and when the permanent financing is in place. The short term NSP loan will help the City meet the March 2014 NSP funding obligation deadline.

The completed Mobley Lane project will feature 41 fully renovated rental units along with professional onsite project management that will be in the neighborhood and meeting with resident's every day. RHDC will participate in the City's Crime Free Multi-Family Housing Program and Neighborhood Watch efforts to ensure the neighborhood maintains a high quality and safe environment for its residents.

The construction improvements will include; newly constructed enclosed garages, onsite laundry facilities, play area with a tot lot, private patios, and a community room available to residents for special events or to provide training classes for residents and their children.

RHDC can begin plans and bidding process immediately upon approval by the City and HHA. The project is divided into two phases. Phase 1 will be three buildings (12 units) that were acquired with NSP funds. Phase 1 construction improvements will likely start in November or December 2013. Phase 2 will be the remaining eight buildings (29 units) and additional improvements specific to Phase 2, when initiated include: construction of secure enclosed garages, additional common laundry facilities and a community room. Additional landscape enhancements will be included in Phase I and II.

Phase 2 is contingent upon Developer's receipt of an allocation for low-income housing tax credits, and that if Developer is not successful in obtaining an allocation in 3 rounds (by

approximately Spring of 2015), then the Housing Authority has an option to reacquire the Phase 1 property and seek a different developer for Phase 2.

Because the NSP funds are provided by federal sources, Fair Housing Laws prohibit the units to be marketed and exclusively available to City of Hemet residents. However, RHDC and City Staff will work closely to ensure that a significant outreach is made to Hemet residents so that they are at least aware of the opportunity to apply for occupancy when the time is appropriate.

RHDC and NSP administration continues to collaborate with the City's Community Investment Department and Community Development Department to ensure the highest quality results, mutual satisfaction and completion of NSP requirements in renovating the 11 buildings.

Documents to be executed by the HHA Chairperson or Interim Executive Director include: the Disposition and Development Agreement (DDA), Loan Agreement, and Regulatory Agreement for both Phase 1 and Phase 2 of the Project.

**COORDINATION AND REVIEW:**

This recommendation was prepared and coordinated with the Department of Community Development, Community Investment, NSP Program Administrator and City Attorney's Office.

**INTEGRATION OF COUNCIL GOALS / STRATEGIC PLAN:**

The recommendation supports the City's goals of leveraging grant funds, revitalizing neighborhoods, improving the housing stock and creating jobs.

**FISCAL IMPACT:**

Proceeding as recommended will require no monies from the City's general fund. The project will be funded exclusively with \$1,471,000 of NSP funds. Failure to proceed with the recommended action will result in the City being required to return a significant portion of already expended NSP1 and NSP3 grant funds to HUD which would require City general fund money to fulfill that obligation.

**ALTERNATIVE(S):**

None proposed.

**CONCLUSION:**

That the Hemet Housing Authority:

1. Approve Hemet Housing Authority Resolution Bill No. 2013-001; and
2. Authorize the Interim Executive Director and Chairperson of the Hemet Housing Authority of the City of Hemet to execute all agreements, in substantially the same form as presented to effect the revitalization program and transfer real property as recommended; and
3. Authorize the Interim Executive Director to make non-substantive changes to the revitalization plan documents as needed to affect the revitalization project.
4. Authorize Staff to amend the HUD NSP Action Plan for NSP1 & NSP3 to allow funds to be expended for NSP Eligible Use "E" category which is to "redevelop demolished or vacant properties."

5. Authorize Staff to reallocate NSP amounts in both NSP1 & NSP3 Action Plans from Single Family Rehabilitation budget to the LH25 Multi-Family Acquisition Rehabilitation budget fund to a level sufficient for the implementation of the Mobley Lane Project as described in this Staff Report.

**Attachments:**

1. HHA Resolution Bill No. 2013-001
2. Draft Disposition and Development Agreement (DDA)

**Recommended By:**



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John Jansons  
Community Investment Director

**Approved By:**

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Ronald E. Bradley  
Interim Executive Director



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**CITY OF HEMET HOUSING AUTHORITY  
Hemet, California**

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**RESOLUTION NO. 001**

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**AUTHORIZING THE EXECUTION OF A DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT FOR THE CONVEYANCE OF REAL PROPERTY TO RIVERSIDE HOUSING DEVELOPMENT CORPORATION; APPROVING THE PROVISION OF FINANCING FOR THE REHABILITATION OF IMPROVEMENTS LOCATED ON THE PROPERTY; AND AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION WITH SUCH DISPOSITION AND FINANCING**

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**WHEREAS**, on April 9, 2013, the Hemet Housing Authority (the "**Authority**") provided conceptual approval for the disposition, rehabilitation and financing of the Property owned by the Authority located on Mobley Lane in the City of Hemet (the "**Property**") pursuant to documents to be negotiated with the Riverside Housing Development Corporation, a California nonprofit public benefit corporation ("**Developer**");

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**WHEREAS**, Authority staff have negotiated the terms and conditions under which the Developer would acquire and rehabilitate the property in two phases, collectively consisting of 41 units of housing affordable to low- and very low-income households (the "**Project**");

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**WHEREAS**, Phase 1 of the Project would consist of Developer's acquisition and rehabilitation of 12 units of affordable housing located at 598, 599 and 575 Mobley Lane ("**Phase 1**"), and Phase 2 of the Project would consist of the acquisition and rehabilitation of 29 units of affordable housing on the remainder of the Property ("**Phase 2**") by Developer or by a limited partnership in which Developer serves as the general partner;

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**WHEREAS**, the Project, the Property and the terms and conditions for disposition, rehabilitation, and financing of the Project are more particularly described in a proposed Disposition, Development and Loan Agreement (the "**DDA**"), a copy of which has been provided to the Authority's governing board;

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**WHEREAS**, the City Council of the City of Hemet has determined that the Project is exempt from the California Environmental Quality Act ("**CEQA**") pursuant to CEQA Guidelines Sections 15301 and 15302 because the Project involves the rehabilitation of existing structures to provide affordable housing to low-income households;

**WHEREAS**, the Developer and Authority staff have determined that it will not be economically feasible to rehabilitate and operate the Project at the proposed level of income-targeting and affordability without financial assistance from the Authority, and despite good faith efforts on the part of Developer, no other reasonable means of private or commercial financing is reasonably available to finance Phase 1 of the Project at such affordability and income levels;

1           **WHEREAS**, the proposed Authority financing for Phase 1 of the Project includes  
2 a construction/permanent loan in the amount of \$1,219,000 and a second short-term  
3 loan in the amount of \$252,000, each to be funded with Neighborhood Stabilization  
4 Program (“**NSP**”) funds (collectively, the “**Loans**”);

5           **WHEREAS**, the DDA provides that the proceeds of the Loans may be used for  
6 rehabilitation of the Phase 1 residential units and for specified predevelopment costs for  
7 Phase 2;

8           **WHEREAS**, Developer will seek additional financing for Phase 2 of the Project,  
9 and will apply for an allocation of federal low-income housing tax credits to fund the  
10 rehabilitation of the Phase 2 residential units and the construction or rehabilitation of  
11 garages and common facilities for both Phase 1 and Phase 2;

12           **WHEREAS**, Developer and Authority staff have negotiated the terms and  
13 conditions of two Secured Promissory Notes (the “**Notes**”) which provide for repayment  
14 of the construction/permanent loan on a residual receipts basis and repayment of the  
15 short-term loan upon completion of Phase 2 of the Project, an Affordable Housing  
16 Regulatory Agreement and Declaration of Restrictive Covenants (“**Regulatory**  
17 **Agreement**”) which restricts rents for units in Phase 1 of the Project at affordable levels  
18 for a period of 55 years, and a Deed of Trust, Assignment of Rents, Security Agreement  
19 and Fixture Filing (the “**Deed of Trust**”) pursuant to which the Authority will be provided  
20 a security interest in the Phase 1 Property to secure repayment of the Loans and  
21 compliance with the Regulatory Agreement;

22           **WHEREAS**, the DDA provides that similar agreements will be executed in  
23 connection with the disposition of the Phase 2 Property; and

24           **WHEREAS**, the DDA provides that the Authority has an option to reacquire the  
25 Phase 1 property if the Developer is unable to timely secure an allocation of low-income  
26 housing tax credits for Phase 2.

27           **NOW, THEREFORE, BE IT RESOLVED** that the governing board of the Hemet  
28 Housing Authority hereby:

1. Finds that the disposition and rehabilitation of the Property in accordance with the DDA will assist in the elimination of blight, and will facilitate the development of housing for low- and very low-income households.
2. Finds that the provision of financial assistance in the amount of the Loans is necessary to make Phase 1 of the Project financially feasible and affordable to low- and very low-income households.
3. Approves the conveyance of the Phase 1 Property to Developer pursuant to the terms and conditions set forth in the DDA, and authorizes the Executive Director to execute and record a Memorandum of the DDA and a Grant Deed, each substantially in the form attached as Exhibits to the DDA.
4. Approves the DDA, and authorizes the Executive Director to execute and deliver the DDA substantially in the form presented to the governing board of the Authority with such modifications as may be approved by the Executive Director in consultation with Authority Counsel, provided such modifications are consistent with the intent of this Resolution and do not substantially increase the obligations or impair the rights of the Authority.

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5. Approves the provision of the Loans pursuant to the terms and conditions set forth in the DDA and the Notes.

6. Approves the Notes, the Deed of Trust and the Regulatory Agreement, and authorizes the Executive Director to execute and deliver each such document to which the Authority is a party substantially in the form attached as Exhibits to the DDA, with such modifications as may be approved by the Executive Director in consultation with Authority Counsel, provided such modifications are consistent with the intent of this Resolution and do not substantially increase the obligations or impair the rights of the Authority.

7. Authorizes and directs staff to amend the HUD NSP Action Plan for NSP1 and NSP3 to allow funds to be expended for NSP Eligible Use category "E" for the redevelopment of vacant properties,

8. Authorizes and directs staff to reallocate amounts in the NSP1 and NSP3 Action Plans from the Single Family Rehabilitation budget to the LH25 Multi-Family Acquisition Rehabilitation budget as necessary to fund the Loans.

9. Authorizes the Executive Director or his designee to execute and deliver such other instruments and to take such other actions as necessary to carry out the intent of this Resolution.

**PASSED, APPROVED and ADOPTED** at a regular meeting of the Hemet Housing Authority of the City of Hemet, California held on this 10<sup>th</sup> day of September, 2013.

\_\_\_\_\_  
**Linda D. Krupa, Chairperson**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Sarah McComas, City Clerk**

\_\_\_\_\_  
**Eric S. Vail, City / Authority Attorney**

1 State of California )  
2 County of Riverside )  
3 City of Hemet )

4 I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the  
5 foregoing Resolution is the actual Resolution adopted by the Hemet Housing Authority  
6 of the City of Hemet and was passed at a regular meeting of the Hemet Housing  
7 Authority on the 10<sup>th</sup> day of September, 2013 by the following vote:

8 AYES:  
9 NOES:  
10 ABSTAIN:  
11 ABSENT:

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Sarah McComas, City Clerk

**DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT**

by and between

**DRAFT**

**THE HEMET HOUSING AUTHORITY**

and

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION**

\_\_\_\_\_, 2013

THIS DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT (this “**Agreement**”) is entered into effective as of \_\_\_\_\_, 2013 (“**Effective Date**”) by and between the Hemet Housing Authority, a public corporation organized and existing pursuant to the California Housing Authorities Law (Health and Safety Code § 34200 *et seq.*) (“**Authority**”) and Riverside Housing Development Corporation, a California nonprofit public benefit corporation (“**Developer**”). The Authority and the Developer are collectively referred to herein as the “**Parties.**”

## RECITALS

A. The Authority is the owner of the following real property located within the City of Hemet, Riverside County, California, and more particularly described in Exhibits A-1 and A-2 attached hereto (the “**Property**”):

598 Mobley Lane (Assessor’s Parcel No. 443-090-025)  
599 Mobley Lane (Assessor’s Parcel No. 443-090-032)  
575 Mobley Lane (Assessor’s Parcel No. 443-090-033)

550 Mobley Lane (Assessor’s Parcel No. 443-090-023)  
622 Mobley Lane (Assessor’s Parcel No. 443-090-026)  
670 Mobley Lane (Assessor’s Parcel No. 443-090-028)  
647 Mobley Lane (Assessor’s Parcel No. 443-090-030)  
623 Mobley Lane (Assessor’s Parcel No. 443-090-031)  
551 Mobley Lane (Assessor’s Parcel No. 443-090-034)  
527 Mobley Lane (Assessor’s Parcel No. 443-090-035)  
503 Mobley Lane (Assessor’s Parcel No. 443-090-036)

B. Developer has proposed to acquire the Property and rehabilitate and manage the improvements located thereon as an affordable residential rental development in two phases as more particularly described herein. Phase 1 consists of the acquisition of the portion of the Property located at 598, 599 and 575 Mobley Lane, known as Riverside County Assessor’s Parcel Nos. 443-090-025, -032, and -033, and more particularly described in Exhibit A-1 attached hereto (the “**Phase 1 Property**”) and the rehabilitation of twelve (12) affordable residential units located thereon (the “**Phase 1 Project**”). Phase 2 consists of the acquisition of the remainder of the Property located at 550, 622, 670, 647, 623, 551, 527 and 503 Mobley Lane (the “**Phase 2 Property**”), the rehabilitation of twenty-nine (29) affordable residential units (including one (1) manager’s unit) located thereon, and the construction and installation of common area improvements and parking garages on both the Phase 1 Property and the Phase 2 Property (collectively, the “**Phase 2 Project**”). The Parties contemplate that in connection with the closing for the Phase 2 Project, the Phase 1 Property and the improvements located thereon will be conveyed to an Approved Partnership (defined below) that will acquire the Phase 2 Property, assume the obligations of Developer under this Agreement and the other Authority Documents, undertake the financing and development of the Phase 2 Project, and own and operate both the Phase 1 Project and the Phase 2 Project.

