

DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT  
Heritage Point Apartments

This Disposition, Development, and Loan Agreement (the "Agreement") is dated December 1, 2017, and is between the County of Contra Costa, a political subdivision of the State of California (the "County") and Heritage Point A/G, 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 succeeded to the housing assets of the former Contra Costa County Redevelopment Agency (the "Former Agency") in accordance with California Health and Safety Code Section 34176. In its capacity as housing successor, the County owns six parcels of real property, fronting the east side of Fred Jackson Way, between Grove Street and Chesley Avenue, in North Richmond, commonly referred to as the Heritage Point Unified Development Area (and formerly known as the Grove Point Unified Development Area) (the "Site"). The Site is located within the North Richmond Redevelopment Project Area (the "Project Area").

C. The Site has been identified as a "housing asset" pursuant to California Health and Safety Code Section 34176. The Oversight Board of the Contra Costa County Successor Agency and the California Department of Finance have approved such identification. The Former Agency acquired the Site using the Former Agency's low and moderate housing fund, which was established pursuant to California Health and Safety Code Section 33334.2.

D. The County has subdivided the Site into a "Commercial Parcel" and a "Residential Parcel" through a metes and bounds division. The "Residential Parcel" is more particularly described in Exhibit A attached to and incorporated into this Agreement (the "Property").

E. Pursuant to a Disposition and Development Agreement dated as of May 9, 2017 by and between Community Housing Development Corporation of North Richmond, a California nonprofit public benefit corporation ("CHDC") and the County (the "Initial DDA"), the County agreed to sell the Site to CHDC for the development of affordable housing and related residential and commercial improvements as a unified development.

F. The purpose of this Agreement is to facilitate the development of affordable housing on the Property. As contemplated by the Initial DDA, CHDC has formed Borrower in order to qualify for certain financing for the development of affordable housing on the Property.

G. Subsequent to entering into this Agreement with Borrower, the County and CHDC will enter into an Amended and Restated Disposition and Development Agreement which will replace the Initial DDA and which addresses the development of the "Commercial Parcel".

H. The County has determined that Borrower has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement and that this Agreement is in the best interests, and will materially contribute to the implementation of, the County's affordable housing goals.

I. The Board of Supervisors of the County has conducted a duly noticed public hearing on this Agreement pursuant to Health and Safety Code Section 33433. The County intends to convey the Property in its capacity as housing successor and as permitted under Health and Safety Code Section 33433.

J. Borrower intends to construct forty-two (42) housing units on the Property for rental to extremely low and very low income households, including one (1) 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".

K. Borrower's construction and operation of the Development is not financially feasible without financial assistance from the County.

L. 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.

M. The County and Borrower are parties to a CDBG Project Agreement HSG-17-50 dated December 1, 2017 (the "CDBG Project Agreement"), pursuant to which the County agreed to lend Two Million Nine Hundred Thousand Dollars (\$2,900,000) of CDBG Funds (the "CDBG Loan") to Borrower to assist in the acquisition of the Property and development of the Development.

N. The County, as housing successor to the Former Agency, has Low and Moderate Income Housing Asset Funds (the "Affordable Housing Funds") which must be used in compliance with the Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.) as amended by California Health and Safety Code Section 34176.1 (the "Community Redevelopment Law").

O. The County previously loaned CHDC Eight Hundred Seventy-Seven Thousand Two Hundred Dollars (\$877,200) of Affordable Housing Funds to assist in predevelopment costs for the development of the Site (the "Predevelopment Loan"). Pursuant to an Assignment and Assumption Agreement dated December 1, 2017, by and among CHDC, Borrower, and the County (the "Assignment Agreement"), CHDC assigned all its rights to the Predevelopment Loan to Borrower and Borrower assumed the Predevelopment Loan, as consented to by the County.

P. Borrower desires to borrow from the County additional Affordable Housing Funds in the amount of Two Million One Hundred Thirteen Thousand Fifty-Four Dollars (\$2,113,054), which when combined with the Predevelopment Loan results in a principal balance of Two Million Nine Hundred Ninety Thousand Two Hundred Fifty-Four Dollars (\$2,990,254) (the "Affordable Housing Funds Loan").

Q. In furtherance of the CDBG Project Agreement and this Agreement the County is providing Borrower a loan in the amount of Five Million Eight Hundred Ninety Thousand Two Hundred Fifty-Four Dollars (\$5,890,254) (the "Loan"), comprised of the CDBG Loan and the Affordable Housing Funds Loan.

R. The Loan is evidenced by this Agreement, the Memorandum of DDLA, the Note, the Regulatory Agreement, the Grant Deed, and the Notice of Affordability Restrictions, and is secured by the Deed of Trust.

S. The Mitigated Negative Declaration reviewed and approved by the County Board of Supervisors on May 05, 2015, has served as the environmental documentation pursuant to the California Environmental Quality Act (Public Resource Code 21000 et seq.), and its implementing regulations ("CEQA") for the activities proposed to be undertaken under this Agreement.

T. In accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347) ("NEPA"), the County has completed and approved all applicable environmental review for the activities proposed to be undertaken under this Agreement.

The parties therefore agree as follows:

## AGREEMENT

### ARTICLE 1 DEFINITIONS AND EXHIBITS

#### Section 1.1 Definitions.

The following terms have the following meanings:

- (a) "Accessibility Requirements" has the meaning set forth in Section 4.10 below.
- (b) "Affordable Housing Funds" has the meaning set forth in Paragraph N of the Recitals.
- (c) "Affordable Housing Funds Loan" has the meaning set forth in Paragraph P of the Recitals.
- (d) "Agreement" means this Disposition, Development, and Loan Agreement.
- (e) "Annual Operating Expenses" means for each calendar year, the following costs reasonably and actually incurred for operation and maintenance of the Development:
  - (i) property taxes and assessments imposed on the Development;
  - (ii) debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on the Permanent Loan;

(iii) on-site service provider fees for tenant social services, provided the County has approved, in writing, the plan and budget for such services before such services begin;

(iv) fees paid to the Government Lender with respect to the Government Lender Note;

(v) property management fees and reimbursements, on-site property management office expenses, and salaries of property management and maintenance personnel, not to exceed amounts that are standard in the industry and which are pursuant to a management contract approved by the County;

(vi) the Partnership/Asset Fee;

(vii) fees for accounting, audit, and legal services incurred by Borrower's general partner in the asset management of the Development, not to exceed amounts that are standard in the industry, to the extent such fees are not included in the Partnership/Asset Fee;

(viii) premiums for insurance required for the Improvements to satisfy the requirements of any lender of Approved Financing;

(ix) utility services not paid for directly by tenants, including water, sewer, and trash collection;

(x) maintenance and repair expenses and services;

(xi) any annual license or certificate of occupancy fees required for operation of the Development;

(xii) security services;

(xiii) advertising and marketing;

(xiv) cash deposited into the Replacement Reserve Account in the amount set forth in Section 5.1(a);

(xv) cash deposited into the Operating Reserve Account to maintain the amount set forth in Section 5.1(b) (excluding amounts deposited to initially capitalize the account);

(xvi) payment of any previously unpaid portion of Developer Fee (without interest), not to exceed the amount set forth in Section 4.18;

(xvii) extraordinary operating costs specifically approved in writing by the County;

(xviii) payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced,

repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved in writing by the County and not listed above.

Annual Operating Expenses do not include the following: depreciation, amortization, depletion or other non-cash expenses, initial deposits to capitalize a reserve account, any amount expended from a reserve account, and any capital cost associated with the Development.

(f) "Annual Payment" has the meaning in Section 3.8(a).

(g) "Approved Development Budget" means the proforma development budget, including sources and uses of funds, as approved by the County, and attached hereto and incorporated herein as Exhibit B.

(h) "Approved Financing" means all of the following loans, grants and equity obtained by Borrower and approved by the County for the purpose of financing the acquisition of the Property and construction of the Improvements:

(i) County of Contra Costa Multifamily Housing Revenue Note (Heritage Point Apartments), Series 2018A issued by the County of Contra Costa (the "Government Lender") in the approximate amount of Sixteen Million One Hundred Forty-Four Thousand Seven Hundred Fifty-Six Dollars (\$16,144,756) (the "Government Lender Note"), the proceeds of which are loaned to Borrower by the Government Lender pursuant to a funding loan to the Government Lender by the Bank (the "Bank Construction Loan") which will convert to a permanent loan in the approximate amount of Seven Million Six Hundred Forty-Three Thousand Dollars (\$7,643,000) (the "Permanent Loan");

(ii) the Low Income Housing Tax Credit investor equity funds in the approximate amount of Ten Million Three Hundred Thirty-One Thousand Eighteen Dollars (\$10,331,018) (the "Tax Credit Investor Equity") provided by the Investor Limited Partner;

(iii) the loan from CHDC in the approximate amount of One Million One Hundred Forty-Eight Thousand Two Hundred Twenty-One Dollars (\$1,148,221) (the "Sponsor Loan");

(iv) the loan from CHDC in the approximate amount of One Million Four Hundred Thirty-Two Thousand Eight Hundred Thirty Dollars (\$1,432,830) (the "CHDC LC Loan"); and

(v) the capital contribution from Borrower's general partner in the approximate amount of One Hundred Dollars (\$100) (the "GP Capital Contribution").

(i) "Assignment Agreement" has the meaning set forth in Paragraph O of the Recitals.

(j) "Available Net Proceeds" means the result obtained by multiplying the Net Proceeds of Permanent Financing by 0.75.

(k) "Bank" means Citibank, N.A.

- (l) "Bank Construction Loan" has the meaning set forth in Section 1.1(h)(i).
- (m) "Bid Package" means the package of documents Borrower's general contractor is required to distribute to potential bidders as part of the process of selecting subcontractors for the Development. The Bid Package is to include the following: (i) an invitation to bid; (ii) copy of the proposed construction contract; (iii) a form of bid guarantee that is reasonably acceptable to the County that guarantees, at a minimum, an amount equal to five percent (5%) of the bid price; and (iv) all Construction Plans.
- (n) "Borrower" has the meaning set forth in the first paragraph of this Agreement.
- (o) "CDBG Funds" has the meaning set forth in Paragraph L of the Recitals.
- (p) "CDBG Loan" has the meaning set forth in Paragraph M of the Recitals.
- (q) "CDBG Project Agreement" has the meaning set forth in Paragraph M of the Recitals.
- (r) "CEQA" has the meaning set forth in Paragraph S of the Recitals.
- (s) "Certificate of Completion" means the certificate to be issued by the County pursuant to Section 4.7 of this Agreement, or comparable County sign-off on the completion of construction of the Improvements.
- (t) "CHDC" has the meaning set forth in Paragraph E of the Recitals.
- (u) "CHDC LC Loan" has the meaning set forth in Section 1.1(h)(iv).
- (v) "Close of Escrow" means the date the Grant Deed and the Memorandum of DDLA are recorded against the Property.
- (w) "Commencement of Construction" has the meaning set forth in Section 4.5.
- (x) "Community Redevelopment Law" has the meaning set forth in Paragraph N of the Recitals.
- (y) "Completion Date" means the date a final certificate of occupancy, or equivalent document is issued by the County to certify that the Development may be legally occupied.
- (z) "Construction Plans" means all construction documentation upon which Borrower and Borrower's general contractor rely in constructing all the Improvements on the Property (including the units in the Development, landscaping, parking, and common areas) and includes, but is not limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings").
- (aa) "County-Assisted Units" means the twenty (20) units in the Development

assisted by the County and regulated pursuant to the Regulatory Agreement.

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

(cc) "County Documents" means this Agreement, the Memorandum of DDLA, the Grant Deed, the Note, the Regulatory Agreement, the Notice of Affordability Restrictions, and the Deed of Trust.

(dd) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Borrower, as Trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, that will encumber the Property to secure repayment of the Loan and performance of the covenants of the County Documents.

(ee) "Default Rate" means the lesser of the maximum rate permitted by law and ten percent (10%) per annum.

(ff) "Developer Fee" has the meaning set forth in Section 4.18.

(gg) "Development" has the meaning set forth in Paragraph J of the Recitals.

(hh) "Event of Default" has the meaning set forth in Section 7.1.

