

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Contra Costa County  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attn: Affordable Housing Program Manager

No fee for recording pursuant to  
Government Code Section 27383

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REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS  
(Berrellesa Palms)  
(HOME, CDBG, and HOPWA Funds)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is dated December 1, 2012 and is between the County of Contra Costa, a political subdivision of the State of California (the "County"), and Berrellesa Palms, L.P., a California limited partnership ("Borrower").

RECITALS

A. Defined Terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. The County has received funds from the United States Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974, as amended ("CDBG Funds"). The CDBG Funds must be used by the County in accordance with 24 C.F.R. Part 570.

C. The County has received Home Investment Partnerships Act funds from HUD pursuant to the Cranston-Gonzales National Housing Act of 1990 ("HOME Funds"). The HOME Funds must be used by the County in accordance with 24 C.F.R. Part 92.

D. The County has received Housing Opportunities for Persons with AIDS Program funds from HUD pursuant to the HOPWA program ("HOPWA Funds"). The HOPWA Funds are available to and administered by the County, as the subrecipient of the City of Oakland, which is the representative for the Alameda-Contra Costa County Eligible Metropolitan Area. The HOPWA Funds must be used by the County in accordance with 24 C.F.R. Part 574.

E. Borrower is the owner of that certain real property located at 301 Buckley Street in the City of Martinez, County of Contra Costa, State of California, as more particularly described in Exhibit A (the "Property"). Borrower intends to construct forty-nine (49)

multifamily housing units on the Property, forty-eight (48) of which will be for rental to very low income seniors and one manager's unit (the "Development"). The Development as well as all landscaping, roads and parking spaces on the Property and any additional improvements on the Property, are the "Improvements".

F. Pursuant to a HOME, CDBG, and HOPWA Loan Agreement by and between the County and Borrower of even date herewith (the "Loan Agreement"), the County is lending Borrower Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000) of HOME Funds, One Million Five Hundred Twenty-Five Thousand Dollars (\$1,525,000) of CDBG Funds, and Three Hundred Thousand Dollars (\$300,000) in HOPWA Funds for a total loan amount of Four Million Seven Hundred Seventy-Five Thousand Dollars (\$4,775,000) (the "Loan").

G. The County has the authority to lend the Loan to Borrower pursuant to Government Code Section 26227, which authorizes counties to spend county funds for programs that will further a county's public purposes. In addition, the County has the authority to loan (i) the HOME Funds pursuant to 24 C.F.R. 92.205, (ii) the CBDG Funds pursuant to 24 C.F.R. 570.201, and (iii) the HOPWA Funds to provide housing to Persons with HIV/AIDS pursuant to 24 C.F.R. 574.300.

H. The County has agreed to make the Loan on the condition that the Borrower maintain and operate the Development in accordance with restrictions set forth in this Agreement and in the related documents evidencing the Loan.

I. In consideration of receipt of the Loan at an interest rate substantially below the market rate, Borrower agrees to observe all the terms and conditions set forth below.

J. This Agreement supersedes the Regulatory Agreement and Declaration of Restrictive Covenants by and between Borrower and the County, dated October 1, 2010, which was recorded against the Property on October 21, 2010 as instrument number 2010-0234092-00.

## ARTICLE 1 DEFINITIONS

### 1.1 Definitions.

The following terms have the following meanings:

(a) "Actual Household Size" means the actual number of persons in the applicable household.

(b) "Adjusted Income" means the total anticipated annual income of all persons in the Tenant household as defined under the Section 8 Housing Assistance Payment programs in 24 CFR 5.609 and calculated pursuant to 24 CFR 5.611, and as further referenced in 24 CFR 574.310(d)(1) for the HOPWA Units, and 24 CFR 92.203(b)(1) for the HOME Units.

(c) "Agreement" has the meaning set forth in the first paragraph of this Agreement.

(d) "Assumed Household Size" means the household size "adjusted for family size appropriate to the unit" as such term is defined in Health & Safety Code Section 50052.5(h).

(e) "CDBG" means the Community Development Block Grant Program, funded pursuant to Title I of the Housing and Community Development Act of 1974 (42 USC 5301, et seq.).

(f) "CDBG Funds" has the meaning set forth in Paragraph B of the Recitals.

(g) "City" means the City of Martinez, California, a municipal corporation.

(h) "Completion Date" means the date a final certificate of occupancy, or equivalent document is issued by the City to certify that the Development may be legally occupied.

(i) "County-Assisted Units" means the twenty-four (24) Units within the Development designated as assisted by the County pursuant to this Agreement, which Units are "floating" Units as defined in 24 C.F.R. 92.252(j).

(j) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith by and among Borrower, as trustor, Chicago Title Company, as trustee, and the County, as beneficiary, that will encumber the Property to secure repayment of the Loan and Borrower's performance of the covenants set forth in the documents evidencing the Loan.