C. Upon satisfaction of the conditions precedent set forth in this Agreement and subject to the terms and conditions set forth herein, the Authority will convey the Property to Developer, and will provide financing to assist in financing rehabilitation of the improvements located thereon.

D. Concurrently with the execution of this Agreement, among other documents, Developer will execute: two secured promissory notes to evidence Developer's obligation to repay the loans Authority will provide for the Phase 1 Project, a deed of trust that will provide Authority with a security interest in the Phase 1 Property, and an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants that will require rents for the Phase 1 residential units to be affordable to very low-income households for a term of not less than fifty-five (55) years. Counterpart documents will be executed in connection with the conveyance of the Phase 2 Property and financing of the Phase 2 Project, and if an Approved Partnership acquires the Phase 1 Property, the Parties may amend and restate this Agreement and the other Authority Documents to reflect the terms and conditions applicable to the Phase 2 Project.

E. A material inducement to Authority to enter into this Agreement is the agreement by Developer to rehabilitate the Improvements within the time periods specified herein and in accordance with the provisions hereof, and the Authority would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to take such actions and complete such work in accordance with such provisions and within such time periods.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

## ARTICLE I

### DEFINITIONS; EXHIBITS

1.1 Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

“**Affordable Rent**” is defined in the Regulatory Agreement.

“**Applicable Laws**” is defined in Section 5.15.

“**Approved Partnership**” is defined in Section 7.3.

“**Area Median Income**” is defined in the Regulatory Agreement.

“**Assignment Agreement**” is defined in Section 9.13.

“**Authority**” means the Hemet Housing Authority, a public corporation organized and existing pursuant to the California Housing Authorities Law (Health and Safety Code § 34200 *et seq.*).

**“Authority Documents”** means collectively, this Agreement, the Note, the Deed of Trust, the Regulatory Agreement, the Memorandum and the Grant Deed.

**“Authority’s Permitted Exceptions”** is defined in Section 3.7.

**“Authorized Representative”** means the Authority’s Executive Director or his or her designee.

**“Certificate of Completion”** is defined in Section 5.12.

**“City”** means the City of Hemet, a municipal corporation.

**“Claims”** is defined in Section 5.14.

**“Closing Date”** or **“Close of Escrow”** shall be the date that escrow closes for the Loans and the conveyance of the Phase 1 Property.

**“Conditions of Approval”** is defined in Section 5.4.

**“Construction/Permanent Loan”** is defined in Section 4.1.

**“Construction/Permanent Note”** is defined in Section 4.1.

**“Construction Plans”** is defined in Section 5.6.

**“Deed of Trust”** is defined in Section 3.7.

**“Developer”** means the Riverside Housing Development Corporation, a California nonprofit public benefit corporation.

**“Developer’s Permitted Exceptions”** is defined in Section 3.1.

**“Environmental Laws”** is defined in Section 6.11.2.

**“Escrow Agent”** is defined in Section 3.3.

**“Excess Proceeds”** is defined in Section 4.2.1.

**“Grant Deed”** is defined in Section 3.1.

**“Hazardous Material”** is defined in Section 6.11.1.

**“Improvements”** means the improvements located on the Property including without limitation, the residential dwelling units to be rehabilitated pursuant to this Agreement.

**“Indemnitees”** is defined in Section 5.14.

**“Lender’s Title Policy”** is defined in Section 3.7.

**“Loan Proceeds”** is defined in Section 4.1.

**“Loans”** is defined in Section 4.1.

**“Memorandum”** is defined in Section 3.7.

**“Notes”** is defined in Section 4.1.

**“Official Records”** means the Official Records of Riverside County.

**“Owner’s Title Policy”** is defined in Section 3.8.

**“Partnership Agreement”** is defined in Section 7.3.

**“Phase 1”** means Developer’s acquisition of the Phase 1 Property and rehabilitation of the Improvements located thereon in accordance with this Agreement.

**“Phase 2”** means Developer’s or an Approved Partnership’s acquisition of the Phase 2 Property and rehabilitation of the Improvements located thereon in accordance with this Agreement as it may be amended to reflect terms and conditions applicable to the Phase 2 Project.

**“Phase 1 Developer Fee”** is defined in Section 2.5.1.

**“Phase 1 Financing Plan”** is defined in Section 2.5.1.

**“Phase 2 Financing Plan”** is defined in Section 2.5.2.

**“Phase 2 Predevelopment Costs”** is defined in Section 4.1.

**“Phase 1 Project”** is defined in Recital B.

**“Phase 2 Project”** is defined in Recital B.

**“Phase 1 Property”** is defined in Recital B and described in Exhibit A-1.

**“Phase 2 Property”** is defined in Recital B and described in Exhibit A-2.

**“Project”** means collectively the Phase 1 Project and the Phase 2 Project.

**“Property”** is defined in Recital A and means, collectively, the Phase 1 Property and the Phase 2 Property.

**“NSP Funds”** is defined in Section 2.5.4.

**“NSP Requirements”** is defined in Section 2.5.4.

“**Regulatory Agreement**” is defined in Section 3.7.

“**Repurchase Options**” means collectively Repurchase Option A as defined in Section 9.9 and Repurchase Option B as defined in Section 9.9.1.

“**Short-Term Loan**” is defined in Section 4.1.

“**Short-Term Note**” is defined in Section 4.1.

“**Title Company**” is defined in Section 3.6.

“**Title Report**” is defined in Section 3.1.

“**Transfer**” is defined in Section 7.2.

1.2 Exhibits. The following Exhibits are attached hereto and incorporated into this Agreement by this reference:

- A-1 Legal Description of the Phase 1 Property
- A-2 Legal Description of the Phase 2 Property
- B-1 Form of Construction/Permanent Promissory Note – Phase 1
- B-2 Form of Short-Term Promissory Note – Phase 1
- C Form of Deed of Trust – Phase 1
- D Form of Regulatory Agreement – Phase 1
- E-1 Phase 1 Financing Plan
- E-2 Phase 1 Financing Plan
- F Form of Certificate of Completion
- G Form of Memorandum of Option and Loan Agreement
- H Form of Grant Deed
- I Predevelopment Costs

## ARTICLE II

### REPRESENTATIONS; EFFECTIVE DATE; PROJECT SCOPE; FINANCING PLAN

2.1 Developer’s Representations. Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, Developer shall immediately give written notice of such fact or condition to Authority. Developer acknowledges that Authority shall rely upon Developer’s representations made herein notwithstanding any investigation made by or on behalf of Authority.

(a) Organization. Developer is a nonprofit public benefit corporation, duly organized and in good standing under the laws of the State of California and tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

(b) Authority of Developer. Developer has full power and authority to execute and deliver this Agreement and all other documents or instruments executed and delivered by Developer, or to be executed and delivered by Developer, pursuant to or in connection with this Agreement, and to perform and observe the terms and provisions of all of the foregoing

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered by Developer, or to be executed and delivered by Developer, pursuant to or in connection with to this Agreement, have been executed and delivered, or will be executed and delivered, by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered by Developer, or to be executed and delivered by Developer, pursuant to or in connection with this Agreement, have been duly taken or will have been duly taken (to the extent such actions are required) as of the date of execution and delivery of such documents.

(d) Valid and Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered by Developer or will be executed and delivered by Developer pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute, legal, valid and binding obligations of Developer, enforceable in accordance with their respective terms, subject to laws affecting creditors' rights and principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or any other documents or instruments executed and delivered by Developer, or to be executed or delivered by Developer, pursuant to or in connection with this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

(f) Pending Proceedings. Except as disclosed in writing to the Authority prior to execution of this Agreement, Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and, to the best of its knowledge, there are no claims, actions, suits or proceedings pending or, to the knowledge of Developer, threatened against or affecting Developer or the Property, at law or in equity, before or by any court, board, commission or agency. Developer is not the subject of a bankruptcy or insolvency proceeding.

2.2 Effective Date; Memorandum. The obligations of Developer and Authority hereunder shall be effective as of the Effective Date which date is set forth in the preamble to this Agreement. Concurrently with the execution of this Agreement, the Parties shall execute a memorandum of this Agreement substantially in the form attached hereto as Exhibit G which shall be recorded in the Official Records.

2.3 Project Scope. The Phase 1 Project will include the rehabilitation of twelve (12) units of affordable multi-family housing on the Phase 1 Property consisting of ten (10) three-bedroom units and two (2) two-bedroom units. The Phase 2 Project will include the rehabilitation of twenty-nine (29) units of affordable multi-family housing (including one (1) manager's unit) on the Phase 2 Property; the rehabilitation or construction of parking facilities for both the Phase 1 residential units and the Phase 2 residential units, and the installation and development of common facilities including laundry facilities and open space. The Phase 2 residential units will include twenty-two (22) three-bedroom units, six (6) two-bedroom units, and one (1) two-bedroom manager's unit.

2.4 Design Review; Conditions of Approval. Prior to the Authority's consideration of this Agreement, Developer submitted a site plan to City and Authority staff for review and approval. Developer will submit to City and Authority staff for review and approval design documents including elevations and schematic drawings for the Project. Authority staff shall review the design documents within ten (10) business days. Developer agrees that it shall rehabilitate the Improvements in accordance with the approved design documents.

2.5 Financing Plan.

2.5.1 Phase 1. Developer has previously submitted to Authority, and the Authority has approved, Developer's plan for financing the Phase 1 Project (the "**Phase 1 Financing Plan**"). The Phase 1 Financing Plan is attached hereto as Exhibit E-1. The terms set forth in the body of this Agreement shall prevail in the event of a conflict between the information set forth in the Phase 1 Financing Plan and the terms set forth in the body of this Agreement. Without limiting the generality of the foregoing, notwithstanding any contrary provision in Exhibit E-1 or in any Authority Document, the maximum developer fee payable for the Phase 1 Project shall be Two Hundred Thousand Dollars (\$200,000) ("**Phase 1 Developer Fee**"). This sum is equal to Sixteen Thousand, Six Hundred Sixty-Seven Dollars (\$16,667) per residential unit in Phase 1. To the extent that funds are available, the Phase 1 Developer Fee shall be paid in the following installments: \$50,000 shall be payable upon commencement of construction of the Phase 1 rehabilitation work as evidenced by City's issuance of building permits, \$100,000 shall be payable upon completion of the Phase 1 rehabilitation work as evidenced by City's issuance of a final certificate of occupancy for the Phase 1 Project, and \$50,000 shall be payable when the Phase 1 Project achieves 95% occupancy. No interest will be payable on any portion of the Phase 1 Developer Fee that is deferred.

2.5.2 Phase 2. Developer shall submit for Authority review Developer's plans for construction and permanent financing of the Phase 2 Project (the "**Phase 2 Financing Plan**"). The Phase 2 Financing Plan shall indicate all sources of funds necessary to pay, when due, the estimated costs of the Phase 2 Project, including without limitation acquisition costs and hard and soft construction costs, and shall be accompanied by evidence that all such funds have been firmly committed by Developer, equity investors or lending institutions, subject only to commercially reasonable conditions. The Phase 2 Financing Plan shall include development and operating pro formas which set out in detail Developer's plan for financing the costs of acquisition, rehabilitation and operation of the Phase 2 Project.