(ii) "Fifteen Year Compliance Period" means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.

(jj) "Final Cost Certification" has the meaning set forth in Section 5.2.

(kk) "Final Development Cost" means the total of the cost of acquisition and construction of the Improvements as shown on the Final Cost Certification.

(ll) "Former Agency" has the meaning set forth in Paragraph B of the Recitals.

(mm) "Grant Deed" means the grant deed by which the County conveys the Property to Borrower.

(nn) "Government Lender" has the meaning set forth in Section 1.1(h)(i).

(oo) "Government Lender Note" has the meaning set forth in Section 1.1(h)(i).

(pp) "GP Capital Contribution" has the meaning set forth in Section 1.1(h)(v).

(qq) "Gross Revenue" means for each calendar year, all revenue, income, receipts, and other consideration actually received from the operation and leasing of the Development. Gross Revenue includes, but is not limited to:

(i) all rents, fees and charges paid by tenants;

- (ii) Section 8 payments and other rental or operating subsidy payments received for the dwelling units;
- (iii) deposits forfeited by tenants;
- (iv) all cancellation fees;
- (v) price index adjustments and any other rental adjustments to leases or rental agreements;
- (vi) net proceeds from vending and laundry room machines;
- (vii) the proceeds of business interruption or similar insurance not paid to senior lenders;
- (viii) the proceeds of casualty insurance not used to rebuild the Development and not paid to senior lenders; and
- (ix) condemnation awards for a taking of part or all of the Development for a temporary period.

Gross Revenue does not include tenants' security deposits, loan proceeds, unexpended amounts (including interest) in any reserve account, required deposits to reserve accounts, capital contributions or similar advances.

(rr) "Hazardous Materials" means: (i) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical, and (ii) any waste, substance or material defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic materials", "toxic waste", "toxic substances," or words of similar import under any Hazardous Materials Law.

(ss) "Hazardous Materials Claims" means with respect to the Property (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any Hazardous Materials Law; and (ii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials.

(tt) "Hazardous Materials Law" means any federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, health, industrial hygiene, environmental conditions, or the regulation or protection of the environment, and all amendments thereto as of this date and to be added in the future and any successor statute or rule or regulation promulgated thereto.

(uu) "Housing Authority" means the Housing Authority of Contra Costa County.



- (vv) "HUD" has the meaning set forth in Paragraph L of the Recitals.
- (ww) "Improvements" has the meaning set forth in Paragraph J of the Recitals.
- (xx) "Initial DDA" has the meaning set forth in Paragraph E of the Recitals.
- (yy) "Investor Limited Partner" means Raymond James California Housing Opportunities Fund VI, L.L.C., a Florida limited liability company, its successors and assigns.
- (zz) "Lenders' Share of Residual Receipts" means seventy-five percent (75%) of Residual Receipts.
- (aaa) "Loan" has the meaning set forth in Paragraph Q of the Recitals.
- (bbb) "Memorandum of DDLA" means the Memorandum of Disposition, Development, and Loan Agreement, to be recorded against the Property at Close of Escrow.
- (ccc) "NEPA" has the meaning set forth in Paragraph T of the Recitals.
- (ddd) "Net Proceeds of Permanent Financing" means the amount by which Permanent Financing exceeds Final Development Costs.
- (eee) "Note" means the promissory note of even date herewith that evidences Borrower's obligation to repay the Loan.
- (fff) "Notice of Affordability Restrictions" means the Notice of Affordability Restrictions on Transfer of Property of even date herewith, between the County and Borrower to be recorded against the Property that will restrict the development and operation of the Property to affordable housing.
- (ggg) "Operating Reserve Account" has the meaning set forth in Section 5.1(b).
- (hhh) "Option to Purchase" has the meaning set forth in Section 7.4(a).
- (iii) "Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership between Borrower's general partner and the Investor Limited Partner that governs the operation and organization of Borrower as a California limited partnership.
- (jjj) "Partnership/Asset Fee" means: (i) partnership management fees (including any asset management fees) payable pursuant to the Partnership Agreement to any partner or affiliate of Borrower or any affiliate of a partner of Borrower, if any, during the Fifteen Year Compliance Period; and (ii) after expiration of the Fifteen Year Compliance Period, asset management fees payable to Borrower, in the amounts approved by the County as set forth in Section 4.19.
- (kkk) "Permanent Conversion" means the date the Bank Construction Loan converts to the Permanent Loan.
- (lll) "Permanent Loan" has the meaning set forth in Section 1.1(h)(i).

(mmm) "Permanent Financing" means the sum of the following amounts: (i) the Loan; (ii) the Permanent Loan; (iii) the CHDC LC Loan; (iv) the Sponsor Loan; (v) the Tax Credit Investor Equity; and (vi) the GP Capital Contribution.

(nnn) "Predevelopment Loan" has the meaning set forth in Paragraph O of the Recitals.

(ooo) "Project Area" has the meaning set forth in Paragraph B of the Recitals.

(ppp) "Property" has the meaning set forth in Paragraph D of the Recitals.

(qqq) "Purchase Price" has the meaning set forth in Section 2.2.

(rrr) "Redevelopment Plan" means the redevelopment plan entitled "North Richmond Redevelopment Project," which was recorded in the official records of Contra Costa County on March 15, 1999, as document number 99-0070071, as amended from time to time.

(sss) "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Borrower evidencing County requirements applicable to the Loan, to be recorded against the Property.

(ttt) "Released Parties" has the meaning set forth in 2.6(e).

(uuu) "Replacement Reserve Account" has the meaning set forth in Section 5.1(a).

(vvv) "Residual Receipts" means for each calendar year, the amount by which Gross Revenue exceeds Annual Operating Expenses.

(www) "Retention Amount" means Thirty Thousand Dollars (\$30,000) of the CDBG Loan, the disbursement of which is described in Section 3.7.

(xxx) "Security Financing Interest" has the meaning set forth in Section 8.1.

(yyy) "Security Financing Interest Assignment" has the meaning set forth in Section 8.4.

(zzz) "Senior Loan" has the meaning set forth in Section 3.5.

(aaaa) "Site" has the meaning set forth in Paragraph B of the Recitals.

(bbbb) "Sponsor Loan" has the meaning set forth in Section 1.1(h)(iii).

(cccc) "Statement of Residual Receipts" means an itemized statement of Residual Receipts.

(dddd) "Tax Credit Investor Equity" has the meaning set forth in Section 1.1(h)(ii).

(eeee) "TCAC" means the California Tax Credit Allocation Committee.

(ffff) "Term" means the period of time that commences on the date of this Agreement, and expires, unless sooner terminated in accordance with this Agreement, 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.

(gggg) "Title Company" means Old Republic Title Company.

(hhhh) "Title Report" means that certain preliminary title report dated October 12, 2017, issued by the Title Company for the Property.

(iiii) "Transfer" has the meaning set forth in Section 6.13 below.

### Section 1.2 Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A: Legal Description of the Property
- Exhibit B: Approved Development Budget
- Exhibit C: NEPA Mitigation Requirements

## ARTICLE 2 DISPOSITION OF PROPERTY

### Section 2.1 Purchase and Sale.

Provided the closing conditions set forth in Section 2.4 have been satisfied the County will sell to Borrower, and Borrower will purchase from the County, the Property pursuant to the terms, covenants, and conditions of this Agreement and the Grant Deed.

### Section 2.2 Purchase Price.

The purchase price for the Property is Four Hundred Sixty-Four Thousand Three Hundred Twenty-Five Dollars (\$464,325) (the "Purchase Price"). The Purchase Price equals the portion of the value of the Site attributed to the Property, based on the analysis set forth in the summary report prepared by the County pursuant to California Health and Safety Code Section 33433. The Purchase Price will be deemed paid to the County upon Borrower's execution of the Note.

### Section 2.3 Opening Escrow.

To accomplish the conveyance of the Property from the County to Borrower, the parties have established an escrow with the Title Company. The Parties will execute and deliver all written instructions to the Title Company to accomplish Close of Escrow, which instructions must be consistent with this Agreement.

Section 2.4 Close of Escrow.

The following conditions must be satisfied, or waived in writing by the County, prior to or concurrently with, and as conditions of, Close of Escrow:

- (a) The Board of Supervisors of the County has approved the Loan and the parties have negotiated and executed the County Documents and all other documents and instruments required to be executed and delivered, all in form and substance satisfactory to the County;
- (b) There exists no condition, event or act which would constitute a breach or default under this Agreement, the County Documents, or under any other project financing agreements or contracts related to the Development, or which, upon the giving of notice or the passage of time, or both, would constitute such a breach or default;
- (c) All representations and warranties of Borrower contained in this Agreement and in any of the County Documents are true and correct in all material respects as of Close of Escrow;
- (d) Borrower has provided the County with copies of Borrower's organizational documents and a certified copy of a Borrower's authorizing resolution, approving the transactions contemplated under the County Documents and all other Approved Financing, and authorizing Borrower's execution of the County Documents;
- (e) There exists no material adverse change in the financial condition of Borrower from that shown by the financial statements and other data and information furnished by Borrower to the County prior to the date of this Agreement;
- (f) Borrower has furnished the County with evidence of the insurance coverage meeting the insurance requirements set forth in Section 5.13;
- (g) The County has received and approved the general contractor's construction contract that the Borrower has entered or proposed to enter for the construction of the Improvements pursuant to Section 4.3 below;
- (h) The County has received and approved labor and material (payment) bonds and performance bonds as required pursuant to Section 4.4 below;
- (i) Borrower has obtained all permits and approvals necessary for the construction of the Improvements;
- (j) The County has received and approved the Bid Package for the subcontractors for the construction of the Improvements pursuant to Section 4.2 below;
- (k) Borrower has provided the County a certification from the Development architect or qualified accessibility specialist that the construction plans are in conformance with the Accessibility Requirements;
- (l) The County has received a fully executed copy of the Partnership

Agreement, in which the Investor Limited Partner is obligated to provide Borrower the Tax Credit Investor Equity;

(m) Borrower has closed the loans and the equity financings that comprise the Approved Financing described in Section 1.1(h)(i)-(v) and has already received, or is eligible to receive, the funds;

(n) The County has received a fully executed copy of the New Construction Agreement between Borrower and the Housing Authority governing the commitment of project-based section 8 rental assistance through the Rental Assistance Demonstration Program for forty-one (41) units in the Development by the Housing Authority;

(o) The County has determined the undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that Borrower has obtained in connection with the construction of the Improvements, are not less than the amount the County determines is necessary to pay for the acquisition of the Property and the construction of the Improvements and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement;

(p) All environmental review necessary for the construction of the Improvements has been completed, and Borrower has provided the County evidence of planned compliance with all NEPA and CEQA requirements and mitigation measures applicable to construction, and evidence of compliance with all NEPA and CEQA requirements and mitigation measures applicable to preconstruction;

(q) The Grant Deed and the Memorandum of DDLA have been, or concurrently with Close of Escrow, will be recorded against the Property; and

(r) Borrower has provided the County all information required by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 (<https://www.dir.ca.gov/pwc100ext/>).

#### Section 2.5 Condition of Title.

Upon Close of Escrow, Borrower will have insurable title to the Property which will be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (a) applicable building and zoning laws and regulations;
- (b) the provisions of the Redevelopment Plan;
- (c) the provisions of this Agreement (as disclosed by the Memorandum of DDLA) and the Grant Deed;
- (d) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed; and
- (e) exceptions in the Title Report approved by Borrower.

Section 2.6 Condition of Property.

(a) In fulfillment of the purposes of California Health and Safety Code Section 25359.7(a), the County hereby represents and warrants that it has no knowledge, and has no reasonable cause to believe, that any release of Hazardous Materials has come to be located on or beneath the Property, except as previously disclosed by the County to Borrower.