(k) "Development" has the meaning set forth in Paragraph E of the Recitals.

(l) "Forty Percent Household" means a household with an Adjusted Income that does not exceed forty percent (40%) of Median Income, adjusted for Actual Household Size.

(m) "Forty Percent Rent" means the maximum allowable rent for a Forty Percent Unit pursuant to Section 2.2(d) below.

(n) "Forty Percent Units" means the Units which, pursuant to Section 2.1(c) below, are required to be occupied by Forty Percent Households.

(o) "HOME" means the Home Investment Partnerships Act Program funded pursuant to the Cranston-Gonzales National Housing Act of 1990.

(p) "HOME Funds" has the meaning set forth in Paragraph C of the Recitals.

(q) "HOME Regulations" means the regulations set forth in 24 C.F.R. Part 92.

(r) "HOME Term" means the period beginning on the date of this Agreement and ending on the twentieth (20<sup>th</sup>) anniversary of the date of this Agreement.

(s) "HOME Units" means the County-Assisted Units.

(t) "HOPWA" means the Housing Opportunities for Persons with AIDS Program pursuant to the AIDS Housing Opportunity Act (42 USC 12901 et. seq.), as amended by the Housing and Community Development Act of 1992 (42 USC 5301 et. seq.).

(u) "HOPWA Eligible Household" means a household that includes at least one Person with HIV/AIDS.

(v) "HOPWA Funds" has the meaning set forth in Paragraph D of the Recitals.

(w) "HOPWA Regulations" means the regulations set forth in 24 C.F.R. Part 574.

(x) "HOPWA Term" means the period beginning on the date of this Agreement and ending on the tenth (10<sup>th</sup>) anniversary of the date of this Agreement, unless earlier terminated pursuant to Section 2.4.

(y) "HOPWA Units" means three (3) of the County-Assisted Units which Units are (i) Twenty Percent Units, and (ii) restricted to occupancy by HOPWA Eligible Households during the HOPWA Term.

(z) "HUD" has the meaning set forth in Paragraph B of the Recitals.

(aa) "Loan" has the meaning set forth in Paragraph F of the Recitals.

(bb) "Loan Agreement" has the meaning set forth in Paragraph F of the Recitals.

(cc) "Loan Documents" means the documents executed by Borrower evidencing the Loan including the Note, the Loan Agreement, and the Deed of Trust.

(dd) "Low HOME Rent" means a monthly Rent that does not exceed the maximum rent published by HUD for a Very Low Income Household for the applicable bedroom size as set forth in 24 C.F.R. 92.252(b).

(ee) "Low Income Household" means a Tenant with an Adjusted Income that does not exceed eighty percent (80%) of Median Income, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than eighty percent (80%) of Median Income on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes, as such definition may be amended pursuant to 24 C.F.R. Section 92.2.

(ff) "Median Income" means the median gross yearly income, adjusted for Actual Household Size as specified herein, in the County of Contra Costa, California, as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County

shall provide Borrower with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

(gg) "Note" means the promissory note that evidences Borrower's obligation to repay the Loan, as such may be amended from time to time.

(a) "Other Regulatory Agreements" means: (i) the regulatory agreement and declaration of restrictive covenants associated with the County multi-family housing revenue tax exempt bonds that were purchased by Bank of the West, the proceeds of which were loaned to the Borrower, (ii) the regulatory agreement associated with the Low Income Housing Tax Credits awards to Borrower by the California Tax Credit Allocation Committee, and (iii) the regulatory agreement associated with the Multifamily Housing Program loan from the California Department of Housing and Community Development to Borrower, all of which will be recorded against the Property.

(b) "Person with HIV/AIDS" means a person with the disease of acquired immunodeficiency syndrome or any conditions arising from the etiological agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV), as confirmed by a certification of HIV-positive test status to be delivered to and maintained on file by Borrower as such definition may be amended as set forth in 24 C.F.R. 574.3.

(c) "Property" has the meaning set forth in Paragraph E of the Recitals.

(d) "Remainder Term" means the period that begins on the date the HOPWA Term expires or is terminated by the County pursuant to Section 2.4, and ends on the last day of the Term.

(e) "Rent" means the total monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Borrower which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Borrower, and paid by the Tenant.

(f) "Social Services Plan" has the meaning set forth in the Loan Agreement.

(g) "Tenant" means the tenant household that occupies a Unit in the Development.

(h) "Term" means the term of this Agreement which commences as of the date of this Agreement, and unless sooner terminated pursuant to the terms of this Agreement, expires on the fifty-fifth (55<sup>th</sup>) anniversary of the Completion Date; provided, however, if a record of the Completion Date cannot be located or established, the Term will expire on the fifty-seventh (57<sup>th</sup>) anniversary of this Agreement.