Authority staff shall promptly review the proposed Phase 2 Financing Plan, and acting through the Authorized Representative, the Authority shall approve such plan in writing within fifteen (15) business days following receipt provided that the plan conforms to the requirements of this Section. If the Authority does not approve the Phase 2 Financing Plan, the Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. If the Authority does not approve or provide written objections to Developer within such fifteen (15) business day period, the Phase 2 Financing Plan shall be deemed rejected. Developer shall thereafter submit a revised Phase 2 Financing Plan that addresses the reasons for disapproval, and the Authority shall grant Developer a reasonable extension of the time deadlines set forth in this Agreement as required to restructure the Phase 2 Financing Plan, subject to the outside time limit for completion set forth in Section 5.1 below. Authority's approval of the Phase 2 Financing Plan shall be a condition precedent to Authority's obligation to convey the Phase 2 Property to Developer. The approved Phase 2 Financing Plan shall be attached to this Agreement as Exhibit E-2. The terms set forth in the body of this Agreement shall prevail in the event of a conflict between the information set forth in the Phase 2 Financing Plan and the terms set forth in the body of this Agreement. Without limiting the generality of the foregoing, notwithstanding any contrary provision in Exhibit E-2 or any document executed in connection with Phase 2, the maximum developer fee payable for the Phase 2 Project shall be the lesser of (a) Five Hundred Seventy Thousand Dollars (\$570,000), and (b) the maximum developer fee allowed by the California Tax Credit Allocation Committee ("TCAC") for the Phase 2 Project. Eighty-Six Thousand, Six Hundred Fifty-Three (\$86,653) of the Phase 2 developer fee shall be deferred until completion of rehabilitation of the Phase 2 Project and shall be paid from Phase 2 cash flow. No interest will be payable on any portion of the Phase 2 developer fee that is deferred. In no event will the aggregate developer fee paid for Phase 1 and Phase 2 together exceed the sum of Seven Hundred Thousand Dollars (\$700,000).

2.5.2.1 Tax Credit Funds. Developer will use best efforts to submit an application to TCAC for a preliminary tax credit reservation in the Spring of 2014 for the Phase 2 Project, and, if necessary will submit an application for TCAC's second round for 2014. Upon award of a preliminary reservation from TCAC, Developer shall exercise diligent good faith efforts to obtain a funding commitment from a reputable equity investor. Procurement of a TCAC preliminary reservation and receipt of an equity investor's funding commitment reasonably acceptable to Authority shall be conditions precedent to the Authority's obligation to convey the Phase 2 Property to Developer.

If Developer does not receive an allocation of tax credits in the first or second TCAC round of funding for the year 2014, Developer shall apply for tax credits in the first TCAC round of funding for the year 2015 (the "**Additional Round**"). If Developer does not receive a TCAC commitment in the Additional Round, then upon delivery of written notice to Developer, the Authority shall have the right to terminate any obligation that may be construed to have arisen under this Agreement relating to conveyance of the Phase 2 Property or financing the Phase 2 Project and Authority shall have the right to exercise the Repurchase Option B pursuant to Section 9.9.1 below.

2.5.3 Modifications. Proposed modifications to the Phase 1 Financing Plan or the Phase 2 Financing Plan shall be submitted to the Authority for review and approval. Authority staff shall promptly review such proposed modifications, and acting through its Authorized

Representative, the Authority shall approve such modifications in writing within fifteen (15) business days following receipt provided that the modifications conform to the requirements of this Agreement. If the Authority does not approve proposed modifications, the Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer shall thereafter submit a revised Financing Plan that addresses the reasons for disapproval. If the Authority does not approve or provide written objections to Developer within such fifteen (15) business day period, the proposed modifications shall be deemed rejected.

2.5.4 Neighborhood Stabilization Program (NSP) Funds. Developer acknowledges that the Loans will be funded with funds provided through the Neighborhood Stabilization Program (“NSP Funds”), and that the Authority has no obligation to provide funding for either the Phase 1 Project or the Phase 2 Project except as expressly provided in this Agreement. Developer pledges to comply with all requirements associated with the receipt and use of NSP Funds, including without limitation, all state and federal laws, rules, regulations and requirements that apply to the use of NSP Funds (collectively the “NSP Requirements”). Developer agrees to indemnify, defend (with counsel approved by Authority) and hold the Indemnitees harmless from and against any and all Claims arising in connection with any breach of the NSP Requirements by Developer or any affiliate of Developer (including any Approved Partnership) or any contractor, subcontractor, agent or employee of Developer or any affiliate of Developer or Approved Partnership. Developer’s indemnification obligations under this Section 2.5.4 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 2.5.4 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement. It is further agreed that the Authority does not and shall not waive any rights against Developer that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Authority, or the deposit with Authority by Developer, of any of the insurance policies described in this Agreement.

2.5.5 Loan and Grant Documents. Developer shall submit to the Authority for its approval, copies of all loan and/or grant documents for the financing sources identified in the Phase 1 Financing Plan and the Phase 2 Financing Plan.

### ARTICLE III

#### DISPOSITION OF THE PROPERTY; CONDITIONS PRECEDENT TO CLOSING

3.1 Purchase and Sale of Property. Provided that all conditions precedent set forth in this Agreement have been satisfied or waived, Authority shall sell to Developer, and Developer shall purchase from Authority, the fee interest in the Phase 1 Property in accordance with and subject to the terms, covenants and conditions of this Agreement, free and clear of all exceptions to title except: (a) the provisions and effects of the Authority Documents, (b) applicable building and zoning laws and regulations, (c) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed, (d) exceptions as shown on the preliminary title report for the Property (“**Title Report**”) as reasonably approved by

Developer, and (e) such other conditions, liens, encumbrances, restrictions, easements and exceptions as Developer may approve in writing, which approval shall not be unreasonably withheld. All of the foregoing are collectively hereinafter referred to as “**Developer’s Permitted Exceptions**.” Conveyance of the Phase 1 Property shall be effectuated by grant deed substantially in the form attached hereto as Exhibit H (the “**Grant Deed**”).

3.2 Purchase Price. Authority shall sell the Phase 1 Property to Developer for the sum of One Dollar (\$1.00) (the “**Purchase Price**”).

3.3 Escrow. Authority and Developer shall open escrow at the office of Appian Escrow located at 3771 Arlington Ave, Riverside, CA 92506 or such other escrow or title company as the Parties may agree upon (“Escrow Agent”) in order to consummate the conveyance of the Phase 1 Property to Developer and the closing of escrow for the transactions contemplated hereby.

3.4 Costs of Closing and Escrow. Developer shall pay all title insurance premiums for policies Developer elects to purchase in connection with the acquisition of the Property and the financing of the Project, and Developer shall pay all recording fees, transfer taxes, escrow fees and closing costs incurred in connection with the acquisition of the Property and the financing of the Project. Developer shall pay for the cost of any lender’s policy of title insurance that Authority elects to acquire in connection with the transactions contemplated hereby. Property taxes and assessments shall be prorated as of the Closing Date. Authority and Developer shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as Authority or Developer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by Authority and Developer, shall serve as escrow instructions for the Closing. Developer’s expenses described in this Section may be paid with proceeds of the Loans or by other sources of financing.

3.5 Closing. The Closing Date shall be a date that is mutually acceptable to the Parties, consistent with Section 5.1, and which shall occur within thirty (30) days following the Developer’s satisfaction or Authority’s waiver of all conditions precedent to conveyance of the Property as set forth in Sections 3.7 and 3.8. Prior to the Close of Escrow, Developer shall deposit into escrow the Authority Documents to which Developer is a party, executed and acknowledged as applicable and Developer’s share of closing costs. Provided that all conditions precedent to Close of Escrow have been satisfied or waived, Authority shall deposit into escrow the executed Grant Deed and executed copies of the Authority Documents to which Authority is a party. On the Closing Date, the Escrow Agent shall cause the Grant Deed, the Memorandum, the Deed of Trust and the Regulatory Agreement to be recorded in the Official Records.

3.6 Review of Title. Authority shall provide or cause Lawyer’s Title Company or such other title company as Developer and Authority may agree upon (“**Title Company**”) to provide Developer with a copy of the Title Report within sixty (60) days following the Effective Date. Developer shall notify Authority of any objections Developer has to exceptions to title (“**Title Exceptions**”) within ten (10) business days following Developer’s receipt of the Title Report. Developer’s failure to object within such period shall be deemed to be approval of the condition of title to the Property. If Developer objects to any Title Exception, Authority shall use reasonable efforts at Authority’s expense to remove from title or otherwise satisfy each such

exception in a form that is reasonably satisfactory to Developer no later than fourteen (14) days prior to the Closing Date.

3.7 Authority's Conditions to Closing. Authority's obligations to convey the Phase 1 Property to Developer and fund the Loans are conditioned upon the satisfaction of the terms and conditions set forth in this Section 3.7, unless any such condition is waived in writing by the Authority acting in the discretion of its Authorized Representative. Additional requirements pertaining to disbursement of Loan proceeds are set forth in Section 4.6.

(a) No Default. There shall exist no condition, event or act which would constitute a material breach or default under this Agreement or any other Authority Document, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

(b) Representations. All representations and warranties of Developer contained herein or in any other Authority Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Close of Escrow.

(c) Due Authorization and Good Standing. Developer shall have delivered to Authority: (i) a certificate of good standing, certified by the Secretary of State, indicating that Developer is properly organized and authorized to do business in the State of California; (ii) copies of Developer's articles of incorporation and bylaws, each certified by Developer's corporate Secretary as accurate, complete, and in full force and effect; (iii) verification of Developer's tax-exempt status; and (iv) a certified resolution authorizing Developer's execution of and performance under this Agreement and the other Authority Documents.

(d) Execution, Delivery and Recordation of Documents. Developer shall have executed, acknowledged as applicable, and delivered to Authority this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation the Construction/Permanent Note, the Short-Term Note, a deed of trust substantially in the form attached hereto as Exhibit C (the "**Deed of Trust**"), an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit D (the "**Regulatory Agreement**"), a Memorandum of Option and Loan Agreement substantially in the form attached hereto as Exhibit G (the "**Memorandum**") and a counter-signed original of the Grant Deed. Concurrently with the Closing, the Grant Deed, the Memorandum, the Deed of Trust and the Regulatory Agreement shall be recorded in the Official Records.

(e) Lender's Title Policy. The Title Company shall, upon payment of the premium therefore, be ready to issue an ALTA Lender's Policy of Title Insurance for the benefit and protection of Authority ("**Lender's Title Policy**") in the amount of the Loan (and in Authority's election, the Authority's reversionary interest in the Phase 1 Property), insuring that the Memorandum, the Deed of Trust and the Regulatory Agreement are recorded subject only to title exceptions and such other defects, liens, conditions, encumbrances, restrictions, easements and exceptions as Authority may

reasonably approve in writing (collectively, “**Authority’s Permitted Exceptions**”) and containing such endorsements as Authority may reasonably require.

(f) Financing Plan. Authority shall have approved the Phase 1 Financing Plan, including without limitation, the construction and operating budgets for the Phase 1 Project.

(g) Approval of Financing Documents; Evidence of Availability of Funds. Authority shall have approved the loan and/or grant documents for all financing sources for the Phase 1 Project, and Developer shall have provided evidence reasonably satisfactory to Authority that (i) all conditions to the release and expenditure of the initial draw of funds from each source described in the approved Phase 1 Financing Plan as a source of construction financing for the Phase 1 Project have been met and that such funds will be available, and (ii) all construction financing (including draws subsequent to the initial draw of funds) will be available upon the satisfaction of the conditions set forth in the applicable documents.

(h) Construction Contract, Plans, Budget and Schedule. Authority shall have approved the general contractor, the construction budget and schedule, and the construction contract for the Phase 1 Project, and City and Authority shall have approved the final Construction Plans and specifications for the Phase 1 Project. Developer shall have delivered an executed copy of the construction contract for the Phase 1 Project to the Authority. If Authority has not provided written objections to Developer regarding the general contractor, the construction budget and schedule, or the construction contract for the Phase 1 Project within fifteen (15) business days following their submittal to the Authority, such items shall be deemed to have been approved.

(i) Permits. Developer shall have delivered evidence satisfactory to Authority that Developer has obtained all permits (including without limitation building permits) required to rehabilitate the Phase 1 Project, or that the receipt of such permits is subject only to such conditions as Authority shall reasonably approve.