(b) "AS IS" PURCHASE. PRIOR TO THE DATE OF THIS AGREEMENT, BORROWER WAS PROVIDED THE OPPORTUNITY TO INVESTIGATE THE PROPERTY, AND HAS APPROVED THE PHYSICAL CONDITION OF THE PROPERTY. BORROWER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE COUNTY IS SELLING AND BORROWER IS BUYING THE PROPERTY (AND ALL IMPROVEMENTS THEREON) ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT BORROWER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE COUNTY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY; (D) 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; (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY; (F) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY; (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY; AND (H) THE CONDITION OF TITLE TO THE PROPERTY. BORROWER AFFIRMS THAT BORROWER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE COUNTY OR ANY OF ITS AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE COUNTY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. BORROWER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM

FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). BORROWER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(c) Survival. The terms and conditions of this Section expressly survive Close of Escrow, will not merge with the provisions of the Grant Deed, or any other closing documents and are deemed to be incorporated by reference into the Grant Deed. The County is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. Borrower acknowledges that the Purchase Price reflects the "as is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Borrower has fully reviewed the disclaimers and waivers set forth in this Agreement with Borrower's counsel and understands the significance and effect thereof.

(d) Acknowledgment. Borrower acknowledges and agrees that: (i) to the extent required to be operative, the disclaimers of warranties contained in this Section are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the Purchase Price has been adjusted to reflect the same and that the County would not have agreed to sell the Property to Borrower for the Purchase Price without the disclaimers and other agreements set forth in this Section.

(e) Borrower's Release of the County. Borrower, on behalf of itself and anyone claiming by, through or under Borrower hereby waives its right to recover from and fully and irrevocably releases the County, its board members, officers, directors, representatives, consultants, employees and agents (the "Released Parties") from any and all claims, responsibility and/or liability that Borrower may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (ii) any presence of Hazardous Materials; and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(f) Scope of Release. The release set forth in Section 2.6(e) above includes claims of which Borrower is presently unaware or which Borrower does not presently suspect to exist which, if known by Borrower, would materially affect Borrower's release of the Released Parties. Borrower specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, Borrower agrees, represents and warrants that Borrower realizes and acknowledges that factual matters now unknown to Borrower may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Borrower further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that

realization and that Borrower nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, Borrower, on behalf of itself and anyone claiming by, through or under Borrower, hereby assumes the above-mentioned risks and hereby expressly waives any right Borrower and anyone claiming by, through or under Borrower, may have under Section 1542 of the California Civil Code, which reads as follows:

**"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."**

**Borrower's Initials:** \_\_\_\_\_

Notwithstanding the foregoing, this release does not apply to, nor will the County be released from, the County's actual fraud or misrepresentation.

**Section 2.7 Costs of Escrow and Closing.**

Ad valorem taxes, if any, will be prorated as of the date of conveyance of the Property from the County to Borrower. Borrower must pay the cost of title insurance, transfer tax, Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, and any additional costs to close the escrow. The costs borne by Borrower are in addition to the Purchase Price for the Property.

**Section 2.8 Mandatory Language in All Subsequent Deeds, Leases and Contracts.**

(a) **Basic Requirement.** Borrower may not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code. Borrower or any person claiming under or through Borrower may not 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 Development. The foregoing covenant runs with the land.

(b) **Provisions in Conveyance Documents.** All deeds, leases or contracts made or entered into by Borrower, and its successor and assigns permitted under this Agreement, as to any portion of the Property must contain therein the following language:

(i) In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (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 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)."

(ii) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (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 leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises 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 premises 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)."

(iii) In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (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 the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of 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)."

ARTICLE 3  
LOAN PROVISIONS

Section 3.1 Loan.

(a) Upon satisfaction of the conditions set forth in Section 3.6 and Section 3.7 of this Agreement, the County shall lend to Borrower the Loan for the purposes set forth in Section 3.3 of this Agreement. Borrower's obligation to repay the Loan is evidenced by the Note. As of the date of this Agreement the total amount of the Predevelopment Loan has been disbursed.

Section 3.2 Interest.

(a) Subject to the provisions of subsection (b) below, simple interest will accrue on the outstanding principal balance of the Loan at a per annum rate of interest equal to three percent (3%), commencing on the date of disbursement.

(b) Upon the occurrence of an Event of a Default, interest on the outstanding principal balance of the Loan will begin to accrue, beginning on the date of such occurrence and continuing until the date the Loan is repaid in full or the Event of Default is cured, at the Default Rate.

Section 3.3 Use of Loan Funds.

(a) The CDBG Loan may only be used for acquisition, closing costs, permits, fees, and construction costs, consistent with the Approved Development Budget.

(b) One Million Six Hundred Seventy-Three Thousand Fifty-Four Dollars (\$1,673,054) of the Affordable Housing Fund Loan may only be used for construction costs, consistent with the Approved Development Budget. The remaining Four Hundred Forty Thousand Dollars (\$440,000) of the Affordable Housing Fund Loan may only be used to cover interest and other holding costs associated with the full drawn down of the Government Lender Note prior to January 1, 2018, consistent with the Approved Development Budget. Changes to the Approved Development Budget are subject to the requirements of Section 4.17 below.

(c) Borrower may not use the Loan proceeds for any other purposes without the prior written consent of the County.

Section 3.4 Security.

In consideration of the Loan, Borrower shall (i) secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and cause or permit it to be recorded as a lien against the Property, and (ii) execute the Regulatory Agreement and the Notice of Affordability Restrictions, and cause or permit them to be recorded against the Property, all such documents to be senior to the documents securing the Sponsor Loan and CHDC LC Loan.

Section 3.5 Subordination.

(a) Any agreement by the County to subordinate the Grant Deed, Memorandum of DDLA, Deed of Trust, Regulatory Agreement and/or Notice of Affordability Restrictions to an encumbrance securing and/or evidencing the Bank Construction Loan, the Permanent Loan, or any loan obtained by Borrower to refinance the Bank Construction Loan (collectively, the "Senior Loan") will be subject to the satisfaction of each of the following conditions:

(i) All of the proceeds of the Senior Loan, less any transaction costs, are used to provide acquisition, construction and/or permanent financing for the Development.

(ii) The lender of the Senior Loan is a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

(iii) Borrower demonstrates to the County's satisfaction that subordination of the Grant Deed, Memorandum of DDLA, Deed of Trust, Regulatory Agreement and/or Notice of Affordability is necessary to secure adequate acquisition, construction, and/or permanent financing to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by the County Documents. To satisfy this requirement, Borrower must provide to the County, in addition to any other information reasonably required by the County, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate acquisition, construction, and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

(iv) The subordination agreement(s) is structured to minimize the risk that the Deed of Trust, the Regulatory Agreement, and Notice of Affordability will be extinguished as a result of a foreclosure by the Bank or other holder of the Senior Loan. To satisfy this requirement, the subordination agreement must provide the County with adequate rights to cure any defaults by Borrower, including: (1) providing the County or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (2) providing the County with a cure period of at least sixty (60) days to cure any default.

(v) The subordination(s) of the Loan is effective only during the original term of the Senior Loan and any additional extension of its term that is approved in writing by the County.

(vi) The subordination does not limit the effect of the Deed of Trust, Regulatory Agreement, and Notice of Affordability before a foreclosure, nor require the consent of the holder(s) of the Senior Loan prior to the County exercising any remedies available to the County under the County Documents.

(vii) The requirements of Health and Safety Code Section 33334.14 are satisfied.

(b) Upon a determination by the County's Director – Department of Conservation and Development that the conditions in Subsection (a) have been satisfied, the Director – Department of Conservation and Development or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

(c) The County agrees to subordinate the Grant Deed, Memorandum of DDLA, Deed of Trust, Regulatory Agreement and Notice of Affordability to that certain Rental Assistance Demonstration (RAD) Use Agreement to be entered into between HUD and Borrower, pursuant to a form of subordination agreement provided by HUD and approved by the County.

### Section 3.6 Conditions Precedent to Disbursement of Loan Funds for Construction.

Until the conditions set forth in Section 3.7 have been met, the disbursements made pursuant to this Agreement may not exceed Four Million Nine Hundred Eighty-Three Thousand Fifty-Four Dollars (\$4,983,054). The County is not obligated to disburse any portion of the Loan, or to take any other action under the County Documents unless all of the following conditions have been and continue to be satisfied:

(a) There exists no Event of Default nor any act, failure, omission or condition that would constitute an Event of Default under this Agreement;

(b) Borrower holds title to the Property or is acquiring title to the Property simultaneously with the disbursement of the Loan proceeds;

(c) There exists no material adverse change in the financial condition of Borrower from that shown by the financial statements and other data and information furnished by Borrower to the County prior to the date of this Agreement;

(d) The Deed of Trust, the Regulatory Agreement, and the Notice of Affordability Restrictions, have been recorded against the Property in the Office of the Recorder of the County of Contra Costa;

(e) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing an LP-10 2006 ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require. The Borrower shall provide whatever documentation (including an indemnification agreement), deposits or surety is reasonably required by the title company in order for the County's Deed of Trust to be senior in lien priority to any mechanics liens in connection with any start of construction that has occurred prior to the recordation of the Deed of Trust against the Property in the Office of the Recorder of the County of Contra Costa; and

(f) The County has received a written draw request from Borrower, including: (i) certification that the condition set forth in Section 3.6(a) continues to be satisfied; (ii) certification that the proposed uses of funds is consistent with the Approved Development

Budget; (iii) the amount of funds needed; and, (iv) where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with improvements on the Property, the written request must be accompanied by: (1) certification by the Borrower's architect reasonably acceptable to the County that the work for which disbursement is requested has been completed (although the County reserves the right to inspect the Property and make an independent evaluation); and (2) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the County.

Section 3.7 Conditions Precedent to Disbursement of Retention.

The County is not obligated to disburse the Retention Amount unless the following conditions precedent are satisfied:

(a) The County has received a completion report from Borrower setting forth: (i) the income, household size, race, and ethnicity of tenants of the County-Assisted Units; (ii) and the unit address, unit size, rent amount and utility allowance for all County-Assisted Units;

(b) The County has received a draft Cost Certification for the Development from Borrower showing all uses and sources;

(c) The County has received from Borrower copies of the certificate of occupancy or equivalent final permit sign-offs for the Development;

(d) The County has received from Borrower current evidence of the insurance coverage meeting the requirements of Section 5.13 below;

(e) The County has received from Borrower a form of lease for tenants occupying the Development;

(f) The County has received from Borrower a Marketing Plan and Tenant Selection Plan as defined in the Regulatory Agreement;

(g) The County has received a copy of a social services plan and social services budget for the provision of social services to Tenants;

(h) The County has received from Borrower evidence of marketing for any vacant County-Assisted Unit in the Development such as copies of flyers, list of media ads, list of agencies and organizations receiving information on availability of such units, as applicable;

(i) The County has received from Borrower all relevant contract activity information, including compliance with Section 3 requirements as set forth in Section 4.6(b)(x) of the Regulatory Agreement, and minority-owned (MBE) and women-owned (WBE) business requirements;

(j) If Borrower was required to comply with relocation requirements as set forth in Section 4.6(b)(vi) of the Regulatory Agreement, the County has received from Borrower evidence of compliance with all applicable relocation requirements;

(k) The County has received from Borrower a copy of the management agreement and contact information for the property manager of the Development and the name and phone number of the on-site property manager;

(l) If Borrower is required to pay prevailing wages under the Davis-Bacon Act (40 U.S.C. 3141-3148) by the HUD regulations governing the Loan, the County has received confirmation that Borrower has submitted all certified payrolls to the County, and any identified payment issues have been resolved, or Borrower is working diligently to resolve any such issues;

(m) The County has received from Borrower evidence of compliance with the state prevailing wage provisions set forth in Section 4.9(b) below.

(n) The County has received from Borrower evidence of compliance with all NEPA mitigation requirements as set forth in Exhibit C;

(o) The County has received a fully executed copy of the Housing Assistance Payment Contract between Borrower and the Housing Authority governing the provision of project-based section 8 rental assistance through the Rental Assistance Demonstration Program for forty-one (41) units in the Development by the Housing Authority; and

(p) The County has received a written draw request from Borrower, including certification that the condition set forth in Section 3.6(a) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development Budget, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. Borrower shall apply the disbursement for the purpose(s) requested.

### Section 3.8 Repayment Schedule.

(a) Annual Payments of Loan. Commencing on June 1, 2020 and on June 1 of each year thereafter during the Term, Borrower shall make a Loan payment in an amount equal to Lenders' Share of Residual Receipts (each such payment, an "Annual Payment"). The County shall apply all Annual Payments first, to accrued interest; and second, to principal.