(i) "Thirty-Five Percent Household" means a household with an Adjusted Income which does not exceed thirty-five percent (35%) of Median Income, adjusted for Actual Household Size.

(j) "Thirty-Five Percent Rent" means the maximum allowable rent for a Thirty-Five Percent Unit pursuant to Section 2.2(c) below.

(k) "Thirty-Five Percent Units" means the Units which, pursuant to Section 2.1(b) below, are required to be occupied by Thirty-Five Percent Households.

(l) "Twenty Percent Household" means a household with an Adjusted Income which does not exceed twenty percent (20%) of Median Income, adjusted for Actual Household Size.

(m) "Twenty Percent Rent" means the maximum allowable rent for a Twenty Percent Unit pursuant to Section 2.2(b) below.

(n) "Twenty Percent Units" means the Units which, pursuant to Section 2.1(a) below, are required to be occupied by Twenty Percent Households.

(o) "Unit(s)" means one (1) or more of the units in the Development.

(p) "Very Low Income Household" means a household with an Adjusted Income that does not exceed fifty percent (50%) of Median Income, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than fifty percent (50%) of Median Income on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes, as set forth in 24 C.F.R. Section 92.2.

(q) "Very Low Income Units" means the Units which, pursuant to Section 2.1(d) below, are required to be occupied by Very Low Income Households.

## ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

### 2.1 Occupancy Requirements.

#### (a) Twenty Percent Units.

(1) During the HOPWA Term, Borrower shall cause three (3) Units to be occupied or, if vacant, available for occupancy, by Twenty Percent Households that are HOPWA-Eligible Households.

(2) During the Remainder Term, Borrower shall cause three (3) Units to be occupied or, if vacant, available for occupancy, by Twenty Percent Households which households are not required to be HOPWA-Eligible Households.

(b) Thirty-Five Percent Units. During the Term, Borrower shall cause seven (7) Units to be occupied or, if vacant, available for occupancy, by Thirty-Five Percent Households.

(c) Forty Percent Units. During the Term, Borrower shall cause five (5) Units to be occupied or, if vacant, available for occupancy, by Forty Percent Households.

(d) Very Low Income Units. During the Term, Borrower shall cause nine (9) Units to be occupied or, if vacant, available for occupancy, by Very Low Income Households.

(e) Intermingling of Units. The County-Assisted Units are to be intermingled throughout the Development and of comparable quality to all other Units. All Tenants must have equal access to and enjoyment of all common facilities in the Development.

(f) Disabled Persons Occupancy. Borrower shall cause the Development to be operated at all times in compliance with the provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, and (v) the Americans With Disabilities Act of 1990, which relate to disabled persons access. Borrower shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the County) the County, and its boardmembers, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Borrower's failure to comply with applicable legal requirements related to housing for persons with disabilities. The provisions of this subsection will survive expiration of the Term or other termination of this Agreement, and remain in full force and effect.

(g) Senior Occupancy. Borrower has elected to operate the Development as a senior housing development and as such to require all Units in the Development, except for the resident manager's unit, to be occupied or held available for occupancy by households containing "elderly" or "senior citizen" residents. Borrower shall operate the Development at all times in compliance with the provisions of: (i) the Unruh Act, (ii) the United States Fair Housing Act, as amended, and (iii) the California Fair Employment and Housing Act, which relate to lawful senior housing. Borrower shall develop and implement appropriate age verification procedures to ensure compliance with the requirements of this Section. Borrower shall provide the County with a copy of its written verification procedures. Borrower shall indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the County) the County, and its boardmembers, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Borrower's failure to comply with applicable legal requirements related to housing for seniors. The indemnification provisions of this subsection will survive expiration of the Term or other termination of this Agreement, and remain in full force and effect.

## 2.2 Allowable Rent.

### (a) HOPWA Rent.

#### (1) During HOPWA Term. Subject to the provisions of Section 2.3

below, the total monthly Rent paid by a Tenant of a HOPWA Unit during the HOPWA Term may not exceed the amount that is equal to the greater of:

(A) thirty percent (30%) of the household's monthly Adjusted Income, as adjusted pursuant to 24 C.F.R. 574.310(d)(1);

(B) ten percent (10%) of the household's monthly gross income; and

(C) if the household is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the household's actual housing costs, is specifically designated by the agency to meet the household's housing costs, the portion of the payments that is so designated.

(2) Following Expiration of the HOPWA Term. Subject to Section 2.3 below and the HOPWA Regulations, following the expiration of the HOPWA Term, the Rent paid by a HOPWA Eligible Household that occupies a HOPWA Unit during the HOPWA Term and that continues to reside in the Unit, must be equal to the amount specified in Section 2.2(a)(1).