(j) Insurance; Payment and Performance Bonds. Developer shall have provided evidence satisfactory to Authority that Developer has obtained insurance coverage meeting the requirements set forth in Article X, and shall have provided to Authority copies of payment bonds and performance bonds pursuant to Section 5.18.

3.7.1 Authority’s Conditions to Conveyance of Phase 2 Property. Authority’s obligation to convey the Phase 2 Property to Developer is conditioned upon the satisfaction of the terms and conditions set forth in this Section 3.7.1, unless any such condition is waived in writing by the Authority acting in the discretion of its Authorized Representative.

(a) No Default. There shall exist no condition, event or act which would constitute a material breach or default under this Agreement or any other Authority Document, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

(b) Representations. All representations and warranties of Developer contained herein or in any other Authority Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Close of Escrow for Phase 2.

(c) Due Authorization and Good Standing. Developer or the Approved Partnership, as applicable shall have delivered to Authority for both the Developer/Approved Partnership and each General Partner of the Approved Partnership: (i) a certificate of good standing, certified by the Secretary of State, indicating that each entity is properly organized and authorized to do business in the State of California; (ii) copies of each entity's organizational documents, certified by the Secretary of State/an officer of the entity, as applicable; (iii) verification of Developer's/the General Partner's tax-exempt status; and (iv) a certified resolution authorizing Developer's/the General Partner's execution of and performance under this Agreement and the other Authority Documents applicable to Phase 2.

(d) Execution, Delivery and Recordation of Documents. Developer/the Approved Partnership shall have executed, acknowledged as applicable, and delivered to Authority an amended and restated version of this Agreement, and all other documents required in connection with the transactions contemplated hereby associated with the Phase 2 Project, including without limitation amended or amended and restated versions of the Note, the Deed of Trust, the Regulatory Agreement, and the Memorandum, and such amended Deed of Trust, Regulatory Agreement and Memorandum shall be recorded in the Official Records.

(e) Lender's Title Policy. The Title Company shall, upon payment of the premium therefore, be ready to issue an endorsement or modification to the Lender's Title Policy reflecting the addition of the Phase 2 Property as collateral under the Deed of Trust.

(f) Financing Plan. Authority shall have approved the Phase 2 Financing Plan, including without limitation, the construction and operating budgets for the Phase 2 Project.

(g) Approval of Financing Documents; Evidence of Availability of Funds. Authority shall have approved the loan and/or grant documents for all financing sources for the Phase 2 Project, and Developer shall have provided evidence reasonably satisfactory to Authority that (i) all conditions to the release and expenditure of the initial draw of funds from each source described in the approved Phase 2 Financing Plan as a source of construction financing for the Phase 2 Project have been met and that such funds will be available, and (ii) all construction financing (including draws subsequent to the initial draw of funds) will be available upon the satisfaction of the conditions set forth in the applicable documents.

(h) Construction Contract, Plans, Budget and Schedule. Authority shall have approved the general contractor, the construction budget and schedule, and the construction contract for the Phase 2 Project, and City and Authority shall have approved

the final Construction Plans and specifications for the Phase 2 Project. Developer shall have delivered an executed copy of the construction contract for the Phase 2 Project to the Authority. If Authority has not provided written objections to Developer regarding the general contractor, the construction budget and schedule, or the construction contract for the Phase 2 Project within fifteen (15) business days following their submittal to the Authority, such items shall be deemed to have been approved.

(i) Permits. Developer shall have delivered evidence satisfactory to Authority that Developer has obtained all permits (including without limitation building permits) required to rehabilitate the Phase 2 Project, or that the receipt of such permits is subject only to such conditions as Authority shall reasonably approve.

(j) Insurance; Payment and Performance Bonds. Developer shall have provided evidence satisfactory to Authority that Developer has obtained insurance coverage meeting the requirements set forth in Article X for the Phase 2 Project, and shall have provided to Authority copies of payment bonds and performance bonds pursuant to Section 5.18 for the Phase 2 Project.

3.8 Developer's Conditions to Closing. Developer's obligation to proceed with the acquisition of the Property is subject to the satisfaction or Developer's waiver of the following conditions:

(a) No Default. Authority shall not be in default under the terms of this Agreement, and all representations and warranties of Authority contained herein shall be true and correct in all material respects;

(b) Execution of Documents. Authority shall have executed and acknowledged the Grant Deed, the Memorandum, the Regulatory Agreement, and all other Authority Documents to which the Authority is a party, and shall have delivered such documents into escrow; and

(c) Owner's Title Policy. The Title Company shall, upon payment of the premium therefore, be ready to issue an Owner's Title Insurance Policy for the benefit and protection of Developer ("**Owner's Title Policy**") showing title to the Property vested in Developer, subject only to Developer's Permitted Exceptions and containing such endorsements as Developer may reasonably require, with the cost of such Owner's Title Policy to be paid by Developer.

## ARTICLE IV

### AUTHORITY FINANCIAL ASSISTANCE

4.1 Loan and Note; Use of Loan Proceeds. In order to increase the affordability of the Phase 1 Project, Authority agrees to provide a construction/permanent loan to Developer in the principal amount of One Million, Two Hundred Nineteen Thousand Dollars (\$1,219,000) (the "**Construction/Permanent Loan**") and a short-term loan in the amount of Two Hundred Fifty-Two Thousand Dollars (\$252,000) (the "**Short-Term Loan**", and collectively with the

Construction/Permanent Loan, the “**Loans**”) upon the terms and conditions and for the purposes set forth in this Agreement. The Construction/Permanent Loan shall be evidenced by a secured promissory note, dated as of the Closing Date and executed by Developer substantially in the form attached hereto as Exhibit B-1 (the “**Construction/Permanent Note**”). The Short-Term Loan shall be evidenced by a secured promissory note, dated as of the Closing Date and executed by Developer substantially in the form attached hereto as Exhibit B-2 (the “**Short-Term Note**”, and collectively with the Construction/Permanent Note, the “**Notes**”).

Provided that Developer has complied with all conditions precedent to disbursement of the Loans set forth in Section 4.6, the proceeds of the Loans (“**Loan Proceeds**”) shall be disbursed pursuant to approved draw requests as described in Section 4.6 (vii). The Parties agree that Authority shall disburse the Loan Proceeds only for the purpose of funding rehabilitation of the Phase 1 Project improvements and for third-party predevelopment expenses for the Phase 2 Project in the amounts and for the purposes specified in Exhibit I (“**Phase 2 Predevelopment Costs**”) pursuant to approved draw requests submitted to City in accordance with Section 4.6(vii). The Parties agree that Phase 2 Predevelopment Costs eligible for payment with Loan Proceeds shall be limited to third-party costs, and shall not include Developer’s fees, salaries, overhead or administrative costs.

4.1.1 Phase 2 Financing; Assumption of Obligations by Approved Partnership.

Except to the extent that Loan Proceeds are disbursed for Phase 2 Predevelopment Costs pursuant to Section 4.1 or Section 4.2.1, the Authority has no obligation to provide financing for the Phase 2 Project. If an Approved Partnership acquires the Phase 2 Property pursuant to this Agreement, then such entity shall: (i) assume Developer’s obligations under this Agreement and the other Authority Documents pursuant to an assignment and assumption agreement in form approved by Authority, or in Authority’s discretion, an amended and restated version of this Agreement, and (ii) execute and deliver such additional instruments as Authority shall reasonably require, including without limitation, amended and restated promissory notes and an amended and restated deed of trust (or amendment thereto) to evidence such entity’s obligation to repay the Loans and to secure repayment of the Loans by both the Phase 1 Property and the Phase 2 Property.

4.2 Construction/Permanent Loan – Interest Rate; Payment Dates; Maturity Date.

The outstanding principal balance of the Construction/Permanent Note will bear interest at a rate equal to one percent (1%) simple annual interest. Annual payments shall be due and payable on a residual receipts basis in accordance with the formula set forth in the Construction/Permanent Note. The entire outstanding principal balance of the Construction/Permanent Loan together with accrued interest and all other sums due under the Authority Documents shall be payable in full on the date which is the earlier of (i) the fifty-fifth (55<sup>th</sup>) anniversary of the date the City issues the final certificate of occupancy or equivalent for the Phase 1 Project, or (ii) the fifty-seventh (57<sup>th</sup>) anniversary of the Construction/Permanent Loan origination date.

4.2.1 Cost Savings. Within thirty (30) days after City’s issuance of a final certificate of occupancy or equivalent for the Phase 1 Project, Developer shall pay to the Authority as a reduction of the outstanding principal balance of the Construction/Permanent Note, a one-time payment in the amount of Excess Proceeds. “**Excess Proceeds**” shall mean the sum of all sources of financing received by Developer

for acquisition, construction and permanent financing of the Property and the Phase 1 Project, less the sum of actual uses as shown on the final cost certificate for the Phase 1 Project. Prior to calculating Excess Proceeds, the following payments and adjustments shall be made in the following order of priority: (i) deferred developer fees shall be paid, subject to the limitation set forth in Section 2.5.1; (ii) third-party Phase 2 Predevelopment Costs may be paid (or funds may be set aside in a predevelopment reserve account) in the maximum amount and for the purposes set forth in Exhibit I; (iii) the Phase 1 Project replacement reserve shall be funded in an amount equal to Thirty Thousand Dollars (\$30,000); and (iv) the Phase 1 Project operating reserve shall be funded in an amount equal to the lesser of \$ \_\_\_\_\_ or three (3) months' projected Phase 1 Project operating expenses. Interest earned on the foregoing reserves shall become a part of such reserves and used only for the purpose for which such reserves are established. If the Authority reacquires the Phase 1 Property pursuant to Section 9.8, exercises its option to repurchase the Phase 1 Project pursuant to Section 9.9 or Section 9.9.1, or if the Authority acquires the Phase 1 Project by foreclosure or deed in lieu of foreclosure, the balances of the foregoing reserves as of the date of notice of exercise shall be transferred to the Authority.

4.2.2 Short-Term Loan – Interest Rate; Maturity Date. The outstanding principal balance of the Short-Term Loan will bear interest at a rate equal to three and one-half percent (3.5%) simple annual interest. The entire outstanding principal balance of the Short-Term Loan together with all interest accrued thereon shall be payable in full on the date which is the earlier of: (i) the date upon which construction financing for the Phase 2 Project converts to a permanent loan, and (ii) ten (10) business days after the Phase 2 developer receives its limited partner's capital contribution following the issuance of the IRS Form 8609 for the Phase 2 Project.

4.3 Security. As security for repayment of the Notes, Developer shall execute the Deed of Trust in favor of Authority as beneficiary pursuant to which Authority shall be provided a lien against the Phase 1 Property and the improvements located thereon. The Deed of Trust shall be dated as of the Closing Date, shall be substantially in the form attached hereto as Exhibit C, and shall be recorded in the Official Records on the Closing Date. The Deed of Trust shall be a first lien on the Phase 1 Property. If an Approved Partnership acquires the Phase 1 Property and the Phase 2 Property pursuant to this Agreement (i) the Deed of Trust shall be amended to add the Phase 2 Property as collateral for repayment of the Loan, and (ii) the Deed of Trust may be subordinated only to such liens and encumbrances consistent with the approved Phase 2 Financing Plan as Authority shall approve in writing consistent with Section 8.2.

4.4 Prepayment; Acceleration.

(a) Prepayment. Developer shall have the right to prepay the Loans at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon Developer's obligations under the Regulatory Agreement which shall survive for the full term of the Regulatory Agreement nor shall such prepayment affect the Authority's Repurchase Options.

(b) Due On Transfer or Encumbrance. Unless Authority agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Notes shall be due and payable upon the Transfer absent the prior written consent of Authority of all or any part of or interest in the Property or the Project except as otherwise permitted pursuant to this Agreement.

(c) Default. The Authority shall have the right to accelerate the Maturity Date and declare all sums payable under the Notes immediately due and payable upon the expiration of all applicable cure periods following the occurrence of an Event of Developer Default.