(b) Special Repayments of Loan from Net Proceeds of Permanent Financing. No later than ten (10) days after the date Borrower receives its final capital contribution from the Investor Limited Partner, Borrower shall pay to the County as a special repayment of the Loan, an amount equal to the Available Net Proceeds. No later than one hundred eighty (180) days following completion of construction of the Improvements, Borrower shall submit to the County for its review a preliminary calculation of the Net Proceeds of Permanent Financing and a draft of the Final Cost Certification as defined Section 5.2 below. The County shall approve or disapprove Borrower's determination of the amount of the Net Proceeds of Permanent Financing in writing within thirty (30) days after receipt. If Borrower's determination is disapproved by the County, Borrower shall re-submit documentation to the County until the County approval is obtained.

(c) Payment in Full of Loan. Borrower shall pay all outstanding principal and accrued interest on the Loan, in full, on the earliest to occur of: (i) any Transfer other than as permitted pursuant to Section 5.12; (ii) an Event of Default; and (iii) the expiration of the Term.

(d) Prepayment. Borrower may prepay the Loan at any time without premium or penalty. However, the Regulatory Agreement, the Notice of Affordability Restrictions and the Deed of Trust will remain in effect for the entire Term, regardless of any prepayment or Transfer.

Section 3.9 Reports and Accounting of Residual Receipts.

(a) Borrower shall keep and maintain at the principal place of business of the Borrower set forth in Section 9.9 below, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts and disbursements of Residual Receipts.

(b) In connection with the Annual Payment, Borrower shall furnish to the County:

(i) The Statement of Residual Receipts for the relevant period. The first Statement of Residual Receipts will cover the period that begins on January 1, 2019 and ends on December 31st of that same year. Subsequent statements of Residual Receipts will cover the twelve-month period that ends on December 31 of each year;

(ii) A statement from the independent public accountant that audited the Borrower's financial records for the relevant period, which statement must confirm that Borrower's calculation of the Lenders' Share of Residual Receipts is accurate based on Gross Revenue and Annual Operating Expenses; and

(iii) Any additional documentation reasonably required by the County to substantiate Borrower's calculation of Lenders' Share of Residual Receipts.

(c) The receipt by the County of any statement pursuant to subsection (b) above or any payment by Borrower or acceptance by the County of any Loan repayment for any period does not bind the County as to the correctness of such statement or payment. The County may audit the Residual Receipts and all books, records, and accounts pertaining thereto pursuant to Section 5.5 below.

Section 3.10 Non-Recourse.

Except as provided below, neither Borrower, nor any partner of Borrower, has any direct or indirect personal liability for payment of the principal of, and interest on, the Loan. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the principal of, or interest on, the Note will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability limits or impairs the enforcement of all the rights and remedies of the County against all such security for the Note, or impairs the right of County to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation to repay the principal and interest on the Note. Except as hereafter set forth; nothing contained herein is intended to relieve Borrower of its obligation to indemnify the County under

the County Documents including but not limited to Sections 4.9, 4.10, 5.6, and 9.4 of this Agreement and Sections 2.1(e) and 4.6(b)(vi), of the Regulatory Agreement, or liability for: (i) loss or damage of any kind resulting from waste, fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

#### ARTICLE 4 CONSTRUCTION OF THE IMPROVEMENTS

##### Section 4.1 Permits and Approvals.

Borrower shall obtain all permits approvals necessary for the construction of the Improvements no later than January 15, 2018, or such later date that the County approves in writing.

##### Section 4.2 Bid Package.

Not later than thirty (30) days prior to Borrower's proposed date for advertising the Bid Package, Borrower shall submit to the County a copy of Borrower's general contractor's proposed Bid Package. The County's Director, Department of Conservation and Development, or his or her designee, shall approve or disapprove the Bid Package within fifteen (15) days after receipt of the Bid Package by the County. If the County rejects the proposed Bid Package the reasons therefore must be given to Borrower. The Borrower will then have fifteen (15) days to revise the proposed Bid Package and resubmit it to the County. The County will then have fifteen (15) days to review and approve Borrower's new or corrected Bid Package. The provisions of this Section will continue to apply until a proposed Bid Package has been approved by the County. Borrower may not publish a proposed Bid Package until it has been approved by the County.

##### Section 4.3 Construction Contract.

(a) Not later than fifteen (15) days prior to the proposed Commencement of Construction, Borrower shall submit to the County for its approval a draft of the proposed construction contract for the Improvements. All construction work and professional services are to be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California. Each contract that Borrower enters for construction of the Improvements is to provide that at least ten percent (10%) of the costs incurred will be payable only upon completion of the construction, subject to early release of retention for specified subcontractors upon approval by the County. The construction contract must include all applicable CDBG requirements set forth in Section 4.6 of the Regulatory Agreement, and all requirements regarding the payment of prevailing wages required to be included in construction contracts pursuant to California Labor Code Section 1720 et seq. The



County's approval of the construction contract may not be deemed to constitute approval of or concurrence with any term or condition of the construction contract except as such term or condition may be required by this Agreement.

(b) Upon receipt by the County of the proposed construction contract, the County shall promptly review same and approve or disapprove it within ten (10) days. If the construction contract is not approved by the County, the County shall set forth in writing and notify Borrower of the County's reasons for withholding such approval. Borrower shall thereafter submit a revised construction contract for County approval, which approval is to be granted or denied in ten (10) days in accordance with the procedures set forth above. Any construction contract executed by Borrower for the Improvements is to be in the form approved by the County.

#### Section 4.4 Construction Bonds.

Not later than thirty (30) days prior to the proposed Commencement of Construction Borrower shall deliver to the County copies of labor and material bonds and performance bonds for the construction of the Improvements in an amount equal to one hundred percent (100%) of the scheduled cost of the construction of the Improvements. Such bonds must name the County as a co-obligee.

#### Section 4.5 Commencement of Construction.

Borrower shall cause the Commencement of Construction of the Improvements to occur no later than March 1, 2018, or such later date that the County approves in writing, but in no event later than 1 year from date of this Agreement. For the purposes of this Agreement, "Commencement of Construction" means the date set for the start of construction of the Improvements in the notice to proceed issued by Borrower to Borrower's general contractor. Borrower shall record a parcel map mirroring the metes and bounds division of the Site, and including all applicable County subdivision requirements, prior to Commencement of Construction.

#### Section 4.6 Completion of Construction.

(a) Borrower shall diligently prosecute construction of the Improvements to completion, and shall cause the construction of the Improvements to be completed no later than September 1, 2019, or such later date that the County approves in writing.

(b) Borrower shall give notice to the County upon completion of construction of the Improvements. Upon receipt of such notice the County will perform an inspection of the Improvements to determine if the Improvements were constructed in accordance with this Agreement. If the County determines the Improvements were not constructed in accordance with this Agreement, the County will provide Borrower with a written report of the deficiencies. Borrower shall correct such deficiencies within the timeframe set forth in the notice provided to Borrower by the County. The Development may not be occupied until such deficiencies have been corrected to the satisfaction of the County.

Section 4.7 Certificate of Completion.

Promptly after completion of the Improvements in accordance with the provisions of this Agreement the County will provide Borrower a Certificate of Completion certifying to the completion of the Improvements. The Certificate of Completion will be conclusive determination that the covenants in this Agreement with respect to the obligations of Borrower to construct the Improvements (excluding Borrower's compliance with Section 4.9) and the dates for the beginning and completion of construction have been met. The Certificate of Completion will be in such form as will enable it to be recorded against the Property in the official records of Contra Costa County. The Certificate of Completion will not constitute evidence of compliance with or satisfaction of any obligation of Borrower: (a) to any holder of a Security Financing Interest; (b) to pay prevailing wages; and (c) to rent the County-Assisted Units in accordance with the terms of this Agreement and the Regulatory Agreement. The Certificate of Completion may not be deemed a notice of completion under the California Civil Code.

Section 4.8 Changes; Construction Pursuant to Plans and Laws.

(a) Changes. Borrower shall construct the Improvements in conformance with (i) the plans and specifications approved by the County's Building Department, and (ii) the Approved Development Budget. Borrower shall notify the County in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the plans and specifications approved by the County's Building Department. Written authorization from the County must be obtained before any of the following changes, additions, or deletions in work for the Improvements may be performed: (i) any change in the work the cost of which exceeds Fifty Thousand Dollars (\$50,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds One Hundred Thousand Dollars (\$100,000) or ten percent (10%) of the Loan amount, whichever is less; or (iii) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Improvements as provided for in the plans and specifications approved by the County. The County's consent to any additions, changes, or deletions to the work does not relieve or release Borrower from any other obligations under this Agreement, or relieve or release Borrower or its surety from any surety bond.

(b) Compliance with Laws. Borrower shall cause all work performed in connection with the Development to be performed in compliance with:

(i) all applicable laws, codes (including building codes and codes applicable to mitigation of disasters such as earthquakes), ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter; and

(ii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. Borrower may permit the work to proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower is responsible to the County for the procurement and maintenance thereof.

Section 4.9 Prevailing Wages.

(a) Davis Bacon. Borrower shall cause construction of the Improvements to be in compliance with the prevailing wage requirements of the federal Davis-Bacon Act (40 U.S.C. 3141-3148). Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations in connection with the construction of the Improvements or any other work undertaken or in connection with the Property. The requirements in this subsection survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

(b) State Prevailing Wages.

(i) Borrower shall:

(1) pay, and shall cause any consultants or contractors to pay, prevailing wages in the construction of the Improvements as those wages are determined pursuant to California Labor Code Section 1720 et seq.;

(2) cause any consultants or contractors to employ apprentices as required by California Labor Code Section 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"), and to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., and implementing regulations of the DIR;

(3) keep and retain, and shall cause any consultants and contractors to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed are required by California Labor Code Section 1777.5 et seq.;

(4) post at the Property, or shall cause the contractor to post at the Property, the applicable prevailing rates of per diem wages. Copies of the currently applicable current per diem prevailing wages are available from DIR;

(5) cause contractors and subcontractors constructing the Improvements to be registered as set forth in California Labor Code Section 1725.5 and provide County evidence of such registration including all registration numbers, the name of all contractors and subcontractors;

(6) cause all contracts to include the requirements set forth in California Labor Code Section 1720 et seq. including a copy of the California Labor Code Section Sections listed in California Labor Code Section 1775(b)(1);

(7) cause its contractors and subcontractors, in all calls for bids, bidding materials and the construction contract documents for the construction of the Improvements to specify that:

(A) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the construction of the Improvements unless registered with the DIR pursuant to California Labor Code Section 1725.5; and

(B) the construction of the Improvements is subject to compliance monitoring and enforcement by the DIR.

(8) provide the County all information required by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of any contract (<https://www.dir.ca.gov/pwc100ext/>);

(9) cause its contractors to post job site notices, as prescribed by Title 8 California Code of Regulations 16451(d), or otherwise as required by the DIR; and

(10) cause its contractors to furnish payroll records required by California Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

(ii) Borrower shall also comply with the requirements of County Resolution No. 88-9 regarding the payment of prevailing wages (the "County Local Prevailing Wage Requirement").

(iii) Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its contractor and subcontractors) to comply with the County Local Prevailing Wage Requirement, to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., to meet the conditions of California Labor Code Section 1771.4, and implementing regulations of the DIR, or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and 1771.4, and the implementing regulations of the DIR, in connection with the construction of the Improvements or any other work undertaken or in connection with the Property. The requirements in this Section survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

#### Section 4.10 Accessibility.

(a) Borrower shall cause the Improvements to be constructed and operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable 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, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(b) In compliance with the Accessibility Requirements, a minimum of three (3) units in the Development must be constructed to be fully accessible to households with a mobility impaired member and an additional one (1) unit in the Development must be

constructed to be fully accessible to hearing and/or visually impaired persons. In compliance with the Accessibility Requirements Borrower shall provide the County with a certification from the Development architect that to the best of the architect's knowledge, the Improvements comply with all federal and state accessibility requirements applicable to the Improvements.