(3) Following Termination of the HOPWA Term. Subject to Section 2.3 below and the HOPWA Regulations, following the termination of the HOPWA Term pursuant to Section 2.4 below, the Rent paid by a HOPWA Eligible Household that occupies a HOPWA Unit during the HOPWA Term and that continues to reside in the Unit, must be equal to the amount specified in Section 2.2(b).

(b) Twenty Percent Rent. Subject to Section 2.3 below, the Rent paid by a Tenant of a Twenty Percent Unit may not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of twenty percent (20%) of Median Income, adjusted for Assumed Household Size.

(c) Thirty-Five Percent Rent. Subject to Section 2.3 below, the Rent paid by a Tenant of a Thirty-Five Percent Unit, may not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of thirty-five percent (35%) of Median Income, adjusted for Assumed Household Size.

(d) Forty Percent Rent. Subject to Section 2.3 below, the Rent paid by a Tenant of a Forty Percent Unit, may not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of forty percent (40%) of Median Income, adjusted for Assumed Household Size.

(e) Very Low Income Rent. Subject to Section 2.3 below, the Rent paid by a Tenant of a Very Low Income Unit, may not exceed the Low HOME Rent.

(f) No Additional Fees. Borrower may not charge any fee, other than Rent, to any Tenant of the County-Assisted Units for any housing or other services provided by Borrower.



### 2.3 Rent Increases; Increased Income of Tenants.

(a) Rent Increases. The initial Rent and subsequent Rent for all HOME Units must be approved by the County prior to occupancy and are subject to the HOME Regulations. The initial Rent and subsequent Rent for all HOPWA Units must be approved by the County prior to occupancy and are subject to the HOPWA Regulations during the HOPWA Term. All Rent increases for all County-Assisted Units are also subject to County approval. The Rent for such Units may be increased no more than once annually based upon the annual income certification described in Article 3. Tenants are to be given at least sixty (60) days written notice prior to any Rent increase. The County will provide Borrower with a schedule of maximum permissible Rents for the County-Assisted Units annually.

(b) Increased Income of HOPWA Eligible Household During HOPWA Term. Subject to Subsection (a) above, in the event that upon the annual certification of the income of a HOPWA Eligible Household Borrower determines that the Tenant has an Adjusted Income exceeding the maximum qualifying income of a Twenty Percent Household, the Tenant may continue to occupy the Unit and be charged rent consistent with Section 2.2(a)(1) above. During the HOPWA Term Borrower shall then rent the next available HOPWA Unit to a Twenty Percent Household that is also a HOPWA Eligible Household, to comply with the requirements of Section 2.1(a)(1) above.

(c) Increased Income above Twenty Percent Income but below Low Income Limit During Remainder Term. Subject to Subsection (a) above, if, upon the annual certification of the income of a Tenant of a Twenty Percent Unit, Borrower determines that the income of a Twenty Percent Household has increased above the qualifying limit for a Twenty Percent Household, but not above the qualifying income for a Low Income Household, the Tenant may continue to occupy the Unit and the Tenant's Rent will remain at the Twenty Percent Rent. Borrower shall then rent the next available Unit to a Twenty Percent Household to comply with the requirements of Section 2.1(a)(2) above, at a Rent not exceeding the maximum Rent specified in Section 2.2(b), or re-designate another comparable Unit in the Development with a Twenty Percent Household a Twenty Percent Unit, to comply with the requirements of Section 2.1(a)(2) above. Upon renting the next available Unit in accordance with Section 2.1(a)(2) or re-designating another Unit in the Development as a Twenty Percent Unit, the Unit with the over-income Tenant will no longer be considered a County-Assisted Unit.

(d) Increased Income above Thirty-Five Percent Income but below Low Income Limit. Subject to Subsection (a) above, if, upon the annual certification of the income of a Tenant of a Thirty-Five Percent Unit, Borrower determines that the income of a Thirty-Five Percent Household has increased above the qualifying limit for a Thirty-Five Percent Household, but not above the qualifying income for a Low Income Household, the Tenant may continue to occupy the Unit and the Tenant's Rent will remain at the Thirty-Five Percent Rent. Borrower shall then rent the next available Unit to a Thirty-Five Percent Household to comply with the requirements of Section 2.1(b) above, at a Rent not exceeding the maximum Rent specified in Section 2.2(c), or re-designate another comparable Unit in the Development with a Thirty-Five Percent Household a Thirty-Five Percent Unit, to comply with the requirements of Section 2.1(b) above. Upon renting the next available Unit in accordance with Section 2.1(b) or re-designating

another Unit in the Development as a Thirty-Five Percent Unit, the Unit with the over-income Tenant will no longer be considered a County-Assisted Unit.