4.5 Nonrecourse. Except as expressly provided in the Notes, the Notes shall be non-recourse to Developer.

4.6 Conditions to Disbursement of Loan Proceeds. Authority's obligation to disburse the Loan Proceeds is conditioned upon the satisfaction of all of the conditions set forth in Section 3.7 and all of the following conditions:

(i) Conveyance of the Phase 1 Property to Developer;

(ii) Recordation of the Deed of Trust, the Regulatory Agreement and the Memorandum in the Official Records;

(iii) Developer's delivery to Authority of evidence reasonably satisfactory to Authority that there are no mechanics' liens or stop notices related to the Phase 1 Property or the Phase 1 Project, and Developer's provision to Authority of full waivers or releases of lien claims if required by Authority;

(iv) Developer's delivery to Authority of certified copies of updated versions of any documents listed in Section 3.7 that have been amended or modified since the date of delivery to the Authority;

(v) All other sources of construction financing for the Phase 1 Project shall have closed or shall close concurrently with Authority's disbursement of funds for construction;

(vi) Developer's delivery to Authority, and Authority approval of such other documents related to the development and financing of the Phase 1 Project as Authority may reasonably request; and

(vii) Authority's receipt of a written requisition from Developer specifying the amount and use of the requested funds, accompanied by copies of third-party invoices, evidence of Developer's payment for services rendered in connection with the work (if applicable), and such other documentation as Authority may reasonably require, and Authority's inspection and approval of the work that is the subject of the requisition. If Authority has not approved a requisition within ten (10) business days following its submittal, the requisition shall be deemed rejected.

4.7 No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the Authority shall have no obligation to disburse or authorize the disbursement of any portion of the Loan Proceeds following:

- (i) the failure of any of Developer's representations and warranties made in this Agreement or in connection with the Loan to be true and correct in all material respects;
- (ii) the termination of this Agreement; or
- (iii) the occurrence of an Event of Default under any Authority Document which remains uncured beyond any applicable cure period, or the existence of any condition, event or act which upon the giving of notice or the passage of time or both would constitute an Event of Default under any Authority Document.

## ARTICLE V

### DEVELOPMENT AND USE OF THE PROPERTY

5.1 Development Schedule. Subject to force majeure, Developer shall commence rehabilitation of the Phase 1 Project by not later than December 15, 2013, and shall diligently prosecute to completion the rehabilitation of the Phase 1 Improvements to enable City to issue final certificates of occupancy for all residential units in the Phase 1 Project within five (5) months following commencement of construction, with construction targeted to be completed by not later than May 15, 2014. Developer agrees to take all reasonable steps to ensure that construction progresses in a manner that will enable not less than \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) of the NSP Funds to be expended for approved Phase 1 Project costs by not later than March 1, 2014. Developer shall use diligent and commercially reasonable efforts to perform Developer's obligations under this Agreement within the times periods set forth herein, and if no such time is provided, within a reasonable time, designed to permit issuance of final certificates of occupancy for all residential units in the Phase 1 Project by the date specified in this Section 5.1. Subject to force majeure and the City's issuance of permits and approvals, Developer's failure to commence or complete rehabilitation of the Improvements in accordance with the time periods specified in this Section 5.1 shall be an Event of Developer Default hereunder.

5.1.1 Phase 2 Project. Subject to force majeure, and Developer's ability to obtain an allocation of federal low-income tax credits for the Phase 2 Project, Developer shall commence rehabilitation of the Phase 2 Project by not later than December 1, 2015 or such earlier date as required by TCAC or the California Debt Limit Allocation Committee ("CDLAC"), and shall diligently prosecute to completion the rehabilitation of the Phase 2 Improvements to enable City to issue final certificates of occupancy for all residential units in the Phase 2 Project within nine (9) months following commencement of construction, with construction targeted to be completed by not later than August 1, 2016, or such earlier date as required by TCAC or CDLAC.

5.2 Cost of Acquisition and Construction. Except as expressly set forth herein, Developer shall be solely responsible for all direct and indirect costs and expenses incurred in

connection with the acquisition of the Property, including without limitation appraisal fees, title reports and any environmental assessments Developer elects to undertake. Except as expressly set forth herein, all costs of designing, developing and rehabilitating the Improvements and compliance with the Conditions of Approval, including without limitation all off-site and on-site improvements required by City in connection therewith, shall be borne solely by Developer and shall not be an obligation of the Authority. Developer's expenses described in this Section may be paid with proceeds of the Loan or by other sources of financing.

5.3 Permits and Approvals; Payment of Fees; Cooperation. Developer acknowledges that the execution of this Agreement by the Authority does not constitute City approval for the purpose of the issuance of building permits, does not relieve Developer from the obligation to apply for and to obtain from the City and all other agencies with jurisdiction over the Property, all necessary approvals, entitlements, and permits for the rehabilitation of the Project (including without limitation the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the development of the Property (if any), and the approval of the Project in compliance with CEQA and if applicable, NEPA), nor does it limit in any manner the discretion of the City or any other agency in the approval process. Prior to the Close of Escrow for each phase of the Project, Developer shall have obtained all entitlements, permits, licenses and approvals required for the rehabilitation of the applicable phase, including without limitation, building permits and use permits or shall provide evidence satisfactory to Authority that receipt of such permits and approvals is subject only to such conditions as Authority may reasonably approve. Developer shall pay when due all customary and reasonable fees and charges in connection with the processing of all applicable permits and approvals. Developer shall not commence construction work on the Project prior to issuance of building permits required for such work. Authority staff shall work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for the development and operation of the Project as contemplated by this Agreement.

5.4 Conditions of Approval. Developer shall develop the Property in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the "**Conditions of Approval**").

5.5 Fees. Developer shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City and all other agencies with jurisdiction over development of the Property in connection with obtaining building permits and other approvals for the Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Project. Developer's expenses described in this Section may be paid with proceeds of the Loan or by other sources of financing.

5.6 Construction Plans. Developer shall submit to City's Building Department detailed construction plans for each phase of the Project (the "**Construction Plans**"). As used herein "**Construction Plans**" means all construction documents upon which Developer and Developer's contractors shall rely in rehabilitating the Improvements (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the scope of development set forth herein and upon the approvals issued by the City for the Project, and shall not materially deviate therefrom without the express written consent of Authority.

5.7 Construction Pursuant to Plans. Developer shall develop each component of the Project in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City pertaining to the Project. Developer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

5.8 Change in Construction Plans. If Developer desires to make any material change in the approved Construction Plans, Developer shall submit the proposed change in writing to the City and the Authority for their written approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by the City after the Effective Date. Unless a proposed change is approved by Authority within thirty (30) days, it shall be deemed rejected. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved Construction Plans. Nothing in this Section is intended to or shall be deemed to modify the City's standard plan review procedures.

5.9 Rights of Access. For the purpose of ensuring that the construction of the Project is completed in compliance with this Agreement, Developer shall permit representatives of the Authority to enter upon the Property following 24 hours written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided).

5.10 Authority Disclaimer. Developer acknowledges that the Authority is under no obligation, and the Authority neither undertakes nor assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of rehabilitation or the operation of the Project. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all

other matters relating to the rehabilitation and operation of the Project. Any review or inspection undertaken by the Authority is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by the Authority as to the quality of the design or rehabilitation of the Improvements or otherwise.

5.11 Defects in Plans. The Authority shall not be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Developer shall indemnify, defend (with counsel approved by Authority) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that Authority does not, and shall not, waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Authority, or Developer's deposit with Authority of any of the insurance policies described in this Agreement. Developer's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

5.12 Certificate of Completion for Project. Promptly after completion of rehabilitation of each phase of the Project, issuance of a final Certificate of Occupancy by the City for all residential units in such phase, and the written request of Developer, the Authority will provide a certificate substantially in the form attached hereto as Exhibit F ("**Certificate of Completion**") so certifying, provided that at the time such certificate is requested all applicable work has been completed for the applicable phase. The Certificate of Completion shall be conclusive evidence that Developer has satisfied its obligations regarding the rehabilitation of the applicable phase of the Project. At Developer's option the Certificate of Completion shall be recorded in the Official Records. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement.

5.13 Equal Opportunity. There shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction work on the Property, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

5.14 Prevailing Wage Requirements. If required by applicable federal and state law, Developer and its contractors, subcontractors and agents shall comply with the federal Davis Bacon Act and implementing regulations and with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto (all of the foregoing, collectively, "**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. If applicable, Developer shall submit to Authority a plan for monitoring payment of prevailing

wages and at Developer's expense shall implement such plan and comply with all applicable reporting and recordkeeping requirements.

Developer shall indemnify, defend (with counsel approved by Authority) and hold the Authority and the City and their respective elected and appointed officers, officials, employees, agents, consultants, and contractors (all of the foregoing, collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781) or the requirement of competitive bidding in connection with the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Authority does not and shall not waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Authority, or Developer's deposit with Authority of any of the insurance policies described in this Agreement. The provisions of this Section 5.14 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Developer's indemnification obligations set forth in this Section shall not apply to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees.

**5.15 Compliance with Laws.** Developer shall carry out and shall cause its contractors and subcontractors to carry out the rehabilitation of the Improvements in conformity with all applicable federal, state and local laws, rules, ordinances and regulations ("**Applicable Laws**"), including without limitation, all applicable federal and state labor laws and standards, Section 3 of the Housing and Community Development Act of 1974, as amended (if applicable), applicable provisions of the California Public Contracts Code, the City's zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* Developer shall indemnify, defend (with counsel approved by Authority) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Developer's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Authority does not and shall not waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Authority, or Developer's deposit with Authority of any of the insurance policies described in this Agreement. Developer's indemnification obligations set forth in this Section shall not apply to Claims arising solely from the gross negligence or willful misconduct

of the Indemnitees. Developer's defense and indemnification obligations set forth in this Section 5.15 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project.

5.16 Liens and Stop Notices. Until the later of the date of reconveyance of the Deed of Trust or the expiration of the term of the Regulatory Agreement, Developer shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Developer. If a claim of a lien or stop notice is given or recorded affecting the Project or the Property or any part thereof, Developer shall within twenty (20) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (c) provide other assurance satisfactory to Authority that the claim of lien or stop notice will be paid or discharged.

5.17 Right of Authority to Satisfy Liens on the Property. If Developer fails to satisfy or discharge any lien or stop notice on the Property or any part thereof pursuant to and within the time period set forth in Section 5.16 above, the Authority shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense and without further notice to Developer and all sums advanced by Authority for such purpose shall be part of the indebtedness secured by the Deed of Trust. In such event Developer shall be liable for and shall immediately reimburse Authority for such paid lien or stop notice. Alternatively, the Authority may require Developer to immediately deposit with Authority the amount necessary to satisfy such lien or claim pending resolution thereof. The Authority may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Property for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property. The Authority may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the Authority deems necessary or desirable to protect its interest in the Property.

5.18 Performance and Payment Bonds. Prior to commencement of construction work on each phase of the Project, Developer shall cause its general contractor to deliver to the Authority copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of such Project component. The bonds shall name the Authority as co-obligee.

5.19 Insurance Requirements. Developer shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article X.

5.20 Affordable Housing. Developer covenants and agrees for itself, its successors and assigns that the Phase 1 Property will be subject to recorded covenants that will restrict use of the Phase 1 Property to operation of an affordable rental residential development and that for a term of not less than fifty-five (55) years commencing upon the issuance of the final certificate of occupancy for the Phase 1 Project, all of the residential units in the Phase 1 Project shall be

available at Affordable Rents to households whose income is no greater than fifty percent (50%) of Area Median Income.

5.20.1 Phase 2 Project. Developer covenants and agrees for itself, its successors and assigns that the Phase 2 Property will be subject to recorded covenants that will restrict use of the Phase 2 Property to operation of an affordable rental residential development and that for a term of not less than fifty-five (55) years commencing upon the issuance of the final certificate of occupancy for the Phase 2 Project, all of the residential units in the Phase 2 Project (including the manager's unit) shall be available at Affordable Rents to households whose income is no greater than sixty percent (60%) of Area Median Income.

5.21 Intentionally omitted.

5.22 Intentionally omitted.

5.23 Maintenance. Commencing upon Developer's acquisition of the Phase 1 Property and the Phase 2 Property, as applicable, Developer shall at its own expense, maintain the Property and the Improvements, including the landscaping and common areas, in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenable living conditions in conformity with all Applicable Laws. Without limiting the foregoing, Developer agrees to maintain the Property and the Improvements (including without limitation, landscaping, driveways, parking areas, and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property. Developer shall prevent and/or rectify any physical deterioration of the Improvements and shall make all repairs, renewals and replacements necessary to keep the Property and the Improvements in good condition and repair.

5.24 Taxes and Assessments. Commencing upon Developer's acquisition of the Phase 1 Property and the Phase 2 Property, as applicable, Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property and/or the Improvements, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property or Improvements; provided, however, Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

5.25 Obligation to Refrain from Discrimination. Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Improvements, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition 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 or the Improvements, or part thereof, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or Improvements, or part thereof. Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) In Deeds, the following language shall appear:

“(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a 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 herein conveyed nor shall the grantee or any person claiming under or through the grantee 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 in the property herein conveyed. The foregoing covenant shall run with the land.