(c) Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its architect, contractor and subcontractors) to construct the Improvements in accordance with the Accessibility Requirements. The requirements in this Subsection survive repayment of the Loan and the reconveyance of the Deed of Trust.

#### Section 4.11 Equal Opportunity.

During the construction of the Improvements discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work is not allowed.

#### Section 4.12 Minority and Women-Owned Contractors.

Borrower shall use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the construction of the Improvements. Borrower shall, at a minimum, notify applicable minority-owned and women-owned business firms located in Contra Costa County of bid opportunities for the construction of the Improvements. A listing of minority owned and women owned businesses located in the County and neighboring counties is available from the County. Documentation of such notifications must be maintained by Borrower and available to the County upon request.

#### Section 4.13 Progress Reports.

Until such time as Borrower has completed construction of the Improvements, as evidenced by the Certificate of Completion, Borrower shall provide the County with quarterly progress reports regarding the status of the construction of the Improvements, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time pursuant to Section 4.17 below.

#### Section 4.14 Construction Responsibilities.

(a) Borrower is responsible for the coordination and scheduling of the work to be performed so that commencement and completion of the construction of the Improvements takes place in accordance with this Agreement.

(b) Borrower is solely responsible for all aspects of Borrower's conduct in connection with the Improvements, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the

County with reference to the Improvements is solely for the purpose of determining whether Borrower is properly discharging its obligations to the County, and may not be relied upon by Borrower or by any third parties as a warranty or representation by the County as to the quality of the design or construction of the Improvements.

Section 4.15 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on the County or any other lender or other third party in connection with the Improvements, then Borrower shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the County a surety bond in sufficient form and amount, or provide the County with other assurance satisfactory to the County that the claim of lien or stop notice will be paid or discharged.

(b) If Borrower fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the County may (but is under no obligation to) discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternately, the County may require Borrower to immediately deposit with the County the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The County may use such deposit to satisfy any claim or lien that is adversely determined against Borrower.

(c) Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Improvements for a continuous period of thirty (30) days or more, and take all other steps necessary to forestall the assertion of claims of lien against the Property. Borrower authorizes the County, but the County has no obligation, to record any notices of completion or cessation of labor, or any other notice that the County deems necessary or desirable to protect its interest in the Development and Property.

Section 4.16 Inspections.

Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the County and by public authorities during reasonable business hours during the Term, for the purposes of determining compliance with this Agreement.

Section 4.17 Approved Development Budget; Revisions to Budget.

As of the date of this Agreement, the County has approved the Approved Development Budget set forth in Exhibit B. Borrower shall submit any required amendments to the Approved Development Budget to the County for approval, within five (5) days after the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget, or if Borrower requests any change to the previously authorized use of the Loan. Written consent of the County will be required to amend the Approved Development Budget.

Section 4.18 Developer Fee.

The maximum cumulative Developer Fee that may be paid to any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, is not to exceed the amount allowed by TCAC and as approved by the County. For the purposes of this Agreement "Developer Fee" has the meaning set forth in California Code of Regulations, Title 4, Section 10302(l). The total of Developer Fee paid, whether paid up-front out of development sources or on a deferred basis out of Annual Operating Expenses, is not to exceed Three Million One Hundred Ninety-Six Thousand Two Hundred Twenty-One Dollars (\$3,196,221). At least One Million One Hundred Forty-Eight Thousand Two Hundred Twenty-One Dollars (\$1,148,221) of the Developer Fee earned by the Developer shall be contributed to the Partnership at Permanent Conversion. The amount of Developer Fee payable to the Developer out of development sources shall not exceed One Million Two Hundred Thirty-Five Thousand Dollars (\$1,235,000).

Section 4.19 Partnership/Asset Fee.

During the Fifteen Year Compliance Period, the Partnership/Asset Fee is not to exceed Thirty Thousand Dollars (\$30,000) per year. After the expiration of the Fifteen Year Compliance Period, the Partnership/Asset Fee is not to exceed Twenty-Five Thousand Dollars (\$25,000) per year.

Section 4.20 NEPA Mitigation Requirements.

Borrower shall comply with the NEPA mitigation requirements set forth in the attached Exhibit C in the construction of the Improvements.

ARTICLE 5  
LOAN REQUIREMENTS

Section 5.1 Reserve Accounts.

(a) Replacement Reserve Account. Borrower shall establish and maintain an account that is available for capital expenditures for repairs and replacement necessary to maintain the Development in the condition required by the County Documents (the "Replacement Reserve Account"). Borrower shall make annual deposits to the Replacement Reserve Account in the amounts required in the Partnership Agreement and/ or the documents evidencing the Permanent Loan, whichever is greater. In no event shall the annual amount deposited in the Replacement Reserve Account exceed Six Hundred Dollars (\$600) per unit, increasing by the applicable consumer price index every five (5) years, or such greater amount required in connection with the Partnership Agreement or any permanent financing, and approved by the County.

(b) Operating Reserve Account. Borrower shall establish and maintain an account that is available to fund operating deficits (which is the amount by which Annual Operating Expenses exceed Gross Revenue for any period) (the "Operating Reserve Account"). Borrower shall capitalize the Operating Reserve Account in the amount required by TCAC

(currently three months of Annual Operating Expenses); provided, however that if the Partnership Agreement or the documents evidencing the Permanent Loan require the Operating Reserve Account to be capitalized in an amount greater than the TCAC requirement, Borrower shall capitalize the Operating Reserve Account as required by the Partnership Agreement or the documents evidencing the Permanent Loan, as applicable, for as long as the Partnership Agreement or the Permanent Loan, as applicable, is outstanding. In no event may the amount held in the Operating Reserve Account exceed six (6) months gross rent from the Development (as such rent may vary from time to time) which limitation does not include amounts held in any other reserves required for the Development.

#### Section 5.2 Financial Accountings and Post-Completion Audits.

(a) No later than ninety (90) days following completion of construction of the Improvements, Borrower shall provide to the County for its review and approval a financial accounting of all sources and uses of funds for the construction of the Improvements.

(b) No later than one hundred twenty (120) days after Permanent Conversion, Borrower shall submit an audited financial report showing the sources and uses of all funds utilized for the construction of the Improvements. This requirement may be satisfied by providing the Final Cost Certification to the County. "Final Cost Certification" means the Final Cost Certification Sources and Uses of Funds prepared by Borrower for the Development that: (i) Borrower submits to TCAC; and (ii) has been prepared using generally accepted accounting standards in effect in the United States of America from time to time, consistently applied.

#### Section 5.3 Approval of Annual Operating Budget.

At the beginning of each year of the Term, Borrower shall provide to the County an annual budget for the operation of the Development. The County may request additional information to assist the County in evaluating the financial viability of the Development. Unless rejected by the County in writing within thirty (30) days after receipt of the budget, the budget will be deemed accepted. If rejected by the County in whole or in part, Borrower shall submit a new or corrected budget within thirty (30) calendar days after notification of the County's rejection and the reasons therefor. The provisions of this Section relating to time periods for resubmission of new or corrected budgets will continue to apply until such budget has been approved by the County.

#### Section 5.4 Information.

Borrower shall provide any information reasonably requested by the County in connection with the Development, including (but not limited to) any information required by HUD or the state of California in connection with Borrower's use of the Loan funds.

#### Section 5.5 County Audits.

(a) Each year, Borrower shall provide the County with a copy of Borrower's annual audit, which is to include information on all of Borrower's activities and not just those pertaining to the Development.



(b) In addition, the County may, at any time, audit all of Borrower's books, records, and accounts pertaining to the Development including but not limited to the Residual Receipts of the Development. Any such audit is to be conducted during normal business hours at the principal place of business of Borrower and wherever records are kept. Immediately after the completion of an audit, the County shall deliver a copy of the results of the audit to Borrower.

(c) If it is determined as a result of an audit that there has been a deficiency in a loan repayment to the County then such deficiency will become immediately due and payable, with interest at the Default Rate from the date the deficient amount should have been paid. In addition, if the audit determines that Residual Receipts have been understated for any year by the greater of: (i) Two Thousand Five Hundred Dollars (\$2,500); and (ii) an amount that exceeds five percent (5%) of the Residual Receipts, then, in addition to paying the deficiency with interest, Borrower shall pay all of the County's costs and expenses connected with the audit and review of Borrower's accounts and records.

#### Section 5.6 Hazardous Materials.

(a) Upon transfer of the Property, Borrower shall keep and maintain the Property and the Development (including but not limited to, soil and ground water conditions) in compliance with all Hazardous Materials Laws and may not cause or permit the Property and the Development to be in violation of any Hazardous Materials Law. Borrower may not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of any Hazardous Materials, except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential property of this type.

(b) Borrower shall immediately advise the County in writing if at any time it receives written notice of any Hazardous Materials Claims, and Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law including but not limited to the provisions of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith.

(c) The County has the right to join and participate in, as a party if it so elects, and be represented by counsel acceptable to the County (or counsel of its own choice if a conflict exists with Borrower) in 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 Borrower.

(d) Borrower shall indemnify and hold harmless the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or alleged past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or alleged past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; (iv) any investigation, cleanup, remediation, removal, or restoration work of site

conditions of the Property relating to Hazardous Materials (whether on the Property or any other property); and (v) the breach of any representation of warranty by or covenant of Borrower in this Section 5.6, and Section 6.1(l). Such indemnity shall include, without limitation: (x) all consequential damages; (y) the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by the County in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property, (2) loss or restriction of use of rentable space on the Property, (3) adverse effect on the marketing of any rental space on the Property, and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify will survive termination of this Agreement and will not be diminished or affected in any respect as a result of any notice, disclosure, knowledge, if any, to or by the County of Hazardous Materials.

(e) Without the County's prior written consent, which will not be unreasonably withheld, Borrower may not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the County's judgment, impair the value of the County's security hereunder; provided, however, that the County's prior consent is not necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the County's consent before taking such action, provided that in such event Borrower shall notify the County as soon as practicable of any action so taken. The County agrees not to withhold its consent, where such consent is required hereunder, if: (i) a particular remedial action is ordered by a court of competent jurisdiction; (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the satisfaction of the County that there is no reasonable alternative to such remedial action which would result in less impairment of the County's security hereunder; or (iv) the action has been agreed to by the County.

(f) Borrower hereby acknowledges and agrees that: (i) this Section is intended as the County's written request for information (and Borrower's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5; and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(g) 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 County's or the trustee's rights and remedies under the Deed of Trust, the County may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to: (i) waive its lien on such environmentally impaired or affected portion of the Property; and (ii) exercise, (1) the rights and remedies of an unsecured creditor, including reduction of its claim against Borrower to judgment, and (2) any other rights and remedies permitted by law. For purposes of determining the County's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Borrower will 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 Borrower 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) attorneys' fees, incurred by the County 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, until paid, will be added to the indebtedness secured by the Deed of Trust and is due and payable to the County upon its demand made at any time following the conclusion of such action.

#### Section 5.7 Maintenance; Damage and Destruction.

(a) During the course of both construction of the Improvements and operation of the Development, Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition, and in accordance with the Regulatory Agreement.

(b) Subject to the requirements of senior lenders, and if economically feasible in the County's judgment after consultation with Borrower, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the County with such changes as have been approved by the County. Such work or repair is to be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the County in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance or condemnation proceeds, and is to be complete within one (1) year thereafter. Any insurance or condemnation proceeds collected for such damage or destruction are to be applied to the cost of such repairs or restoration and, if such insurance or condemnation proceeds are insufficient for such purpose, then Borrower shall make up the deficiency. If Borrower does not promptly make such repairs then any insurance or condemnation proceeds collected for such damage or destruction are to be promptly delivered by Borrower to the County as a special repayment of the Loan, subject to the rights of the senior lenders, if any.

#### Section 5.8 Fees and Taxes.

Borrower is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development, and shall pay such charges prior to delinquency and at such times and in such

manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property. Borrower is also solely responsible for payment of all personal property taxes, and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property.

However, Borrower is not required to pay and discharge any such charge so long as: (i) the legality thereof is being contested diligently and in good faith and by appropriate proceedings; and (ii) if requested by the County, Borrower deposits with the County any funds or other forms of assurance that the County in good faith from time to time determines appropriate to protect the County from the consequences of the contest being unsuccessful.