(e) Increased Income above Forty Percent Income but below Low Income Limit. Subject to Subsection (a) above, if, upon the annual certification of the income of a Tenant of a Forty Percent Unit, Borrower determines that the income of a Forty Percent Household has increased above the qualifying limit for a Forty Percent Household, but not above the qualifying income for a Low Income Household, the Tenant may continue to occupy the Unit and the Tenant's Rent will remain at the Forty Percent Rent. Borrower shall then rent the next available Unit to a Forty Percent Household to comply with the requirements of Section 2.1(c) above, at a Rent not exceeding the maximum Rent specified in Section 2.2(d), or re-designate another comparable Unit in the Development with a Forty Percent Household a Forty Percent Unit, to comply with the requirements of Section 2.1(c) above. Upon renting the next available Unit in accordance with Section 2.1(c) or re-designating another Unit in the Development as a Forty Percent Unit, the Unit with the over-income Tenant will no longer be considered a County-Assisted Unit.

(f) Increased Income above Very Low Income but below Low Income Limit. Subject to Subsection (a) above, if, upon the annual certification of the income of a Tenant of a Very Low Income Unit, Borrower determines that the income of a Very Low Income Household has increased above the qualifying limit for a Very Low Income Household, but not above the qualifying income for a Low Income Household, the Tenant may continue to occupy the Unit and the Tenant's Rent will remain at the Low HOME Rent. Borrower shall then rent the next available Unit to a Very Low Income Household to comply with the requirements of Section 2.1(d) above, at a Rent not exceeding the maximum Rent specified in Section 2.2(e), or re-designate another comparable Unit in the Development with a Very Low Income Household a Very Low Income Unit, to comply with the requirements of Section 2.1(d) above. Upon renting the next available Unit in accordance with Section 2.1(d) or re-designating another Unit in the Development as a Very Low Income Unit, the Unit with the over-income Tenant will no longer be considered a County-Assisted Unit.

(g) Non-Qualifying Household. If, upon the annual certification of the income a Tenant of a County-Assisted Unit, Borrower determines that the income of a Twenty Percent Income Household (that is not a HOPWA Eligible Household residing in the Unit during the HOPWA Term), Thirty-Five Percent Household, Forty Percent Household, or Very Low Income Household has increased above the qualifying limit for a Low Income Household, such Tenant shall be permitted to retain the Unit and upon expiration of the Tenant's lease and upon sixty (60) days written notice, the Rent must be increased to the lesser of one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of the actual Adjusted Income of the Tenant, or fair market rent (subject to 24 C.F.R. 92.252(i)(2) regarding low income housing tax credit requirements), and Borrower shall rent the next available Unit to a Twenty Percent Income Household, Thirty-Five Percent Household, Forty Percent Household, or Very Low Income Household, as applicable, to comply with the requirements of Section 2.1 above, at a Rent not exceeding the maximum Rent specified in Section 2.2, or re-designate another comparable Unit in the Development with a Twenty Percent Income Household, Thirty-Five Percent Household, Forty Percent Household, or Very Low Income Household, as applicable, as a County-Assisted Unit, to meet the requirements of

Section 2.1 above. Upon renting the next available Unit in accordance with Section 2.1 or re-designating another Unit in the Development as a County-Assisted Unit, the Unit with the over-income Tenant will no longer be considered a County-Assisted Unit.

(h) Termination of Occupancy. Upon termination of occupancy of a County-Assisted Unit by a Tenant, such Unit will be deemed to be continuously occupied by a household of the same income level as the initial income level of the vacating Tenant, until such unit is reoccupied, at which time categorization of the Unit will be established based on the occupancy requirements of Section 2.1.

2.4 Cure for AIDS. If, in the sole determination of the County, there is a cure for AIDS and therefore no need for the HOPWA Units, the County shall provide to Borrower a written notice that sets forth the termination date of the HOPWA Term.

2.5 Units Available to the Disabled. Borrower shall rehabilitate the Development in compliance with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act; Section 504 of the Rehabilitation Act of 1973; Title II and/or Title III of the Americans with Disabilities Act; and Title 24 of the California Code of Regulations. In compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.), a minimum of three (3) Units must be fully accessible to households with a mobility impaired member and an additional one (1) Unit must be fully accessible to hearing and/or visually impaired persons.

### ARTICLE 3 INCOME CERTIFICATION AND REPORTING

#### 3.1 Income Certification.

(a) Borrower shall obtain, complete, and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the County-Assisted Units. Borrower shall make a good faith effort to verify the accuracy of the income provided by the applicant or occupying household, as the case may be, in an income certification. To verify the information Borrower shall take two or more of the following steps: (i) obtain a pay stub for the most recent pay period; (ii) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (iv) obtain an income verification form from the applicant's current employer; (v) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (vi) if the applicant is unemployed and does not have a tax return, obtain another form of independent verification. Copies of Tenant income certifications are to be available to the County upon request.

(b) For each HOPWA Unit during the HOPWA Term, Borrower shall obtain a certification from the Tenant that the HOPWA Unit is occupied by a HOPWA Eligible Household. Borrower shall maintain the initial and annual certifications on file.