“(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(b) In Leases, the following language shall appear:

“(1) The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the

selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

“(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(c) In Contracts, the following language shall appear:

“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 transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.”

## ARTICLE VI

### CONDITION OF THE SITE; ENVIRONMENTAL MATTERS

6.1 Access to Site; Inspections. Prior to the Close of Escrow, Developer and Developer’s authorized representatives may enter upon and conduct further reviews and assessments of the physical and environmental condition of the Property and the condition of the existing improvements. Authority may require Developer to execute a right of entry agreement satisfactory to Authority prior to entry onto the Property for such purpose and shall require Developer to provide proof of liability insurance acceptable to Authority. Developer’s inspection, examination, survey and review of the Property shall be at Developer’s sole expense. Developer shall provide Authority with copies of all reports and test results promptly following completion of such reports and testing. Developer hereby agrees to notify the Authority twenty four (24) hours in advance of its intention to enter the Property and will provide workplans, drawings, and descriptions of any intrusive sampling it intends to do. Developer must keep the Property in a safe condition during its entry. Developer shall repair, restore and return the Property to its condition immediately preceding Developer’s entry thereon at Developer’s sole expense. Developer will not permit any mechanics liens, stop notices or other liens or encumbrances to be placed against the Property prior to Close of Escrow. Without limiting any other indemnity provisions set forth in this Agreement, Developer shall indemnify, defend (with counsel approved by Authority) and hold the Indemnitees harmless from and against all Claims resulting from or arising in connection with entry upon the Property by Developer or

Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section 6.1. Developer's indemnification obligations set forth in this Section 6.1 shall survive the Close of Escrow and the termination of this Agreement.

6.2 Environmental Disclosure. The Authority discloses that the Improvements may contain lead-based paint and asbestos-containing materials. To the extent the Authority has copies of investigation reports concerning the Property or the Improvements, it will provide copies to Developer upon request; but the Parties acknowledge that Authority will not be conducting a public records search of any regulatory agency files—although the Authority urges Developer to do so to satisfy itself regarding the environmental condition of the Property. By execution of this Agreement, Developer: (i) acknowledges its receipt of the foregoing notice respecting the environmental condition of the Property; (ii) acknowledges that it will have an opportunity to conduct its own independent review and investigation of the Property prior to the Close of Escrow; (iii) agrees to rely solely on its own experts in assessing the environmental condition of the Property and its sufficiency for its intended use; and (iv) waives any and all rights Developer may have to assert that the Authority failed to disclose information about the environmental condition of the Property.

6.3 Property Sold "AS IS." Developer specifically acknowledges that the Authority is selling and Developer is purchasing the Property on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis and that Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from Authority, its employees, board members, agents, or brokers as to any matters concerning the Property. The Authority makes no representations or warranties as to any matters concerning the Property, including without limitation: (i) the quality, nature, adequacy and physical condition of the property, including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities, and the electrical, mechanical, HVAC, plumbing, sewage, and utility systems, facilities and appliances, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (iv) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose, (v) the zoning or other legal status of the property or any other public or private restrictions on use of the Property, (vi) the compliance of the Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence or removal of Hazardous Material, substances or wastes on, under or about the Property or the adjoining or neighboring property; (viii) the quality of any labor and materials used in any improvements on the Property, (ix) the condition of title to the Property, (x) the leases, service contracts, or other agreements affecting the Property, or (xi) the economics of the operation of the Property.

6.4 Developer to Rely on Own Experts. Developer understands that notwithstanding the delivery by Authority to Developer of any materials, including, without limitation, third party reports, Developer will rely entirely on Developer's own experts and consultants and its own independent investigation in proceeding with the acquisition of the Property.

6.5 Release by Developer. Effective upon the Close of Escrow for the Phase 1 Property, Developer WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER

DISCHARGES the Indemnitees and any person acting on behalf of the Authority, from any and all Claims, direct or indirect, known or unknown, foreseen or unforeseen, which Developer now has or which may arise in the future on account of or in any way arising out of or in connection with the physical condition of the Property, the presence of Hazardous Material in, on, under or about the Property, or any law or regulation applicable thereto including, without limiting the generality of the foregoing, all Environmental Laws.

DEVELOPER ACKNOWLEDGES THAT DEVELOPER IS FAMILIAR WITH SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

BY INITIALING BELOW, DEVELOPER EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE FOREGOING RELEASE:

Developer's initials: \_\_\_\_\_

6.6 Developer's Post-Closing Obligations. Developer hereby covenants and agrees that:

(1) Developer shall not knowingly permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Material or otherwise knowingly permit the presence or release of Hazardous Material in, on, under, about or from the Property with the exception of limited amounts of cleaning supplies and other materials customarily used in construction, rehabilitation, use or maintenance of residential properties similar in nature to the Project, and used, stored and disposed of in compliance with Environmental Laws.

(2) Developer shall keep and maintain the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Environmental Laws.

(3) Upon receiving actual knowledge of the same, Developer shall immediately advise Authority in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer, or the Property pursuant to any applicable Environmental Laws; (ii) any and all claims made or threatened by any third party against the Developer or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material; (iii) the presence or release of any Hazardous Material in, on, under, about or from the Property; or (iv) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "Border Zone Property" under the provisions of California Health and Safety

Code, Sections 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Property pursuant to any Environmental Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "**Hazardous Materials Claims**"). The Authority shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim.

(4) Without the Authority's prior written consent, which shall not be unreasonably withheld or delayed, Developer shall not take any remedial action in response to the presence of any Hazardous Material in, on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the Authority agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim. Authority shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Developer.

6.7 Environmental Indemnity. To the greatest extent allowed by law, Developer shall indemnify, defend (with counsel approved by Authority) and hold Indemnitees harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Material on, under, in or about the Property, or the transportation of any such Hazardous Material to or from, the Property, or (ii) the failure of Developer, Developer's employees, agents, contractors, subcontractors, or any person acting on behalf of or as the invitee of any of the foregoing to comply with Environmental Laws, unless caused by the Authority's active or passive negligence. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Material, and irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Laws.

Developer's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any Authority Document; (ii) any extensions of time for performance required by any Authority Document; (iii) any provision in any of the Authority Documents limiting Authority's recourse to property securing the Secured Obligations (as defined in the Deed of Trust), or limiting the personal liability of Developer, or any other party for payment of all or any part of the Loan; (iv) the accuracy or inaccuracy of any representation and warranty made by Developer under this Agreement or by Developer or any other party under any Authority Document, (v) the release of Developer or any other person, by Authority or by operation of law, from performance of any obligation under any Authority Document; (vi) the release or substitution in whole or in part of any security for the Loan; and (vii) Authority's failure to properly perfect any lien or security interest given as security for the Loan.

The provisions of this Section 6.7 shall be in addition to any and all other obligations and liabilities that Developer may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether Authority or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under the Authority Documents or applicable law. The obligations of Developer to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Loan, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust.

6.8 Disclosure. Developer represents and warrants that except as disclosed to Authority in writing, as of the date hereof to the best knowledge of Developer: (i) the Property is free and has always been free of Hazardous Materials and is not and has never been in violation of any Hazardous Materials Law; (ii) there are no buried or partially buried storage tanks located on the Property; (iii) Developer has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are or have ever been in violation of any Hazardous Materials Law or informing Developer that the Property is subject to investigation or inquiry regarding Hazardous Materials on the Property or the potential violation of any Hazardous Materials Law; (iv) there is no monitoring program required by the Environmental Protection Agency or any other governmental agency concerning the Property; (v) no toxic or hazardous chemicals, waste, or substances of any kind have ever been spilled, disposed of, or stored on, under or at the Property, whether by accident, burying, drainage, or storage in containers, tanks, holding areas, or any other means; (vi) the Property has never been used as a dump or landfill; and (vii) Developer has disclosed to Authority all information, records, and studies in Developer's possession or reasonably available to Developer relating to the Property concerning Hazardous Materials.

Developer hereby acknowledges and agrees that (i) this Section is intended as the Authority's written request for information (and the Developer's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5(d)(2), and (ii) each representation and warranty in this Agreement or any of the other Authority Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Authority and the Developer to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

6.9 Authority's Rights. In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Authority's or the Trustee's rights and remedies under the Deed of Trust, the Authority may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Developer to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Authority's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Developer shall be deemed to have willfully permitted or

acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Developer knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) reasonable attorneys' fees, incurred by the Authority in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the default rate specified in the Note, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the Authority upon its demand made at any time following the conclusion of such action.

6.10 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement are in no way limited or otherwise affected by any information the Authority may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Material, whether the Authority obtained such information from the Developer or from its own investigations.

6.11 Definitions.

6.11.1 "**Hazardous Material**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous material" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methy tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

6.11.2 "**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C.

§ 11001 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

## ARTICLE VII

### LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

7.1 Identity of Developer; Changes Only Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer and its principals are of particular concern to the Authority. It is because of these qualifications, experience, financial capacity and expertise that the Authority has entered into this Agreement with Developer. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

7.2 Prohibition on Transfer. Prior to the expiration of the term of the Regulatory Agreement, Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Project, the Improvements, or this Agreement, without the prior written approval of Authority which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the Authority’s consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the expiration of the term of the Regulatory Agreement, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of Authority. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

7.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of individual residences to tenants for occupancy as their principal residence in accordance with the Regulatory Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project in accordance with the approved Financing Plan as it may

be updated with Authority approval, and subject to the requirements of Article VIII, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) a Transfer to a tax-exempt entity under the direct control of or under common control with Developer; (vi) a Transfer to a limited partnership in which Developer or a tax-exempt affiliate of Developer is the managing general partner (“**Approved Partnership**”); (vii) the admission of limited partners and any transfer of limited partnership interests in accordance with the Approved Partnership’s agreement of limited partnership (the “**Partnership Agreement**”); (viii) the removal of the general partner of an Approved Partnership by the investor limited partner for a default under the Partnership Agreement, provided that the replacement general partner is an entity reasonably satisfactory to Authority; or (ix) the transfer of the general partner’s interest to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, provided such replacement general partner is reasonably satisfactory to Authority.

7.4 Requirements for Proposed Transfers. The Authority may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv) and (vii) of Section 7.3):

(i) The proposed transferee demonstrates to the Authority’s satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the Authority to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(ii) The Developer and the proposed transferee shall submit for Authority review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property, the Improvements or this Agreement together with such documentation of the proposed transferee’s qualifications and development capacity as the Authority may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under this Agreement and the other Authority Documents arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Developer’s obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the Authority in form recordable in the Official Records.

(v) The final form of the Partnership Agreement and any subsequent amendments that affect the Authority’s economic interests under this Agreement or the Authority Documents shall be subject to the Authority’s review and approval.

Consent to any proposed Transfer may be given by the Authority's Authorized Representative unless the Authorized Representative, in his or her discretion, refers the matter of approval to the Authority's governing board. If the Authority has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within thirty (30) days following Authority's receipt of written request by Developer, the proposed Transfer shall be deemed approved.

7.5 Effect of Transfer without Authority Consent.

7.5.1 In the absence of specific written agreement by the Authority, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement.

7.5.2 It shall be an Event of Developer Default hereunder entitling Authority to pursue remedies including without limitation, termination of this Agreement and/or foreclosure under the Deed of Trust if without the prior written approval of the Authority, Developer assigns or Transfers this Agreement, the Improvements, or the Property, or any part thereof in violation of Article VII. This Section 7.5.2 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv) and (vii) of Section 7.3.

7.6 Recovery of Authority Costs. Within ten (10) days following Authority's delivery to Developer of an invoice detailing such costs, Developer shall reimburse Authority for all Authority costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer of this Agreement, the Property or the Improvements, or part thereof, and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee.

## ARTICLE VIII

### SECURITY FINANCING AND RIGHTS OF MORTGAGEES

8.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or any other reasonable security instrument are permitted to be placed upon the Property or the Improvements only for the purpose of securing loans for the purpose of financing the acquisition of the Property, the design and rehabilitation of the Improvements, and other expenditures reasonably necessary for the rehabilitation of the Project pursuant to this Agreement. Developer shall not enter into any conveyance for such financing that is not contemplated in the applicable Financing Plan as it may be updated with Authority approval, without the prior written approval of the Authorized Representative or his or her designee. As used herein, the terms "mortgage" and "deed of trust" shall mean any security instrument used in financing real estate acquisition, construction and land development.