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.

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.

Section 5.9 Notice of Litigation.

Borrower shall promptly notify the County in writing of any litigation that has the potential to materially affect Borrower or the Property and of any claims or disputes that involve a material risk of such litigation.

Section 5.10 Operation of Development as Affordable Housing.

(a) Borrower shall operate the Development (i) in accordance with all applicable laws, codes, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (ii) as an affordable housing development consistent with: (1) HUD's requirements for use of CDBG Funds; (2) the applicable requirements of the Community Redevelopment Law; (3) the Regulatory Agreement; (4) any other regulatory requirements imposed on Borrower including but not limited to regulatory agreements associated with the Low Income Housing Tax Credits provided by TCAC; and (5) any regulatory requirements imposed on Borrower related to the rental subsidies provided to the Development.

Section 5.11 Nondiscrimination.

(a) Consistent with Section 2.8 above, Borrower covenants by and for itself and its successors and assigns that there will be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age (except for lawful senior housing in accordance with state and federal law), familial status, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor may 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, subtenants, sublessees or vendees in the Property. The foregoing covenant will run with the land.

(b) Nothing in this Section prohibits Borrower from requiring the County-Assisted Units in the Development to be available to and occupied by income eligible households in accordance with the Regulatory Agreement.

#### Section 5.12 Transfer.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (i) any rights and/or duties under this Agreement; and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title. The term "Transfer" excludes the leasing of any single unit in the Development to an occupant in compliance with the Regulatory Agreement. The County Director – Department of Conservation and Development is authorized to execute assignment and assumption agreements on behalf of the County to implement any approved Transfer.

(b) Except as otherwise permitted in this Section 5.12, no Transfer is permitted without the prior written consent of the County, which the County may withhold in its sole discretion. The Loan will automatically accelerate and be due in full upon any Transfer made without the prior written consent of the County.

(c) The County hereby approves future Transfers of the limited partner interest of Borrower provided that: (i) such Transfers do not affect the timing and amount of the Investor Limited Partner capital contributions provided for in the Partnership Agreement; and (ii) in subsequent Transfers, the Investor Limited Partner or an affiliate thereof, retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner.

(d) The County hereby approves a Transfer of the Property from Borrower to CHDC, or a controlled affiliate of CHDC, and an assumption of the Loan by such transferee at the end of the Fifteen Year Compliance Period, provided that: (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, and (ii) the transferee expressly assumes the obligations of Borrower under the County Documents, utilizing a form of assignment and assumption agreement provided by the County.

(e) The County hereby approves the purchase of the Investor Limited Partner interest by CHDC, or controlled affiliate of CHDC at the end of the Fifteen Year Compliance Period, provided that such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement.

(f) In the event the general partner of Borrower is removed by the limited partner of Borrower for cause following default under the Partnership Agreement, the County

hereby approves the removal of the general partner and the Transfer of the general partner interest to (i) a 501(c)(3) tax exempt nonprofit corporation or other entity with a 501(c)(3) tax exempt nonprofit corporation member or partner, that is selected by the Investor Limited Partner and approved by the County, and (ii) the Investor Limited Partner or an affiliate thereof, but only for a period not to exceed ninety (90) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of subsection (i) above.

(g) The County hereby approves the grant of the security interests in the Development for Approved Financing.

#### Section 5.13 Insurance Requirements.

(a) Borrower shall maintain the following insurance coverage throughout the Term of the Loan:

(i) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(ii) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(iii) Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(iv) Builders' Risk insurance during the course of construction, and upon completion of construction, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the County, naming the County as a Loss Payee, as its interests may appear. Flood insurance must be obtained if required by applicable federal regulations.

(v) Commercial crime insurance covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount approved by the County, naming the County a Loss Payee, as its interests may appear.

(b) Borrower shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with Borrower or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (i), (ii), and (iii) above, except that the limit of liability for commercial general liability insurance for subcontractors must be One Million Dollars (\$1,000,000), and must require that such insurance will meet all of the general requirements of subsections (d) and (e) below.

(c) The required insurance must be provided under an occurrence form, and

Borrower shall maintain the coverage described in subsection (a) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit must be three times the occurrence limits specified above.

(d) Commercial General Liability, Automobile Liability and Property insurance policies must be endorsed to name as an additional insured the County and its officers, agents, employees and members of the County Board of Supervisors.

(e) All policies and bonds are to contain: (i) the agreement of the insurer to give the County at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the County; (iii) a provision that no act or omission of Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver by the insurer of all rights of subrogation against the County and its authorized parties in connection with any loss or damage thereby insured against.

Section 5.14 Covenants Regarding Approved Financing and Partnership Agreement.

(a) Borrower shall promptly pay the principal and interest when due on any Approved Financing.

(b) Borrower shall promptly notify the County in writing of the existence of any default under any documents evidencing Approved Financing whether or not a default has been declared by the lender, and any defaults under the Partnership Agreement, and provide the County copies of any notice of default.

(c) Borrower may not amend, modify, supplement, cancel or terminate the Partnership Agreement or any documents related to any loan that is part of the Approved Financing without the prior written consent of the County except for amendments solely to effectuate Transfers permitted under Section 5.12 above. Borrower shall provide the County copies of all amendments, modifications, and supplements to the Partnership Agreement and any document related to any loan that is part of the Approved Financing.

(d) Borrower may not incur any indebtedness of any kind other than Approved Financing or encumber the Development with any liens (other than liens for Approved Financing approved by the County) without the prior written consent of the County.

(e) The Partnership Agreement may not include any provisions that conflict with the provisions of this Agreement, including, without limitation, the Residual Receipts definition and the payment provisions of Section 3.8 above. To the extent the Partnership Agreement is inconsistent with this Agreement with respect to the repayment of the Loan, this Agreement will control. Any payments made in conflict with the Residual Receipts definition and payment requirements of this Agreement will be considered an Event of Default.

ARTICLE 6  
REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 6.1 Representations and Warranties.

Borrower hereby represents and warrants to the County as follows and acknowledges, understands, and agrees that the representations and warranties set forth in this Article 5 are deemed to be continuing during all times when any portion of the Loan remains outstanding:

(a) Organization. Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the County Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

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

(d) Valid Binding Agreements. The County Documents and all other documents or instruments executed and delivered 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 Borrower enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of the County Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will: (i) 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 whatsoever that is binding on Borrower, or conflict with any provision of the organizational documents of Borrower, or conflict with any agreement to which Borrower is a party; or (ii) result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(f) Compliance with Laws; Consents and Approvals. The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government



or agency.

(g) Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to construct the Improvements, repay the Loan, or impair the security to be given to the County pursuant hereto.

(h) Title to Land. At the time of recordation of the Deed of Trust, Borrower will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens shown on the County's title policy provided pursuant to Section 3.6(e) above, or approved in writing by the County.

(i) Financial Statements. The financial statements of Borrower and other financial data and information furnished by Borrower to the County fairly and accurately present the information contained therein. As of the date of this Agreement, there has not been any material adverse change in the financial condition of Borrower from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Borrower holds sufficient funds and/or binding commitments for sufficient funds to complete the acquisition of the Property and the construction of the Improvements in accordance with the terms of this Agreement.

(k) Taxes. Borrower and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or the Property otherwise due and payable, except those that are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. There is no proposed tax assessment against Borrower or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect on the property, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of Borrower and its subsidiaries, taken as a whole, or which could result in (i) a material impairment of the ability of Borrower to perform under any loan document to which it is a party, or (ii) a material adverse effect upon the legality, validity, binding effect or enforceability against Borrower of any Loan Document.

(l) Hazardous Materials. To the best of Borrower's knowledge, except as disclosed in writing by Borrower to the County prior to the date of this Agreement: (i) no Hazardous Material has been disposed of, stored on, discharged from, or released to or from, or otherwise now exists in, on, under, or around, the Property; (ii) neither the Property nor Borrower is in violation of any Hazardous Materials Law; and (iii) neither the Property nor Borrower is subject to any existing, pending or threatened Hazardous Materials Claims.

ARTICLE 7  
DEFAULT AND REMEDIES

Section 7.1 Events of Default.

Any one or more of the following constitutes an "Event of Default" by Borrower under this Agreement:

(a) Failure to Construct. If Borrower fails to obtain permits, or to commence and prosecute construction of the Improvements to completion, within the times set forth in Article 4 above.

(b) Failure to Make Payment. If Borrower fails to make any payment when such payment is due pursuant to the County Documents.

(c) Failure to Submit Plans. If Borrower fails to submit a Marketing Plan or Tenant Selection Plan that is approved by the County in accordance with the Regulatory Agreement.

(d) Breach of Covenants. If Borrower fails to duly perform, comply with, or observe any other condition, term, or covenant contained in this Agreement (other than as set forth in Section 7.1(a) through Section 7.1(c), and Section 7.1(e) through Section 7.1(m)), or in any of the other County Documents, and Borrower fails to cure such default within thirty (30) days after receipt of written notice thereof from the County to Borrower.

(e) Default Under Other Loans. If a default is declared under any other financing for the Development by the lender of such financing and such default remains uncured following any applicable notice and cure period.

(f) Insolvency. If a court having jurisdiction makes or enters any decree or order: (i) adjudging Borrower to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Borrower, or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties; (iv) directing the winding up or liquidation of Borrower if any such decree or order described in clauses (i) to (iv), inclusive, is unstayed or undischarged for a period of ninety (90) calendar days; or (v) Borrower admits in writing its inability to pay its debts as they fall due or will have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the Events of Default in this paragraph will act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

(g) Assignment; Attachment. If Borrower assigns its assets for the benefit of its creditors or suffers a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon is returned or released within ninety (90) calendar days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the

County, the indebtedness evidenced by the Note.

(h) Suspension; Termination. If Borrower voluntarily suspends its business or, the partnership is dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(i) Liens on Property and the Development. If any claim of lien (other than liens approved in writing by the County) is filed against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the County.

(j) Condemnation. If there is a condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development.

(k) Unauthorized Transfer. If any Transfer occurs other than as permitted pursuant to Section 5.12.

(l) Representation or Warranty Incorrect. If any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the County in connection with any of the County Documents, proves to have been incorrect in any material respect when made.

(m) Applicability to General Partner. The occurrence of any of the events set forth in Section 7.1(f), through Section 7.1(h) in relation to Borrower's managing general partner, unless the removal and replacement of the Borrower's managing general partner in accordance with Section 5.12(f), within the time frame set forth in Section 7.9 cures such a default.

## Section 7.2 Remedies.

Upon the occurrence of an Event of Default and until such Event of Default is cured or waived, the County is relieved of any obligation to transfer the Property or disburse any portion of the Loan. In addition, upon the occurrence of an Event of Default and following the expiration of all applicable notice and cure periods the County may proceed with any and all remedies available to it under law, this Agreement, and the other County Documents. Such remedies include but are not limited to the following:

(a) Acceleration of Note. The County may cause all indebtedness of Borrower to the County under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. Borrower is liable to pay the County on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the County in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The County has the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the County Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the County Documents.

(c) Termination. The County may terminate this Agreement by giving written notice to Borrower; provided, however, that the County's remedies pursuant to this Article 7, and the indemnification provisions of this Agreement survive such termination.

(d) Additional Remedies. The County may exercise any of the remedies specified in Sections 7.3 and 7.4 below.

### Section 7.3 Right of Reverter.

(a) In the event that, following Close of Escrow, there is an Event of Default and such Event of Default occurs prior to issuance of a Certificate of Completion for the Improvements, then the County has the right to reenter and take possession of the Property and all improvements thereon and to revest in the County the estate of Borrower in the Property. Borrower agrees to execute such documents as reasonably necessary to cause Borrower's interest in the Property to revert and revest in the County.

(b) Upon vesting or revesting in the County of title to the Property, the County will use its best efforts to resell the Property consistent with the County's obligations under applicable laws. Upon sale the proceeds will be applied as follows:

(1) First, to reimburse the County for any costs it incurs in managing or selling the Property (after exercising its right of reverter), including but not limited to amounts to discharge or prevent liens or encumbrances arising from any acts or omissions of the Borrower;

(2) Second, to reimburse the County for damages to which it is entitled under this Agreement by reason of Borrower's default;

(3) Third to the County, to repay the Loan;

(4) Fourth, to Borrower in the amount of the reasonable cost of the improvements Borrower has placed on the Property that were not financed by the County; and

(5) Fifth, any balance to the County.