3.2 Reporting Requirements. Borrower shall submit to the County (a) not later than the forty-fifth (45<sup>th</sup>) day after the close of each calendar year, or such other date as may be requested by the County, a statistical report, including income and rent data for all Units, setting forth the information called for therein, and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the County in order to comply with reporting requirements of HUD, the State of California, and the County.

3.3 Additional Information. Borrower shall provide any additional information reasonably requested by the County.

3.4 Records. Borrower shall maintain complete, accurate and current records pertaining to the Development, and shall permit any duly authorized representative of the County to inspect records, including records pertaining to income and household size of Tenants. All Tenant lists, applications and waiting lists relating to the Development are to be at all times: (i) separate and identifiable from any other business of Borrower, (ii) maintained as required by the County, in a reasonable condition for proper audit, and (iii) subject to examination during business hours by representatives of the County. Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the units for a period of at least five (5) years. The County may examine and make copies of all books, records or other documents of Borrower that pertain to the Development.

3.5 HOME Record Requirements. For the period of the HOME Term all records maintained by Borrower pursuant to Sections 3.2 and 3.4 above are to be (i) maintained in compliance with all applicable HUD records and accounting requirements, and (ii) open to and available for inspection and copying by HUD and its authorized representatives at reasonable intervals during normal business hours; provided however, records pertaining to Tenant income verifications, Rents, and Development inspections are subject to HUD inspection for five (5) years after expiration of the HOME Term. Borrower is subject to the audit requirements set forth in 24 CFR 92.505 during the HOME Term.

3.6 HOPWA Record Requirements. For the period of the HOPWA Term all records maintained by Borrower pursuant to Sections 3.2 and 3.4 above are to be (i) maintained in compliance with all applicable HUD records and accounting requirements (including those set out in 24 C.F.R. 574.450 and 24 C.F.R. 574.530), and (ii) open to and available for inspection and copying by HUD and its authorized representatives at reasonable intervals during normal business hours; provided however, records pertaining to Tenant income verifications, Rents, and Development inspections are subject to HUD inspection for five (5) years after expiration of the HOPWA Term.

3.7 On-Site Inspection. The County may perform an on-site inspection of the Development at least one (1) time per year. Borrower shall cooperate in such inspection.

## ARTICLE 4 OPERATION OF THE DEVELOPMENT

4.1 Residential Use. Borrower shall operate the Development for residential use only. No part of the Development may be operated as transient housing.

4.2 Compliance with Loan Documents and Program Requirements.

(a) Borrower's actions with respect to the Property shall at all times be in full conformity with: (i) all requirements of the Loan Documents; (ii) all requirements imposed on projects assisted with HOME Funds as contained in 42 U.S.C. Section 12701, et seq., 24 C.F.R. Part 92, and other implementing rules and regulations, (iii) all requirements imposed on projects assisted with CDBG Funds as contained in 42 U.S.C. Section 5301, et seq., 24 C.F.R. Part 570, and other implementing rules and regulations, and (iv) the Other Regulatory Agreements.

(b) During the HOPWA Term Borrower shall:

(1) ensure that the Property is in full conformity with all requirements imposed on projects assisted under the HOPWA Program as contained in 42 U.S.C. Section 12901, et seq., 24 C.F.R. Part 574, and other implementing rules and regulations;

(2) ensure the confidentiality of the name of any individual requesting or receiving assistance through this project pursuant to 24 C.F.R. 574.440;

(3) ensure that qualified service providers in the area make available appropriate supportive services to HOPWA Eligible Households pursuant to 24 C.F.R. 574.310(a)(1);

(4) conduct an ongoing assessment of the services required by HOPWA Eligible Households pursuant to 24 C.F.R. 574.500(b)(2);

(5) provide the County a Social Services Plan for review detailing the services provided to HOPWA Eligible Households; and

(6) ensure that the Development meets the Housing Quality Standards pursuant to 24 C.F.R. 574.310(b).

4.3 Taxes and Assessments. Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Borrower may contest in good faith, any such taxes, assessments, or charges. In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the proceeding or contest, will immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

4.4 Property Tax Exemption. Borrower shall not apply for a property tax exemption for the Property under any provision of law except California Revenue and Taxation Section 214(g) without the prior written consent of the County.

## ARTICLE 5 PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities. Borrower is responsible for all management functions with respect to the Development, including without limitation the selection of Tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County has no responsibility for management of the Development. Borrower shall retain a professional property management company approved by the County in its reasonable discretion to perform Borrower's management duties hereunder. An on-site property manager is also required.