8.2 Subordination. The Authority agrees that Authority will not withhold consent to reasonable requests for subordination of the Deed of Trust and Regulatory Agreement to deeds of trust provided for the benefit of lenders providing financing for the Phase 2 Project that are identified in the approved Phase 2 Financing Plan as it may be updated with Authority approval,

provided that the instruments effecting such subordination include reasonable protections to the Authority in the event of default, including without limitation, extended notice and cure rights and the rights set forth in Section 8.6 below.

8.3 Holder Not Obligated to Construct. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated to complete rehabilitation of the Improvements or to guarantee such completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

8.4 Notice of Default and Lender Right to Cure. Whenever Authority delivers any notice of default hereunder, Authority shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Property or the Improvements, provided that Authority has been provided with the address for delivery of such notice. Authority shall have no liability to any such holder for any failure by the Authority to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach within the cure period provided to Developer extended by an additional sixty (60) days. In the event that possession of the Property or the Improvements (or any portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Property or Improvements, as applicable, within the applicable cure period, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy. A holder who chooses to exercise its right to cure or remedy a default or breach shall first notify Authority of its intent to exercise such right prior to commencing to cure or remedy such default or breach. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect the same) without first having expressly assumed in writing Developer's obligations to Authority under this Agreement. The holder in that event must agree to complete, in the manner provided in this Agreement, the Project and the Improvements and submit evidence reasonably satisfactory to Authority that it has the development capability on staff or retainer and the financial capacity necessary to perform such obligations. Any such holder properly completing the Project pursuant to this Section shall assume all rights and obligations of Developer under this Agreement.

8.5 Failure of Holder to Complete Improvements. In any case where, six (6) months after default by Developer in completion of rehabilitation of the Improvements, the holder of record of any mortgage or deed of trust has not exercised its option to rehabilitate the Improvements, or having first exercised such option, has not proceeded diligently with such work, Authority shall be afforded those rights against such holder that it would otherwise have against Developer under this Agreement.

8.6 Authority Right to Cure Defaults. In the event of a breach or default by Developer under a mortgage or deed of trust secured by the Property or the Improvements, Authority may cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Developer. In such event, Developer shall be liable

for, and Authority shall be entitled to reimbursement from Developer for all costs and expenses incurred by Authority associated with and attributable to the curing of the default or breach and such sum shall constitute a part of the indebtedness secured by the Deed of Trust.

8.7 Holder to be Notified. Developer agrees to use best efforts to ensure that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged and accepted in writing by the holder prior to its creating any security right or interest in the Property or the Improvements.

8.8 Modifications to Agreement. Authority shall not unreasonably withhold its consent to modifications of this Agreement requested by Project lenders or investors provided such modifications do not alter Authority's substantive rights and obligations under this Agreement.

8.9 Estoppel Certificates. Either Party shall, at any time, and from time to time, within fifteen (15) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

## ARTICLE IX

### DEFAULTS, REMEDIES AND TERMINATION

9.1 Event of Developer Default. The following events shall constitute an event of default on the part of Developer hereunder ("**Event of Developer Default**"):

(a) Developer fails to commence or complete rehabilitation of the Phase 1 Project within the time period set forth in Section 5.1, or subject to force majeure, abandons or suspends rehabilitation of the Phase 1 Project prior to completion for a period of thirty (30) days or more;

(b) Developer fails to pay when due the principal and interest payable under the Note and such failure continues for thirty (30) days after Authority notifies Developer thereof in writing;

(c) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VII;

(d) Developer fails to maintain insurance as required pursuant to this Agreement, and Developer fails to cure such default within five (5) days;

(e) Developer fails to pay prior to delinquency taxes or assessments due on the Phase 1 Property or fails to pay when due any other charge that may result in a lien on the Phase 1 Property, and Developer fails to cure such default within thirty (30) days of the date of

delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(f) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Phase 1 Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(g) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the Authority in connection with this Agreement or Developer's request for the Loan proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the Authority;

(h) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Developer or any general partner of an Approved Partnership that has acquired the Property or part thereof: (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer or any general partner of such Approved Partnership in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any general partner of such Approved Partnership ; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(i) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Developer, in each case if such decree, order, petition, or appointment is not removed or rescinded within ninety (90) days;

(j) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure pursuant to paragraphs (h) or (i) above or pursuant to any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(k) The Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated;

(l) An event of default arises under any Authority Document and remains uncured beyond any applicable cure period; or

(m) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1 and unless a shorter cure period is specified for such default, the default continues for thirty (30) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Authority shall have given written notice of the default to Developer; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, a Event of Developer Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion.

9.2 Authority Default. An event of default on the part of Authority (“**Event of Authority Default**”) shall arise hereunder if Authority fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of sixty (60) days after written notice thereof from Developer to Authority, or in the case of a default which cannot with due diligence be cured within sixty (60) days, Authority fails to commence to cure the default within sixty (60) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

9.3 Authority’s Right to Terminate Agreement. If an Event of Developer Default shall occur and be continuing beyond any applicable cure period, then Authority shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If Authority makes such election, Authority shall give written notice to Developer and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Developer under this Agreement, shall expire and terminate.

9.4 Authority’s Remedies and Rights Upon an Event of Developer Default. Upon the occurrence of an Event of Developer Default and the expiration of any applicable cure period, Authority shall have all remedies available to it under this Agreement or under law or equity, including, but not limited to the following, and Authority may, at its election, without notice to or demand upon Developer, except for notices or demands required by law or expressly required pursuant to the Authority Documents, exercise one or more of the following remedies:

- (a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;
- (b) Seek specific performance to enforce the terms of the Authority Documents;
- (c) Foreclose on the Property pursuant to the Deed of Trust;
- (d) Terminate this Agreement pursuant to Section 9.3; and
- (e) Pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the Authority Documents and Authority’s rights thereunder.

9.5 Developer's Remedies Upon an Event of Authority Default. Upon the occurrence of an Event of Authority Default, in addition to pursuing any other remedy allowed at law or in equity or otherwise provided in this Agreement, Developer may bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking to obtain any other remedy consistent with the purpose of this Agreement, and may pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the Authority Documents and Developer's rights thereunder.

9.6 Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party. Notwithstanding anything contrary provision of this Agreement, a Party's right to recover damages shall be limited to actual damages and shall exclude consequential damages.

9.7 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

9.8 Right of Reverter. If following conveyance of the Phase 1 Property to Developer, Developer (i) fails to begin rehabilitation of the Phase 1 Improvements within the time specified in Section 5.1 as such date may be extended pursuant to the terms hereof, (ii) abandons or suspends construction work for a period of sixty (60) days after written notice from Authority, (iii) fails to complete rehabilitation of the Phase 1 Improvements by the time specified in Section 5.1 as such date may be extended pursuant to the terms hereof, (iv) directly or indirectly, voluntarily or involuntarily Transfers the Phase 1 Property or part thereof or this Agreement in violation of Article VII, or (v) fails to obtain an allocation of low-income housing tax credits for the Phase 2 Project by the time specified in Section 2.5.2.1, the Authority may re-enter and take possession of the Phase 1 Property or any portion thereof with all improvements thereon without payment or compensation to Developer, and revert in the Authority the estate theretofore conveyed to the Developer. The interest created pursuant to this Section 9.8 shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from the Authority's option to purchase the Phase 1 Property under the same or similar conditions specified in Section 9.9. Authority's rights pursuant to this Section 9.8 shall not defeat, render invalid or limit any mortgage or deed of trust permitted by this Agreement or any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

Upon reverting in the Authority of title to the Phase 1 Property or any portion thereof as provided in this Section 9.8, the Authority shall use its best efforts to resell the Phase 1 Property or applicable portion thereof and as soon as possible, in a commercially reasonable manner to a qualified and responsible party or parties (as determined by the Authority) who will assume the obligation of completing and operating the Phase 1 Project in accordance with the uses specified

for such property in this Agreement and in a manner satisfactory to the Authority. Upon such resale of the Phase 1 Property or any portion thereof, the sale proceeds shall be applied as follows:

(a) First, to reimburse the Authority for all costs and expenses incurred by Authority, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture and resale of the Phase 1 Property; all taxes and assessments payable prior to resale, and all applicable water and sewer charges; any payments necessary to discharge any encumbrances or liens on the Phase 1 Property at the time of reversion of title thereto in the Authority or to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Phase 1 Project or any part thereof on the Phase 1 Property; and any other amounts owed to the Authority by Developer and its successors or transferee pursuant to the Authority Documents or otherwise.

(b) Second, to reimburse the Authority for damages to which it is entitled under this Agreement by reason of the Developer's default.

(c) Third, to reimburse the Developer, its successor or transferee, up to the amount equal to:

(1) The payment made to the Authority for the Phase 1 Property; plus

(2) The fair market value of any new improvements constructed by Developer and existing on the Phase 1 Property at the time of Authority's exercise of its rights under this Section; less

(3) Any gains or income withdrawn or made by the Developer from the Phase 1 Property or applicable portion thereof or the improvements thereon.

Notwithstanding the foregoing, the amount calculated pursuant to this subsection (c) shall not exceed the fair market value of the Phase 1 Property or applicable portion thereof, together with the improvements thereon as of the date of the default or failure which gave rise to the Authority's exercise of the right of reverter.

(4) Any balance remaining after such reimbursements shall be retained by the Authority.

The rights established in this Section 9.8 are to be interpreted in light of the fact that the Authority will convey the Phase 1 Property to the Developer for completion of the Phase 1 Project as specified herein and not for speculation.

**9.9 Option to Purchase, Enter and Possess Upon Default.** The Authority shall have the additional right at its option to purchase, enter and take possession of the Phase 1 Property with all improvements thereon (the "**Repurchase Option A**"), if after conveyance of the Phase 1 Property, Developer (i) fails to begin rehabilitation of the Phase 1 Improvements within the time

specified in Section 5.1 as such date may be extended pursuant to the terms hereof, (ii) abandons or suspends construction of the Phase 1 Project for a period of sixty (60) days after written notice from Authority, (iii) fails to complete rehabilitation of the Phase 1 Project by the time specified in Section 5.1 as such date may be extended pursuant to the terms hereof, or (iv) directly or indirectly, voluntarily or involuntarily Transfers the Phase 1 Property or part thereof or this Agreement in violation of Article VII. If it exercises Repurchase Option A, the Authority shall pay to the Developer cash in an amount equal to:

- (i) The purchase price paid to the Authority by the Developer for the Phase 1 Property; plus
- (ii) The fair market value of any new improvements constructed on the Phase 1 Property by Developer and existing on the Phase 1 Property at the time of exercise of the Option; less
- (iii) Any gains or income withdrawn or made by the Developer from the applicable portion of the Property or the improvements thereon; less
- (iv) The value of any liens or encumbrances on the applicable portion of the Property which the Authority assumes or takes subject to; less
- (v) Any amounts owed to the Authority by Developer and its successors or transferee pursuant to the Authority Documents or otherwise; less
- (vi) All taxes, assessments and utility charges payable with respect to the Phase 1 Property for the period prior to the date the Authority acquires title to the Phase 1 Property; less
- (vii) The amount of any payments necessary to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; less
- (viii) Any damages to which the Authority is entitled under this Agreement by reason of Developer's default.

In order to exercise the Repurchase Option A, the Authority shall give Developer written notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide Authority with a summary of all of Developer's costs incurred as described in this Section 9.9. Within thirty (30) days of Authority's receipt of such summary, Authority shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 9.9, and Developer shall execute and deposit into such escrow a grant deed transferring to Authority all of Developer's interest in the Phase 1 Property, or portion thereof, as applicable, and the improvements located thereon.

9.9.1 Option to Repurchase Upon Failure to Obtain Tax Credit Allocation for Phase 2. If Developer fails to obtain an allocation of low-income housing tax credits for the Phase 2 Project by the time specified in Section 2.5.2.1, the Authority shall have the

right at its option to purchase, enter and take possession of the Phase 1 Property with all improvements thereon (the "**Repurchase Option B**") pursuant to this Section.

To exercise the Repurchase Option B, the Authority shall give Developer written notice of such exercise, and within ten (10) business days after delivery of such notice, Authority shall pay into an escrow established for such purpose cash in the amount of Ten Dollars (\$10.00) (the "**Repurchase Option B Purchase Price**"), and Developer shall execute and deposit into such escrow a grant deed transferring to Authority all of Developer's interest in the Phase 1 Property, and the improvements located thereon.