### Section 7.4 Option to Repurchase, Reenter and Repossess.

(a) The County has the additional right at its option to repurchase, reenter and take possession of the Property or any portion thereof owned by the Borrower with all improvements thereon (the "Option to Purchase"), in the event that, following Close of Escrow, there is an Event of Default and such Event of Default occurs prior to issuance of a Certificate of Completion for the Improvements.

(b) To exercise the Option to Purchase, the County shall pay to Borrower the

amount of One Hundred Dollars (\$100.00).

(c) Upon vesting in the County of title to all or a portion of the Property, the County shall use its best efforts to resell it, subject to a requirement that the Property be developed in accordance with this Agreement. Upon any resale of the Property or portion thereof by the County, the County shall apply such sale proceeds as follows:

(i) To Borrower, the fair market value of any improvements existing on the applicable portion of the Property at the time of the repurchase, reentry and repossession; less

(1) Any gains or income withdrawn or made by Borrower from the applicable portion of the Property or the improvements thereon; less

(2) The value of any unpaid liens or encumbrances on the applicable portion of the Property which the County assumes or takes subject to said encumbrances.

(ii) The remaining sale proceeds, if any, shall be retained by the County.

#### Section 7.5 Right to Cure Monetary Default at Borrower's Expense.

The County has the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. Upon demand therefor, Borrower shall reimburse the County for any funds advanced by the County to cure such monetary default by Borrower, together with interest thereon from the date of expenditure until the date of reimbursement at the Default Rate.

#### Section 7.6 Right of Contest.

Borrower may contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest is to be prosecuted diligently and in a manner unprejudicial to the County or the rights of the County hereunder.

#### Section 7.7 Remedies Cumulative.

No right, power, or remedy given to the County by the terms of this Agreement or the other County Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy is cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies will operate as a waiver thereof, nor does any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 7.8 Notice and Cure Rights of Limited Partner.

The County shall provide the Investor Limited Partner and any limited partner of Borrower who has requested written notice from the County ("Permitted Limited Partner") a duplicate copy of all notices of default that the County may give to or serve in writing upon Borrower pursuant to the terms of the County Documents, at the address set forth in Section 7.9, provided, the County shall have no liability to the Permitted Limited Partner for its failure to do so. The Permitted Limited Partner has the right, but not the obligation, to cure any default of Borrower set forth in such notice, during the applicable cure period described in the County Documents, and the County will accept tender of such cure as if delivered by Borrower. If the Permitted Limited Partner is unable to cure a default because Borrower's general partner is in bankruptcy and/or because the cure requires removal of the general partner of Borrower and the Permitted Limited Partner is proceeding diligently to remove the general partner of Borrower in order to effect a cure of the Default, the cure period will be extended for such reasonable time as is necessary for the Permitted Limited Partner to effect a cure of the Default, but in no event longer than sixty (60) days after the date of receipt by the Permitted Limited Partner of written notice of the default.

ARTICLE 8  
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 8.1 No Encumbrances Except for Development Purposes.

Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon Borrower's interest in the Property, but only for the purpose of securing Approved Financing. Mortgages, deeds of trust, or other reasonable security instruments securing Approved Financing, are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development. For the purposes of this Article 8, Security Financing Interest does not include mortgages, deeds of trust, or other security instruments securing the Sponsor Loan and CHDC LC Loan.

Section 8.2 Rights of Holders of Security Financing Interests.

Any rights of the County under Sections 7.3 and 7.4 will not defeat, limit or render invalid any Security Financing Interest permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of Security Financing Interests. Any conveyance or reverter of the Property to the County pursuant to Sections 7.3 and 7.4 will be subject to Security Financing Interests permitted by this Agreement.

Section 8.3 Holder Not Obligated to Construct.

The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion; nor will any covenant or any other provision in conveyances from the County to Borrower evidencing the realty comprising the Property or any part thereof be construed so to obligate such holder. However, nothing in this Agreement is 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 of improvements provided for or authorized by this Agreement and the Regulatory Agreement.

Section 8.4 Notice of Default and Right to Cure.

Whenever the County pursuant to its rights set forth in Article 7 of this Agreement delivers any notice or demand to the Borrower with respect to the commencement, completion, or cessation of the construction of the Improvements, the County will at the same time deliver to each holder of record of any Security Financing Interest, a copy of such notice or demand. Each such holder (insofar as the rights of the County are concerned) has the right, but not the obligation, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement is deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing Borrower's obligations to the County relating to such Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the County and recordable among the official records of the County (the "Security Financing Interest Assignment"). The holder in that event must agree to complete, in the manner provided in this Agreement (or as may be amended by the Security Financing Interest Assignment; provided, however, the County is under no obligation to extend the dates for performance set forth in this Agreement), the Improvements to which the lien or title of such holder relates. Any such holder properly completing such Improvements pursuant to this paragraph must assume all rights and obligations of Borrower under this Agreement and will be entitled, upon completion and written request made to the County, to a Certificate of Completion from the County.

Section 8.5 Failure of Holder to Complete Improvements.

In any case where six (6) months after default by Borrower in completion of construction of the Improvements under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct pursuant to the Security Financing Interest Assignment, has not proceeded diligently with construction (as reasonably determined by the County), the County shall be afforded those rights against such holder it would otherwise have against Borrower under this Agreement.

Section 8.6 Right of County to Cure.

In the event of a default or breach by Borrower of a Security Financing Interest prior to the completion of the Improvements, and the holder has not exercised its option to complete the Improvements on the Property, the County may cure the default, prior to the completion of any foreclosure. In such event the County will be entitled to reimbursement from Borrower of all costs and expenses incurred by the County in curing the default. The County will also be entitled to a lien upon the Property or any portion thereof to the extent of such costs and disbursements. The County agrees that such lien will be subordinate to any Security Financing Interest, and the County will execute from time to time any and all documentation reasonably requested by Borrower to effect such subordination.

Section 8.7 Right of County to Satisfy Other Liens.

After the conveyance of title to the Property or any portion thereof and after Borrower has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Property or any portion thereof, the County will have the right to satisfy any such lien or encumbrances; provided, however, that nothing in this Agreement will require Borrower to pay or make provision for the payment of any tax, assessment, lien or charge so long as Borrower in good faith may contest the validity or amount therein and so long as such delay in payment is not subject the Property or any portion thereof to forfeiture or sale.

Section 8.8 Holder to be Notified.

Borrower will insert each term contained in this Article 8 into each Security Financing Interest to the extent deemed necessary by, and in form and substance reasonably satisfactorily to the County, or will procure acknowledgement of such terms by each prospective holder of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

ARTICLE 9  
GENERAL PROVISIONS

Section 9.1 Relationship of Parties.

Nothing contained in this Agreement is to be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the County and Borrower or its agents, employees or contractors, and Borrower will at all times be deemed an independent contractor and to be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the construction and operation of the Development, Borrower is solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and must include requirements in each contract that contractors are solely responsible for similar matters relating to their employees. Borrower is solely responsible for its own acts and those of its agents and employees.

Section 9.2 No Claims.

Nothing contained in this Agreement creates or justifies any claim against the County by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the construction or operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the construction or operation of the Development.



Section 9.3 Amendments.

No alteration or variation of the terms of this Agreement is valid unless made in writing by the Parties. The County Director, Department of Conservation and Development is authorized to execute on behalf of the County amendments to the County Documents or amended and restated County Documents as long as any discretionary change in the amount or terms of this Agreement is approved by the County's Board of Supervisors.

Section 9.4 Indemnification.

Borrower shall indemnify, defend and hold the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property and the development, construction, marketing and operation of the Development, except to the extent such claim arises from the gross negligence or willful misconduct of the County, its agents, and its employees. The provisions of this Section will survive the issuance of the Certificate of Completion, the expiration of the Term and the reconveyance of the Deed of Trust.

Section 9.5 Non-Liability of County Officials, Employees and Agents.

No member, official, employee or agent of the County is personally liable to Borrower in the event of any default or breach of this Agreement by the County or for any amount that may become due from the County pursuant to this Agreement.

Section 9.6 No Third Party Beneficiaries.

There are no third party beneficiaries to this Agreement.

Section 9.7 Discretion Retained By County.

The County's execution of this Agreement in no way limits any discretion the County may have in the permit and approval process related to the construction of the Improvements.

Section 9.8 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 9.8(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 financial interest or benefit from the activity, or have a financial interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have immediate family or business ties, during, or at any time after, such person's tenure. Borrower shall exercise due diligence to ensure that the prohibition in this Section 9.8(a) is followed.

(b) The conflict of interest provisions of Section 9.8(a) above apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the

County.

(c) In accordance with California Government Code Section 1090 and the Political Reform Act, California Government Code section 87100 et seq., no person who is a director, officer, partner, trustee or employee or consultant of Borrower, or immediate family member of any of the preceding, may make or participate in a decision, made by the County or a County 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 Borrower. Interpretation of this section is governed by the definitions and provisions used in the Political Reform Act, California Government Code Section 87100 et seq., its implementing regulations manual and codes, and California Government Code Section 1090.

Section 9.9 Notices, Demands and Communications.

All notices required or permitted by any provision of this Agreement must be in writing and sent by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

County: County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attention: Assistant Director

Borrower: Heritage Point A/G, L.P.  
c/o Community Housing Development Corporation of North  
Richmond  
1535A Fred Jackson Way  
Richmond, California 94801  
Attention: Executive Director

Investor Limited  
Partner: Raymond James California Housing Opportunities Fund VI L.L.C.  
c/o Raymond James Tax Credit Funds, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Attention: Steven J. Kropf, President

with a copy to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 West Fifth Street, 64th Floor  
Los Angeles, California 90071  
Attention: Kyle Arndt, Esq.

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this

Section. Receipt will be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 9.10 Applicable Law.

This Agreement is governed by the laws of the State of California.

Section 9.11 Parties Bound.

Except as otherwise limited herein, this Agreement binds and inures to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and to bind Borrower and its successors and assigns in the Property and the Development for the entire Term, and the benefit hereof is to inure to the benefit of the County and its successors and assigns.

Section 9.12 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

Section 9.13 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 9.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either party will not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, or court order. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days after receipt of the notice. In no event will the County be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 9.15 County Approval.

The County has authorized the County Director, Department of Conservation and Development to execute the County Documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel certificates concerning the status of the Loan and the existence of Borrower defaults under the County Documents.

Section 9.16 Waivers.

Any waiver by the County of any obligation or condition in this Agreement must be in

writing. No waiver will be implied from any delay or failure by the County to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement does not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Borrower may not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 9.17 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and are to be disregarded in interpreting any part of the Agreement's provisions.

Section 9.18 Entire Understanding of the Parties.

The County Documents constitute the entire agreement of the parties with respect to the Loan.

Section 9.19 Multiple Originals; Counterpart.

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

Section 9.20 No Brokers. Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim must indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's reasonable attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this section survive expiration of the Term or other termination of this Agreement, and will remain in full force and effect.

Section 9.21 Provision Not Merged with Deed. None of the provisions of this Agreement are intended to or will be merged by any grant deed transferring title to any real property which is the subject of this Agreement from County to Borrower or any successor in interest, and any such grant deed will not be deemed to affect or impair the provisions and covenants of this Agreement.

***Remainder of Page Left Intentionally Blank***

The parties are entering into this Agreement as of date first set forth above.