5.2 Management Agent. Borrower shall cause the Development to be managed by an experienced management agent reasonably acceptable to the County, with a demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (the "Management Agent"). The County previously approved The John Stewart Company as the Management Agent. Borrower shall submit for the County's approval the identity of any proposed subsequent management agent. Borrower shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for the County to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed management agent meets the standard for a qualified management agent set forth above, the County shall approve the proposed management agent by notifying Borrower in writing. Unless the proposed management agent is disapproved by the County within thirty (30) days, which disapproval is to state with reasonable specificity the basis for disapproval, it shall be deemed approved.

5.3 Periodic Performance Review. The County reserves the right to conduct an annual (or more frequently, if deemed necessary by the County) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable the County to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. Borrower shall cooperate with the County in such reviews.

5.4 Replacement of Management Agent. If, as a result of a periodic review, the County determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the County shall deliver notice to Borrower of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days after receipt by Borrower of such written notice, the County staff and Borrower shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

If, after such meeting, County staff recommends in writing the replacement of the Management Agent, Borrower shall promptly dismiss the then-current Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a management agent set forth in Section 5.2 above and approved by the County pursuant to Section 5.2 above. The County acknowledges that any replacement Management Agent is subject to the approval of Borrower's investor limited partner identified in Section 6.13.

Any contract for the operation or management of the Development entered into by Borrower shall provide that the Management Agent may be dismissed and the contract terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section constitutes a default under this Agreement, and the County may enforce this provision through legal proceedings as specified in Section 6.7 below.

5.5 Approval of Management Policies. Borrower shall submit its written management policies with respect to the Development to the County for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

5.6 Property Maintenance. Borrower shall maintain, for the entire Term of this Agreement, all interior and exterior Improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

The County places prime importance on quality maintenance to protect its investment and to ensure that all County and County-assisted affordable housing projects within the County are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Development will be acceptable to the County assuming Borrower agrees to provide all necessary improvements to assure the Development is maintained in good condition. Borrower shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

In the event that Borrower breaches any of the covenants contained in this section and such default continues for a period of five (5) days after written notice from the County with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the County with respect to landscaping and building improvements, then the County, in addition to whatever other remedy it may have at law or in equity, has the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the County is permitted (but is not required) to enter upon the Property and to perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the County and/or costs of such cure, which amount shall be promptly paid by Borrower to the County upon demand.

## ARTICLE 6 MISCELLANEOUS

6.1 Lease Provisions. In newly leasing the Units within the Development, Borrower shall use a form of lease approved by the County. The lease must not contain any provision which is prohibited by 24 C.F.R. Section 92.253(b) and any amendments thereto. The form of lease must comply with all requirements of this Agreement, the other Loan Documents and must, among other matters:

(a) provide for termination of the lease for failure to: (i) provide any information required under this Agreement or reasonably requested by Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Development in accordance with the standards set forth in this Agreement, (ii) qualify as a Twenty Percent Household, Thirty-Five Percent Household, Forty Percent Household, or Very Low Income Household as a result of any material misrepresentation made by such Tenant with respect to the income computation, or (iii) qualify as a HOPWA-Eligible Household when and if applicable as a result of any material misrepresentation made by such Tenant with respect to HIV/AIDS status.

(b) be for an initial term of not less than one (1) year, unless by mutual agreement between the Tenant and Borrower, and provide for no increase in Rent during such year. After the initial year of tenancy, the lease may be month-to-month by mutual agreement of Borrower and the Tenant. Notwithstanding the above, any rent increases are subject to the requirements of Section 2.3 (a) above.

(c) include a provision which requires a Tenant who is residing in a Unit required to be accessible pursuant to Section 2.5 and who is not in need of an accessible Unit to move to a non-accessible Unit when a non-accessible Unit becomes available and another Tenant or prospective Tenant is in need of an accessible Unit.

### 6.2 Lease Termination.

(a) HOME Lease Termination Requirements. Any termination of a lease or refusal to renew a lease for a HOME Unit within the Development must be in conformance with 24 C.F.R. 92.253(c), and must be preceded by not less than sixty (60) days written notice to the Tenant by Borrower specifying the grounds for the action.

#### (b) HOPWA Lease Termination Requirements.

(1) Any termination of a lease or refusal to renew a lease for a HOPWA Unit within the Development must be in conformance with 24 C.F.R. 574.310(e) during the HOPWA Term, and must be preceded by not less than sixty (60) days written notice to the Tenant by Borrower specifying the grounds for the action.

(2) During the HOPWA Term Borrower shall ensure that surviving members of a household that included a Person with HIV/AIDS at the time of his or her death is



permitted to continue to occupy the unit and receive supportive services for a reasonable period of up to one (1) year from the time of the death, and is provided with notice of their grace period and with assistance to obtain information about other available housing assistance programs. In addition, in the event such surviving members of a household would be eligible for occupancy in one of the other units within the Development, upon approval from Borrower, such surviving members may remain in their current unit and the next available unit within the Development will become a HOPWA Unit.