**By initialing below, Developer acknowledges the provisions of Section 9.9.1.**

\_\_\_\_\_  
**Developer's initials**

9.9.2 Treatment of Reserves. If Authority exercises its right to repossess the Phase 1 Property pursuant to Section 9.8, exercises its option to repurchase the Phase 1 Property pursuant to Section 9.9 or Section 9.9.1, or acquires the Phase 1 Project by foreclosure or deed in lieu of foreclosure, the balances of the Phase 1 Project replacement reserve, operating reserve and predevelopment expense reserve as of the date the Authority delivers notice of exercise shall be transferred to Authority.

9.9.3 Treatment of Outstanding Loan Balance. If Developer has failed to obtain an allocation of low-income housing tax credits for the Phase 2 Project and as a result of such failure, Authority exercises its right to repurchase the Phase 1 Property pursuant to Section 9.9.1, then provided that Developer is not otherwise in default under this Agreement or the other Authority Documents, the outstanding balance of the Loans shall be forgiven as of the date that the Authority takes title to the Phase 1 Property.

9.10 Memorandum of Right of Reverter/Option to Purchase. The Parties shall cause a memorandum or memoranda of the rights granted the Authority in Sections 9.8, 9.9 and 9.9.1 of this Agreement to be recorded in the Official Records at the time of the Close of Escrow for conveyance of the Property to Developer. In addition, the rights afforded Authority pursuant to Sections 9.8, 9.9, and 9.9.1 may be described in the Grant Deed.

9.11 Rights of Mortgagees. Any rights of the Authority under this Article IX shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments. Any conveyance or reverter of the Property to the Authority pursuant to this Article IX shall be subject to mortgages and deeds of trust permitted by this Agreement.

9.12 Assignment. The Authority shall have the right to assign the Repurchase Option A and the Repurchase Option B to the City, any other governmental entity, or a qualified nonprofit corporation.

9.13 Construction Plans. If this Agreement is terminated by mutual agreement of the

Parties or by Authority as a result of an Event of Developer Default, the Developer, at no cost to the Authority, shall deliver to the Authority copies of all construction plans and studies in the Developer's possession or in the possession of the Developer's consultants related to development of the Project on the Property, including without limitation, the Construction Plans, subject only to the rights of senior lenders identified in the Financing Plan as it may be updated with Authority approval. If the Authority utilizes the Construction Plans or studies, the Authority shall indemnify the Developer for any claims arising from such use. If Authority requires, Developer shall execute and deliver to Authority an assignment agreement in form approved by Authority (“**Assignment Agreement**”).

9.14 Rights of Limited Partners. If the Phase 1 Project has been transferred to an Approved Partnership, whenever Authority delivers any notice of default hereunder, Authority shall concurrently deliver a copy of such notice to the limited partner(s) in accordance with Section 11.3. The limited partner(s) shall have the same right as Developer to cure or remedy any default hereunder within the cure period provided to Developer extended by an additional sixty (60) days; provided however, if the default is of such nature that the limited partners reasonably determine that it is necessary to replace the general partner of Developer in order to cure such default, then the cure period shall be extended by an additional sixty (60) days after the removal and replacement of such general partner, provided that the limited partners have promptly commenced and diligently proceeded with all requisite actions to effect such removal and replacement.

## ARTICLE X

### INDEMNITY AND INSURANCE

10.1 Indemnity. Developer shall indemnify, defend (with counsel approved by Authority) and hold the Indemnitees harmless from and against any and all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with the rehabilitation, development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof by Developer or Developer's contractors, subcontractors, agents, employees or any other party acting for or on behalf of Developer, or otherwise arising out of or in connection with Developer's performance or failure to perform under this Agreement, including without limitation, Claims arising or alleged to have arisen in connection with any violation of Applicable Laws in connection with the development, operation or management of the Project. Developer's indemnification obligations under this Section 10.1 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10.1 shall survive the expiration or earlier termination of this Agreement. It is further agreed that Authority does not and shall not waive any rights against Developer that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Authority, or the deposit with Authority by Developer, of any of the insurance policies described in this Agreement.

#### 10.2 Liability, Workers Compensation, and Property Insurance.

(a) Developer (and until issuance of the final certificate of occupancy or equivalent for the Project all contractors working on behalf of Developer on the Project) shall

maintain a commercial general liability policy in the amount of Two Million Dollars (\$2,000,000) each occurrence, Two Million Dollars (\$2,000,000) annual aggregate, together with Three Million Dollars (\$3,000,000) excess liability coverage, or such other policy limits as Authority may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage; provided however, the coverage requirements for subcontractors shall be One Million Dollars (\$1,000,000). Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Developer (and until issuance of the final certificate of occupancy or equivalent for the Project all contractors working on behalf of Developer on the Project) shall maintain a comprehensive automobile liability coverage in the amount of Two Million Dollars (\$2,000,000), combined single limit including coverage for owned and non-owned vehicles. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Developer (and if the Property has been transferred to an Approved Partnership, the general partners thereof) shall furnish or cause to be furnished to Authority evidence satisfactory to Authority that Developer (and if the Property has been transferred to an Approved Partnership, the general partners thereof), and any contractor with whom Developer (or an Approved Partnership) has contracted for the performance of work on the Property or otherwise pursuant to this Agreement, carries statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per accident.

(d) Upon commencement of construction work and continuing until issuance of the final certificate of occupancy or equivalent for the Project, Developer and all contractors working on behalf of Developer shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming Authority as loss payee.

(e) Developer shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to Authority, naming Authority as loss payee.

(f) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name Authority as loss payee as its interests may appear.

(g) Prior to commencement of construction work, Developer shall furnish Authority with certificates of insurance in form acceptable to Authority evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify

Authority of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by Authority's Risk Manager, Developer shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(h) If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within five (5) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Authority a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Authority may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Developer shall promptly reimburse Authority for such expense upon receipt of billing from Authority.

(i) Coverage provided by Developer shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Authority or City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Authority and City. Developer shall furnish the required certificates and endorsements to Authority prior to the commencement of construction of the Project, and shall provide Authority with certified copies of the required insurance policies upon request of Authority.

(j) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, Authority's Risk Manager. At the option of and upon request by Authority's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Developer shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(k) Adjustments. The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to meet any change of circumstance, including, but not limited to, changes in inflation and the litigation climate in California. Authority shall give written notice to Developer of any such adjustments, and Developer shall provide Authority with amended or new insurance certificates or endorsements evidencing compliance with such adjustments within thirty (30) days following receipt of such notice.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

11.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the close of escrow and the expiration or earlier termination of this Agreement.

11.2 Enforced Delay; Extension of Times of Performance. The time for performance of provisions of this Agreement by either Party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, suits filed by unrelated third parties concerning or arising out of this Agreement or unseasonable weather conditions ("**Force Majeure**"). An extension of time for any of the above-specified causes will be deemed granted only if written notice by the Party claiming such extension is sent to the other Party within ten (10) calendar days from the commencement of the cause. In any event, rehabilitation of the Phase 1 Project must be completed no later than ninety (90) calendar days after the scheduled completion date pursuant to the schedule set forth in this Agreement, any unavoidable delay notwithstanding.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and Authority (acting in the discretion of the Authorized Representative unless he or she determines in his or her discretion to refer such matter to the Authority's governing board). Authority and Developer acknowledge that, notwithstanding any contrary provision of this Agreement, adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the Project shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

11.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement or any other Authority Document shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or

(iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

**Authority:**

Hemet Housing Authority  
45 E. Florida Avenue  
Hemet, CA 92543  
Attention: Executive Director

**DRAFT**

**Developer:**

Riverside Housing Development Corporation  
4250 Brockton Avenue  
Riverside, CA 92501  
Attention: Executive Director

11.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

11.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving Party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the Party granting the extension. This Agreement may be amended or modified only by a written instrument executed by the Parties.

11.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VII, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

11.7 Survival. All representations made by Developer hereunder, Developer's obligations pursuant to Sections 2.54, 5.11, 5.14, 5.15, 6.1, 6.5, 6.7, 10.1 and 11.1, and Authority's rights under Section 9.8, 9.9 and 9.9.1, and all other provisions that expressly so state, shall survive the expiration or termination of this Agreement.

11.8 Headings; Interpretation; Statutory References. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the

negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it. All references in the Authority Documents to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Hemet shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.9 Action or Approval. Whenever action and/or approval by Authority is required under this Agreement, the Authority's Authorized Representative or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Authorized Representative determines in his or her discretion that such action or approval requires referral to Authority governing board for consideration.

11.10 Entire Agreement. This Agreement, including Exhibits A through I attached hereto and incorporated herein by this reference, together with the other Authority Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof. If the Exhibits to this Agreement are inconsistent with this Agreement, the more restrictive requirements shall control, as determined by the Authority's Authorized Representative. In the event of a conflict between this Agreement and the other Authority Documents, the more restrictive requirements shall control, as determined by the Authorized Representative.

11.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

11.12 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

11.13 No Third Party Beneficiaries. Except as expressly set forth herein, nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

11.14 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship.. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Developer and Authority is and shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership or any other relationship. Authority neither undertakes nor assumes any responsibility or duty to Developer (except as expressly provided in this Agreement) or to any

third party with respect to the Project or the Loan. Developer and its employees are not employees of Authority but rather are, and shall always be considered independent contractors. Furthermore, Developer and its employees shall at no time hold themselves out as employees or agents of Authority. Except as Authority may specify in writing, Developer shall not have any authority to act as an agent of Authority or to bind Authority to any obligation.

11.15 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a “business day” means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of the State of California.

11.16 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Riverside County, California or in the Federal District Court for the Central District of California.

11.17 Inspection of Books and Records. Upon request, Developer shall permit the Authority to inspect at reasonable times and on a confidential basis those books, records and all other documents of Developer necessary to determine Developer’s compliance with the terms of this Agreement.

11.18 Political Activity. None of the funds, materials, property or services contributed by Authority to Developer under this Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.19 Non-Liability of Authority Officials, Employees and Agents. No member, official, employee or agent of the Authority or City shall be personally liable to the Developer in the event of any default or breach by the Authority or for any amount which may become due to the Developer or its successor or on any obligation under the terms of this Agreement.

11.20 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in subsection (b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person’s tenure. The Developer shall exercise due diligence to ensure that the prohibition in this Section is followed.

(b) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code Section 87100 *et seq.*, no person who is a director, officer, partner, trustee or employee or consultant of the Developer, or immediate family member of any of the preceding, shall make or participate in a decision, made by the Authority or a Authority board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or the Developer. Interpretation of this Section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 *et seq.*, its implementing regulations manual and codes, and Government Code Section 1090.

*SIGNATURES ON FOLLOWING PAGES.*

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

**DEVELOPER:**

RIVERSIDE HOUSING DEVELOPMENT CORPORATION,  
a California nonprofit public benefit corporation

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DRAFT**

**AUTHORITY:**

HEMET HOUSING AUTHORITY, a public corporation

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Authority Counsel

Exhibit A-1

**LEGAL DESCRIPTION OF THE PHASE 1 PROPERTY**  
(Attach legal description of the Phase 1 Property.)

Exhibit A-2

**LEGAL DESCRIPTION OF THE PHASE 2 PROPERTY**  
(Attach legal description of the Phase 2 Property.)

Exhibit B-1

**FORM OF CONSTRUCTION/PERMANENT PROMISSORY NOTE – PHASE 1**  
(Attach form of \$1,219,000 Note.)

Exhibit B-2

**FORM OF SHORT-TERM PROMISSORY NOTE – PHASE 1**  
(Attach form of \$252,000 Note.)

Exhibit C

**FORM OF DEED OF TRUST – PHASE 1**  
(Attach form of Deed of Trust.)

Exhibit D

**FORM OF AFFORDABLE HOUSING REGULATORY AGREEMENT AND  
DECLARATION OF COVENANTS – PHASE 1**  
(Attach form of Regulatory Agreement.)

Exhibit E-1

**PHASE 1 FINANCING PLAN**  
(Attach approved Financing Plan for Phase 1.)

Exhibit E-2

**PHASE 2 FINANCING PLAN**  
(Attach Financing Plan for Phase 2 when approved.)

Exhibit F

**FORM OF CERTIFICATE OF COMPLETION**  
(Attach form of Certificate.)

Exhibit G

**FORM OF MEMORANDUM OF OPTION AND LOAN AGREEMENT**  
(Attach form of Memorandum.)

Exhibit H

**GRANT DEED**  
(Attach form of Grant Deed.)

Exhibit I

**PHASE 2 PREDEVELOPMENT COSTS**  
(Attach itemized list and budget for Phase 2 Predevelopment Costs  
permitted to be paid from Loan proceeds.)