**COUNTY:**

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

By: \_\_\_\_\_  
John Kopchik  
Director, Department of Conservation and  
Development

APPROVED AS TO FORM:

SHARON L. ANDERSON  
County Counsel

By: \_\_\_\_\_  
Kathleen Andrus  
Deputy County Counsel

**BORROWER:**

Heritage Point A/G, L.P.,  
a California limited partnership

By: Heritage Point A/G LLC,  
a California limited liability company,  
its general partner

By: Community Housing Development  
Corporation of North Richmond, a  
California nonprofit public benefit  
corporation, its sole member/manager

By: \_\_\_\_\_  
Donald Gilmore, Executive Director

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The real property located in the unincorporated area of the County of Contra Costa, State of California, described as follows:

All of Lots 1, 2, 26 through 34, and a portion of Lots 24 and 25 in Block 69, as shown on that certain map entitled, "Map of North Richmond Land and Ferry Co. Tract No. 2" filed for record September 19, 1911 in Book 5 of maps, at Page 124, Contra Costa County Records, described as follows:

Beginning at the Northwesterly corner of said Lot 1, said point being at the intersection of the Easterly line of 3rd Street (70 feet wide) (formerly Seventh Street) with the Southerly line of Grove Avenue (60 feet wide) (formerly Park Avenue) as said Street and Avenue are shown on said map; thence along the said Southerly line of Grove Avenue, North 89°59'00" East, 50.01 feet to the Northeasterly corner of said Lot 2; thence leaving last said line and along the Easterly line of said Lot 2, South 00°01'31" East, 99.98 feet to the Southeasterly corner of said Lot 2, said point being on the Northerly line of said Lot 34; thence along last said line, North 89°59'00" East, 50.03 feet to the Northeasterly corner of said Lot 34; thence along the Easterly lines of said Lots 34 through 26, South 00°02'03" East, 230.72 feet to the Southeasterly corner of said Lot 26; thence along the Southerly line of said Lot 26, South 89°59'40" West, 50.06 feet to the Northeasterly corner of said Lot 24; thence along the Easterly line of said Lot 24, South 00°01'33" East, 36.54 feet; thence leaving last said line, South 89°59'40" West, 50.07 feet to said Easterly line of 3rd Street; thence along last said line, North 00°01'00" West, 367.22 feet to the Point of Beginning.

APN: 409-080-001, 014, 015, 016, 020 and portion 409-080-013

EXHIBIT B

APPROVED DEVELOPMENT BUDGET

**EXHIBIT C**  
**NEPA MITIGATION REQUIREMENTS**

NEPA Mitigation and Monitoring Plan – Heritage Point

All mitigations / conditions of approval must be included in project agreement and/or legal documents.  
Compliance with mitigations / conditions of approval must be documented prior to final payment of County funds

Mitigation Measure(s)	Source	Method and date County staff informed Project Sponsor	Included in County loan document and /or project agreement	Verification of Mitigation Measure(s)	Responsible for implementation	Mitigation Timing	Responsible for monitoring and reporting on implementation	Monitoring and reporting frequency	Verification of compliance	Date completed
<b>Cultural Resources</b>  CR1 CR2	Northwest Information Center letter  Cultural Resources Evaluation December 2014		<input type="checkbox"/>	<input type="checkbox"/> Contra Costa County Approved Construction Plans	Project sponsor, archaeologist	Ongoing	Archeologist and contractor	ongoing	<input type="checkbox"/> Letter from archeologist  <input type="checkbox"/> Copy of Final approved Building Permit	
<b>Soil Suitability</b>  SS1	Geotechnical Peer Review June 2014		<input type="checkbox"/>	<input type="checkbox"/> Contra Costa County Approved Construction Plans	Project sponsor, architect	Pre and post construction	Architect and contractor	ongoing	<input type="checkbox"/> Letter from architect  <input type="checkbox"/> Copy of Final approved Building Permit	
<b>Geotechnical Peer Review</b>  GPR1	Geotechnical Peer Review June 2014		<input type="checkbox"/>	<input type="checkbox"/> Contra Costa County Approved Construction Plans	Project sponsor, architect	Pre and post construction	Architect and contractor	ongoing	<input type="checkbox"/> Letter from architect  <input type="checkbox"/> Copy of Final approved Building	



									Permit	
<b>Construction Noise</b> CR1 CR2 CR3 CR4 CR5 CR6	Contra Costa County Building Inspection Requirements		<input type="checkbox"/>	<input type="checkbox"/> Contra Costa County Approved Construction Plans	Project sponsor, architect	Pre and post construction	Architect and contractor	ongoing	<input type="checkbox"/> Letter from architect  <input type="checkbox"/> Copy of Final approved Building Permit	
<b>Asbestos and Lead-Based Paint</b> ACM1 LBP1	Buildings on site older than 1978 proposed to be demolished		<input type="checkbox"/>	<input type="checkbox"/> Contra Costa County Construction Plans	Asbestos and lead based paint licensed contractor	Pre and post demolition	Architect and contractor	Once – after demolition	<input type="checkbox"/> Certification/ permit post demolition	
<b>Air Filtration Systems</b> AFS1	California Air Resources Board Guidelines		<input type="checkbox"/>	<input type="checkbox"/> Contra Costa County Construction Plans	Project sponsor, architect	Pre and post construction	Architect and contractor	ongoing	<input type="checkbox"/> Letter from architect  <input type="checkbox"/> Copy of Final approved Building Permit	
<b>Storm Water Management and Discharge Control Ordinance</b> SWM1	Contra Costa County C.3 Requirements		<input type="checkbox"/>	<input type="checkbox"/> Contra Costa County Construction Plans	Project sponsor, architect	ongoing	Architect and contractor	ongoing	<input type="checkbox"/> Copy of approval from County Public Works Department	

<b>Landscape Plan</b>  LP1	Contra Costa County Development Plan COAs			<input type="checkbox"/> Contra Costa County Construction Plans	Project sponsor, architect	Pre and post construction	Architect and contractor	ongoing	<input type="checkbox"/> Letter from architect  <input type="checkbox"/> Copy of Final approved Building Permit	
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**CR1.** In the event that during grading, scraping, or excavation archaeological features, such as a concentration of artifacts, culturally modified soil (midden) or shell are encountered within the parcel where Heritage Point is proposed to be built, all work should be halted in the vicinity of the find. A qualified archaeologist should be contacted immediately to make an evaluation. If a concentration of artifacts or soil deposits is discovered that seems to represent an actual site, it is also recommended that a qualified archaeologist, who is trained to properly record and recover such potentially significant cultural material, should monitor further work in the discovery area.

Artifacts that are typically associated with prehistoric sites include humanly modified stone, shell, bone or other cultural materials such as charcoal, ash and burned rocks indicative of food procurement or processing activities. Prehistoric domestic features include hearths, firepits, or house or floor depressions whereas human skeletal remains or discrete human burials in a prepared pit or depression in the culturally modified soil deposit typically represent mortuary features. Historic artifacts potentially include all byproducts of human land use greater than 50 years of age.

As recommended by the NIC, any discovered archaeological material should be properly recorded using the appropriate DPR 523 form; the recording form should be submitted to the NIC so that an official site numerical designation can be assigned. It is also recommended that a copy of the site recording form should also be submitted with the final report to the Contra Costa County Department of Conservation and Development for their files.

**CR2.** Should human skeletal remains be encountered (especially if no monitor is present), all work must stop in the immediate vicinity of the discovered remains and the County Coroner as well as a qualified archaeologist must be notified immediately so proper evaluation can be performed. Procedures from this point on are as described by law. If the remains are deemed to be Native American and prehistoric, the Native American Heritage Commission should be contacted by the Coroner so that a "Most Likely Descendant" (MLD) can be designated and discussions regarding protection of the discovered remains can begin.

**SS1.** All of the following mitigation measures are to reduce the impact of potential geologic, geotechnical and seismic hazards to less-than-significant.

- A. At least 30 days prior to the issuance of grading or building permits, the developer shall submit to the County peer Geologist for review and approval, a design-level geotechnical report to provide specific standards and criteria for foundation and pavement design developed in accordance with the California Building Code and County Code requirements on the basis of adequate subsurface data and laboratory testing. The constraints on use of expansive soils near finished grade should be evaluated in the report. It is also anticipated that the design-level geotechnical report shall provide California Building Code seismic parameters, and lot drainage recommendations, along with recommendations for geotechnical monitoring services during site preparation work, grading and foundation-related work on the site. The design-level geotechnical report shall also provide the following: (a) screening investigation of liquefaction potential. Based on the data provided and review of that data by the County peer review geologist, the screening investigation may be adequate to determine that further evaluation of liquefaction potential is not required; and (b) provide specific criteria and standards for site grading, drainage and foundation design, (including the design of the bio-retention facilities, and their proximity to planned improvements). The design-level geotechnical report is subject to technical review by the County's Peer Review Geologist, and by review and approval of the Building Inspection Division.
- B. Following rough grading the geotechnical engineer shall perform corrosivity testing of the building pad to determine if special precautions shall be required to avoid damage to improvements that are in contact with the ground (concrete or steel).

- C. Prior to the issuance of building permits, the geotechnical engineer shall certify that the lot preparation work is in compliance with recommendations in the approved design-level report. During foundation work, the geotechnical engineer shall provide observation services to ensure the geotechnical recommendations are properly implemented by the contractor. Prior to requesting a final building inspection, the County Building Inspection Division may require documentation of the geotechnical engineer's observation services during final grading/ foundation work/ lot drainage. The intent of such documentation is to ensure that the lot/ building improvements are in conformance with recommendations in the approved design-level report.

The design-level geotechnical report is subject to technical review by the County's Peer Review Geologist, and by review and approval of the Building Inspection Division.

**GPR1.** Based on the finding of the Geotechnical Peer Review (as may be amended) conducted by Darwin Myer Associates, dated June 20, 2014, the conclusions listed on page 4 and 5 will be implemented.

**CN1.** All noise generating construction activities shall be limited to the hours of 7:30 A.M. to 5:30 P.M., Monday through Friday, and shall be prohibited on state and federal holidays on the calendar dates that these holidays are observed by the state or federal government as listed below:

New Year's Day (State and Federal)  
Birthday of Martin Luther King, Jr. (State and Federal)  
Washington's Birthday/Presidents' Day (State and Federal)  
Lincoln's Birthday (State)  
Cesar Chavez Day (State)  
Memorial Day (State and Federal)  
Independence Day (State and Federal)  
Labor Day (State and Federal)  
Columbus Day (State and Federal)  
Veterans Day (State and Federal)  
Thanksgiving Day (State and Federal)  
Day after Thanksgiving (State)  
Christmas Day (State and Federal)

For specific details on the actual day the state and federal holidays occur, please visit the following websites:

Federal/holidays: [http://www.opm.gov/Operating\\_Status\\_Schedules/fedhol/2011.asp](http://www.opm.gov/Operating_Status_Schedules/fedhol/2011.asp)

California/holidays: <http://www.ftb.ca.gov/aboutFTB/holidays.shtml>

**CN2.** Utilize "quiet" models of air compressors and other stationary noise sources where technology exists.

**CN3.** Prohibit unnecessary idling of internal combustion engines.

**CN4.** Equip all internal combustion engine driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.

**CN5.** Locate stationary noise generating equipment as far as possible from noise sensitive receptors.

**CN6.** Designate a noise disturbance coordinator who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site.

**ACM1.** If found on site, all asbestos-containing material found on the site must be removed prior to demolition in accordance with BAAQMD Regulation 11, Rule 2, including specific requirements for surveying, notification, removal, and disposal of material containing asbestos.

**LBP1.** If lead is found on site, then the project applicant is required to follow all applicable guidelines per the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.

**AFS1.** Install and maintain air filtration systems of fresh air supply either on an individual unit-by-unit basis, with individual air intake and exhaust ducts ventilating each unit separately, or through a centralized building ventilation system. The ventilation system should be certified to achieve a performance effectiveness, for example, to remove at least 85 percent of ambient PM<sub>2.5</sub> concentrations from indoor areas. Air intakes should be located away from emission sources areas, such as major roadways.

**SWM1.** The project is required by condition of approval of the development plan to comply with the County's C.3 Requirements and the San Francisco Bay Regional Water Quality Control Board.

**LP1.** Prior to the issuance of building permit, a final landscaping plan shall be submitted for review and approval of the Department of Conservation and Development. The landscape plan shall comply with the State of California model water efficient landscape ordinance. The landscape plan shall be certified by a landscape architect to comply with state ordinance.

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DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT

Between

COUNTY OF CONTRA COSTA

And

HERITAGE POINT A/G, L.P.

Heritage Point Apartments

dated December 1, 2017