### 6.3 Nondiscrimination.

(a) All of the Units must be available for occupancy on a continuous basis to members of the general public who are income eligible. Borrower may not give preference to any particular class or group of persons in renting or selling the Units, except to the extent that the Units are required to be leased to income eligible households in accordance with this Agreement and the Other Regulatory Agreements, and to HOPWA-Eligible Households pursuant to this Agreement. Borrower herein covenants by and for Borrower, assigns, and all persons claiming under or through Borrower, that there exist no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any unit nor will Borrower or any person claiming under or through Borrower, 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 of any unit or in connection with the employment of persons for the construction, operation and management of any unit.

(b) Borrower shall accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. Borrower may not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective Tenants, nor will Borrower apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective Tenants.

6.4 Term. The provisions of this Agreement apply to the Property for the entire Term even if the Loan is paid in full prior to the end of the Term. This Agreement binds any successor, heir or assign of Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by County. County is making the Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

### 6.5 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Borrower shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the County, and (iv) a statement

that a public hearing may be held by the County on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Borrower shall also file a copy of the above-described notice with the County Deputy Director-Current Planning.

(b) In addition to the notice required above, Borrower shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a)) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; (iv) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

6.6 Covenants to Run With the Land. The County and Borrower hereby declare their express intent that the covenants and restrictions set forth in this Agreement run with the land, and bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, is to be held conclusively to have been executed, delivered and accepted subject to the covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the County expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.7 Enforcement by The County. If Borrower fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the County has notified Borrower in writing of the default or, if the default cannot be cured within thirty (30) days, fails to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within ninety (90) days, the County may enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Calling the Loan. The County may declare a default under the Note, accelerate the indebtedness evidenced by the Note, and proceed with foreclosure under the Deed of Trust.

(b) Action to Compel Performance or for Damages. The County may bring an action at law or in equity to compel Borrower's performance of its obligations under this Agreement, and may seek damages.

(c) Remedies Provided Under Loan Documents. The County may exercise any other remedy provided under the Loan Documents.

6.8 Attorneys' Fees and Costs. In any action brought to enforce this Agreement, the prevailing party must be entitled to all costs and expenses of suit, including reasonable attorneys'

fees. This section must be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

6.9 Recording and Filing. The County and Borrower shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Contra Costa.

6.10 Governing Law. This Agreement is governed by the laws of the State of California.

6.11 Waiver of Requirements. Any of the requirements of this Agreement may be expressly waived by the County in writing, but no waiver by the County of any requirement of this Agreement extends to or affects any other provision of this Agreement, and may not be deemed to do so.

6.12 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title that is duly recorded in the official records of the County of Contra Costa.

6.13 Notices. Any notice requirement set forth herein will be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

County: County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attn: Affordable Housing Program Manager

Borrower: Berrellesa Palms, L.P.  
c/o Resources for Community Development  
2220 Oxford Street  
Berkeley, CA 94704  
Attention: Executive Director

Investor Limited  
Partner: Union Bank, N.A.  
200 Pringle Avenue, Suite 355  
Walnut Creek, CA 94596  
Attn: CDF Division Head

With a copy to: Paul Hastings LLP  
515 South Flower Street  
Los Angeles, CA 90071  
Attn: Kenneth Krug

Such addresses may be changed by notice to the other party given in the same manner as provided above.

6.14 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement will not in any way be affected or impaired thereby.

6.15 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

6.16 Revival of Agreement after Foreclosure. In the event there is a foreclosure of the Property, this Agreement will revive according to its original terms if, during the Term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Development or Property.

6.17 Original Regulatory Agreement. This Agreement supersedes in its entirety the Regulatory Agreement and Declaration of Restrictive Covenants by and between Borrower and the County, dated October 1, 2010, which was recorded against the Property on October 21, 2010 as instrument number 2010-0234092-00.

*[remainder of page intentionally left blank]*

WHEREAS, this Agreement has been entered into by the undersigned as of the date first written above.

**COUNTY:**

COUNTY OF CONTRA COSTA, a political  
subdivision of the State of California

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

Its: \_\_\_\_\_

Approved as to form:

SHARON L. ANDERSON  
County Counsel

By: Kathleen M. Andrus  
Kathleen Andrus  
Deputy County Counsel

**BORROWER:**

BERRELLESA PALMS, L.P., a California limited  
partnership

By: 112 Alves Lane, Inc. a California  
nonprofit public benefit corporation, its  
general partner

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

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

Its: \_\_\_\_\_

On \_\_\_\_\_, 2012, before me, \_\_\_\_\_, Notary Public, personally appeared, \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

STATE OF CALIFORNIA )  
 )  
COUNTY OF CONTRA COSTA )

On \_\_\_\_\_, 2012, before me, \_\_\_\_\_, Notary Public, personally appeared, \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

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EXHIBIT A

Legal Description

The land is situated in the State of California, County of Contra Costa, and is described as follows: