

HOME LOAN AGREEMENT

Between

COUNTY OF CONTRA COSTA

and

HEBSV ESPERANZA PLACE LLC

dated November 16, 2021

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HOME LOAN AGREEMENT
Esperanza Place

This HOME Loan Agreement (the "Agreement") is dated November 16, 2021, and is between the County of Contra Costa, a political subdivision of the State of California (the "County"), and HEBSV Esperanza Place, LLC, a California limited liability company ("Borrower").

RECITALS

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

B. The County, as the Housing Successor to the Contra Costa Redevelopment Agency, sold to Habitat for Humanity East Bay/Silicon Valley, a California nonprofit public benefit corporation ("Habitat"), for fair market value, that certain real property located at 1250 Las Juntas Way, Walnut Creek, California, that is more particularly described in Exhibit A (the "Property"), and deposited the proceeds received from the sale of the Property into the County's low and moderate income housing fund. As a condition of the sale of the Property, the County and Habitat entered into a Declaration of Affordability Covenants dated December 14, 2016 and recorded against the Property on December 23, 2016 as Instrument number 2016-0279536-00 (the "Affordability Covenants"), requiring Habitat to sell any homes constructed on the Property at an affordable cost to low and moderate income households.

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

D. Habitat transferred the Property to Borrower, subject to the Affordability Covenants. Borrower intends to construct forty-two (42) condominium units on the Property in two phases of construction, for use as housing affordable to low- and moderate-income households. The first phase of construction (the "First Phase") will consist of twenty-three (23) condominium units (each a "Unit") (collectively, the "Development"). Together, the Development as well as any additional improvements constructed on the Property in the First Phase, including all landscaping, roads and parking spaces on the Property, are referred to as the "Improvements."

E. Borrower desires to borrow from the County and the County desires to lend to Borrower One Million Six Hundred Five Thousand Dollars (\$1,605,000) of HOME Funds (the "Loan") to finance the construction of the Development. Construction of the Development will increase the supply of affordable for-sale housing in Contra Costa County. Due to the assistance provided by the County to Borrower through the Loan, the County is designating eleven (11) of the Units as assisted by the County (the "HOME-Assisted Units").

F. Borrower intends to sell each HOME-Assisted Unit to an Eligible Purchaser. In accordance with the HOME Regulations, if Borrower fails to sell a HOME-Assisted Unit to an

Eligible Purchaser within six (6) months of the Completion Date, as defined below, Borrower must either rent the HOME-Assisted Unit to an Eligible Tenant or repay the HOME Funds that were invested in the unsold HOME-Assisted Unit.

G. The City of Walnut Creek (the "City") is providing financing to Borrower to assist in the construction of the Development in the approximate amount of Five Million One Hundred Fifty Thousand Dollars (\$5,150,000) (as assigned to Borrower from Habitat pursuant to an Assignment and Assumption Agreement among Habitat, Borrower, and the City) (the "City Loan"). The City and the County will enter into the Intercreditor Agreement to set out their agreement as to: (i) disbursement of the Loan and City Loan funds, and (ii) the lien priority for their respective security instruments.

H. The Loan is (i) evidenced by the Note and the Intercreditor Agreement, and (ii) secured by the Deed of Trust.

I. The County will consider the Loan to be partially repaid by Borrower after the sale of each HOME-Assisted Unit to an Eligible Purchaser, and at the time of such sale will terminate the Affordability Covenant and Intercreditor Agreement, and reconvey the Deed of Trust encumbering such Unit.

J. In accordance with the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA"), on May 1, 2018, the City filed a Notice of Exemption for the Development.

K. 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 3.10.
- (b) "Adjusted Income" means the total anticipated annual income, as calculated pursuant to 24 C.F.R. 92.203(b)(1), of all persons in the Homeowner's household, or the household of the Eligible Purchaser, as applicable.
- (c) "Affordability Covenants" has the meaning set forth in Paragraph B of the Recitals.
- (d) "Agreement" means this HOME Loan Agreement.
- (e) "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.

(f) "Approved Financing" means all of the following loans, grants, and equity obtained by Borrower or to be obtained by Borrower, and approved by the County or to be approved by the County, for the purpose of financing the construction of the Development in addition to the Loan:

(i) an acquisition and construction loan from Heritage Bank of Commerce, in the approximate amount of Seven Million Four Hundred Fourteen Thousand Seven Hundred Forty-Three Dollars (\$7,414,743) (the "Bank Loan");

(ii) the City Loan, of which approximately Three Million Six Hundred Fifty-Seven Thousand One Hundred Thirty-Nine Dollars (\$3,657,139) will be used for the Development; and

(iii) private contributions and donations received by Borrower, in the approximate amount of Two Million Six Hundred Fourteen Thousand Two Hundred Thirty-Nine Dollars (\$2,614,239), of which approximately One Million Six Hundred Ninety-Six Thousand Six Hundred Five Dollars (\$1,696,605) will be used for the Development.

(g) "Approved Purchase Price" has the meaning set forth in Section 4.2(b).

(h) "Bank Loan" has the meaning set forth in Section 1.1(f)(i).

(i) "Bid Package" means the package of documents distributed to potential bidders as part of the process of selecting subcontractors to construct the Development. The Bid Package is to include the following: (i) an invitation to bid, (ii) a copy of the proposed construction contract, and (iii) all Construction Plans.

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

(k) "City" has the meaning set forth in Paragraph G of the Recitals.

(l) "City Loan" has the meaning set forth in Paragraph G of the Recitals.

(m) "CEQA" has the meaning set forth in Paragraph J of the Recitals.

(n) "Commencement of Construction" has the meaning set forth in Section 3.6.

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

(p) "Construction Plans" means all construction documentation upon which Borrower and Borrower's contractors rely in constructing all the Improvements 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").

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

(r) "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 encumbers the Property to secure repayment of the Loan and performance of the covenants of the Loan Documents.

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

(t) "Developer Fee" has the meaning set forth in Section 3.20.

(u) "Development" has the meaning set forth in Paragraph D of the Recitals.

(v) "Disposition Agreement" means a purchase and sale agreement between Borrower and an Eligible Purchaser or a lease or rental agreement between Borrower and an Eligible Tenant, in a form that is approved by the County.

(w) "Disposition Date" means, for each HOME-Assisted Unit, the date that is six (6) months after its Completion Date.

(x) "Eligible Purchaser" means a household that (i) is a First Time Homebuyer that is a Low Income Household, and (ii) will occupy a HOME-Assisted Unit as its primary residence.

(y) "Eligible Tenant" means a household that (i) qualifies as a Low-Income Household, and (ii) will occupy a HOME-Assisted Unit as its primary residence.

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

(aa) "First Phase" has the meaning set forth in Paragraph D of the Recitals.

(bb) "First Time Homebuyer" means a household of one or more individuals, none of whom have owned a home during the three-year period before the purchase of a HOME-Assisted Unit, except that:

(i) Any individual who is a Displaced Homemaker (as defined below) may not be excluded from consideration as a First Time Homebuyer on the basis that the individual, while a homemaker, owned a home with his or her spouse. For purposes of this section a "Displaced Homemaker" means an individual who (i) is an adult; (ii) has not worked full-time, full-year in the labor force for a number of years, but has, during such years, worked primarily without remuneration to care for the home and family; and (iii) is unemployed or under-employed and is experiencing difficulty in obtaining or upgrading employment.

(ii) Any individual who is a single parent may not be excluded from consideration as a First Time Homebuyer on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

(iii) An individual may not be excluded from consideration as a First Time Homebuyer on the basis that the individual owns or owned, as a principal residence during the three (3) year period before the purchase of a HOME-Assisted Unit, a dwelling unit whose structure is: (i) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations, or (ii) not in compliance with state, local or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

(cc) "Habitat" has the meaning set forth in Recital B.

(dd) "Habitat Partnership Agreement" means the agreement to be entered into by and between the Eligible Purchaser and Borrower in connection with the purchase of a HOME-Assisted Unit.

(ee) "Hazardous Materials" has the meaning set forth in Section 5.6.

(ff) "Hazardous Materials Claims" has the meaning set forth in Section 5.6.

(gg) "Hazardous Materials Law" has the meaning set forth in Section 5.6.

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

(ii) "HOME-Assisted Unit(s)" has the meaning set forth in Paragraph E of the Recitals.

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

(kk) "HOME Regulations" has the meaning set forth in Paragraph C of the Recitals.

(ll) "Homeowner" means an Eligible Purchaser that has purchased a HOME-Assisted Unit.

(mm) "Homeowner Resale Restriction" means the Owner's Occupancy and Resale Restriction Agreement with Option to Purchase among a Homeowner, Borrower, and the City, to be recorded against a HOME-Assisted Unit at the time of sale to an Eligible Purchaser.

(nn) "HUD" has the meaning set forth in Paragraph C of the Recitals.

(oo) "Improvements" has the meaning set forth in Paragraph D of the Recitals.

(pp) "Income Certification" means certifications of household income and household size from either a Proposed Purchaser or a Proposed Tenant for the purpose of determining that a Proposed Purchaser is an Eligible Purchaser and a Proposed Tenant is an

Eligible Tenant, as the case may be.

(qq) "Intercreditor Agreement" means that certain intercreditor agreement of even date herewith entered into by and among the City, the County, and Borrower related to the Loan and the City Loan, to be recorded against the Development.

(rr) "Loan" has the meaning set forth in Paragraph E of the Recitals.

(ss) "Loan Documents" means this Agreement, the Note, the Deed of Trust and the Intercreditor Agreement.

(tt) "Low Income Household" means a household with an Adjusted Income that does not exceed eighty percent (80%) of Median Income, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than eighty percent (80%) of Median Income on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes, as such definition may be amended pursuant to 24 C.F.R. Section 92.2. An individual does not qualify as a Low-Income Household if the individual is a student who is not eligible to receive Section 8 assistance under 24 C.F.R. 5.612.

(uu) "Marketing Plan" has the meaning set forth in Section 3.12(a).

(vv) "Median Income" means the median gross yearly income in the County of Contra Costa, California, as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County shall provide Borrower with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

(ww) "Mortgage Assistance" has the meaning set forth in Section 4.7.

(xx) "NEPA" has the meaning set forth in Paragraph K of the Recitals.

(yy) "Note" means the promissory note of even date herewith that evidences Borrower's obligation to repay the Loan.

(zz) "Owner Occupancy Certification" has the meaning set forth in Section 4.2(e).

(aaa) "Property" has the meaning set forth in Paragraph B of the Recitals.

(bbb) "Proposed Purchaser" means a household that proposes to purchase a HOME-Assisted Unit.

(ccc) "Proposed Tenant" means a household that proposes to rent a HOME-Assisted Unit.

(ddd) "Rental Unit" means any HOME-Assisted Unit that is leased or rented to an Eligible Tenant.

(eee) "Section 3" has the meaning set forth in Section 5.5(b)(ix).

(fff) "Tenant Rent" means for a Low Income Household, a monthly rent not exceeding the maximum rent set forth in 24 C.F.R. 92.252(a) for a Low Income Household for the applicable number of bedrooms.

(ggg) "Term" means the period of time that commences on the date of this Agreement, and expires on April 30, 2024; provided, however, (i) this Agreement may be terminated prior to April 30, 2024 in accordance with this Agreement, and (ii) if a HOME-Assisted Unit is rented, the expiration date will be determined in accordance with Section 4.1(c).

(hhh) "Transfer" has the meaning set forth in Section 5.11.

(iii) "Unit" has the meaning set forth in Paragraph D of the Recitals.

(jjj) "Unit Allocation" means, for each HOME-Assisted Unit, One Hundred Forty-Five Thousand Nine Hundred Nine Dollars (\$145,909), which is equal to the Loan divided by the number of HOME-Assisted Units.

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 Mitigations

ARTICLE 2 LOAN PROVISIONS

Section 2.1 Loan. Upon satisfaction of the conditions set forth in Section 2.6 of this Agreement, the County shall lend to Borrower the Loan for the purposes set forth in Section 2.3 of this Agreement. Borrower's obligation to repay the Loan is evidenced by the Note.

Section 2.2 Interest.

(a) Subject to the provisions of Subsection (b) below, the outstanding principal balance of the Loan will not accrue interest.

(b) Upon the occurrence of an Event of a Default, interest on 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 2.3 Use of Loan Funds.

(a) Borrower shall use the Loan to fund construction of the Development, consistent with the Approved Development Budget. Use of the Loan for reimbursement of costs incurred prior to the date of this Agreement is subject to Section 92.206(d)(1) of the HOME Regulations.

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

Section 2.4 Security. Borrower shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and causing or permitting it to be recorded as a lien against the Property. Pursuant to the Intercreditor Agreement the deed of trust securing the City Loan and the County Deed of Trust are of equal lien priority.

Section 2.5 Subordination. Any agreement by the County to subordinate the Deed of Trust to an encumbrance securing and/or evidencing the Bank Loan will be subject to the satisfaction of each of the following conditions:

(a) All of the proceeds of the Bank Loan, less any transaction costs, are used to finance the acquisition or construction of the Development.

(b) The lender of the Bank Loan (the "Senior Lender") is a state or federally chartered financial institution that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

(c) Borrower must provide to the County, in addition to any other information reasonably required by the County, evidence that demonstrates to the County's satisfaction that subordination of the Deed of Trust is necessary to secure adequate acquisition, construction and/or homebuyer financing to ensure the viability of the Development, including the sale of the HOME-Assisted Units as affordable housing, as required by the Loan Documents.

(d) The subordination agreement(s) is structured to minimize the risk that the Deed of Trust will be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Bank Loan. To satisfy this requirement, the subordination agreement must provide the County with adequate rights to cure any defaults by Borrower, including: (i) 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 (ii) providing the County with a cure period of at least sixty (60) days to cure any default.

(e) The subordination(s) of the Loan is effective only during the original term of the Bank Loan, unless the County is notified by Borrower of an extension of the term of the Bank Loan.

(f) The subordination does not limit the effect of the Deed of Trust before a foreclosure, nor require the consent of the Senior Lender prior to the County exercising any remedies available to the County under the Loan Documents.

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

Section 2.6 Conditions Precedent to Disbursement of Loan Funds for Construction.

The County is not obligated to disburse any portion of the Loan, or to take any other action under the Loan Documents unless all of the following conditions precedent are 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.
- (c) Borrower has delivered to the County a copy of a corporate resolution authorizing Borrower to obtain the Loan and all other Approved Financing, execute the Loan Documents, and construct the Development.
- (d) 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.
- (e) Borrower has furnished the County with evidence of the insurance coverage meeting the requirements of Section 5.12 below.
- (f) Borrower has executed and delivered the Loan Documents to the County and has caused all other documents, instruments, and policies required under the Loan Documents to be delivered to the County.
- (g) The Deed of Trust and Intercreditor Agreements are recorded against the Property in the Office of the Recorder of the County of Contra Costa prior to or simultaneously with the disbursement of the Loan.
- (h) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing a 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. 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.
- (i) Borrower has furnished the County with a copy of the Marketing Plan.
- (j) Borrower has furnished the County with evidence of marketing activity consistent with the Marketing Plan, such as copies of flyers, list of media ads, list of agencies and organizations receiving information on availability of HOME-Assisted Units, as applicable.
- (k) All environmental review necessary for the construction of the Development has been completed, and Borrower has provided the County evidence of compliance, or plan for compliance, with all NEPA requirements and mitigation measures, as set forth in Exhibit C.

(l) 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 Development as shown in the Approved Development Budget, are not less than the amount the County determines is necessary to pay for the construction of the Development and to satisfy all of the covenants contained in this Agreement.

(m) Borrower has provided the County evidence acceptable to the County of the private contributions and donations as described in Section 1.1(f) (iii) that are part of Approved Financing.

(n) Borrower has obtained all permits and approvals necessary for the construction of the Development.

(o) The County has received and approved the Bid Package for the subcontractors for the construction of the Development, pursuant to Section 3.3 below.

(p) The County has received and approved any construction contract for the construction of the Development that exceeds One Hundred Thousand Dollars (\$100,000), pursuant to Section 3.4 below.

(q) Borrower has closed all loans that are part of the Approved Financing for construction of the Development, as described in Section 1.1(f), and has already received or is eligible to receive the funds.

(r) The County has received reasonable evidence that the local match requirement set forth in 24 C.F.R. Section 92.218 et seq., has been satisfied in accordance with Section 3.22 of this Agreement.

(s) The County has received a written draw request from Borrower, including (i) certification that the condition set forth in Section 2.6(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, (iv) where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred, and (v) proof of payment. When a disbursement is requested to pay any contractor in connection with improvements on the Property, the written request must be accompanied by (i) certification by Borrower's architect or other third party consultant 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 (ii) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the County.

Section 2.7 Repayment of the Loan.

(a) Partial Credit. When a HOME-Assisted Unit is sold to an Eligible Purchaser, the County shall:

(i) Credit Borrower with a partial repayment of the Loan in an amount equal to the Unit Allocation for the HOME-Assisted Unit that is sold.

(ii) If the conditions set forth in Section 2.9 are satisfied, execute and record a partial reconveyance of the Deed of Trust and partial termination of the Affordability Covenant and the Intercreditor Agreement with respect to the HOME-Assisted Unit that was sold.

(b) Repayment in Full. Borrower shall pay all outstanding principal and accrued interest on the Loan, in full, on (i) the date an Event of Default occurs, (ii) the date the sale of the eleventh (11th) HOME-Assisted Unit to an Eligible Purchaser occurs in compliance with the terms of this Agreement or (iii) April 30, 2024, whichever occurs first; provided, however, if a HOME-Assisted Unit becomes a Rental Unit, Borrower shall pay the outstanding principal and accrued interest on the Unit Allocation for such Rental Unit upon the expiration of the Term defined in Section 4.1(c).

(i) If all HOME-Assisted Units are sold to Eligible Purchasers, upon the satisfaction of the conditions set forth in Section 2.10, the entire principal amount of the Loan will be deemed by the County to be paid in full and the Note will be cancelled and returned to Borrower.

(ii) If, pursuant to Section 4.1(e), Borrower elects to repay the Unit Allocation of a HOME-Assisted Unit in cash, then, in accordance with Section 4.1(e), (i) the principal balance of the Loan will be reduced by the amount of the Unit Allocation received, and (ii) upon the sale of the remaining HOME-Assisted Units to Eligible Purchasers and the satisfaction of the conditions set forth in Section 2.10, the entire principal amount of the Loan will be deemed by the County to be paid in full and the Note will be cancelled and returned to Borrower.

(iii) If one or more HOME-Assisted Units become Rental Units, (i) the Unit Allocation for such HOME-Assisted Units will remain outstanding, and (ii) the Deed of Trust will remain in effect with respect to the Rental Units. If the Rental Units are sold to Eligible Purchasers at the end of the Term and the conditions set forth in Section 2.10 have been satisfied, the entire principal amount of the Loan will be deemed by the County to be paid in full and the Note will be cancelled and returned to Borrower. If the Rental Units are not sold to Eligible Purchasers, Borrower may elect at any time to pay the Unit Allocation for such HOME-Assisted Units. Upon receipt of such payment, following the sale of the remaining HOME-Assisted Units to Eligible Purchasers and the satisfaction of the conditions set forth in Section 2.10, the Loan will be deemed by the County to be paid in full and the Note will be cancelled and returned to Borrower.

Section 2.8 Prepayment. Borrower may prepay the Loan at any time without premium or penalty. Regardless of any prepayment, Borrower acknowledges that the provisions of this Agreement, including but not limited to the requirement that all HOME-Assisted Units be sold to Eligible Purchasers, remain in effect even though Borrower may have prepaid all or a portion of the Loan.

Section 2.9 Conditions Precedent to Partial Reconveyance of Deed of Trust and Termination of Affordability Covenants and Intercreditor Agreement. The County is not obligated to provide a partial reconveyance of the Deed of Trust or partial termination of the Affordability Covenants and the Intercreditor Agreement upon the sale of a HOME-Assisted

Unit to an Eligible Purchaser, unless the County has received all of the following from Borrower with respect to the HOME-Assisted Unit:

- (a) A completion report from Borrower setting forth the following information with respect to the HOME-Assisted Unit: (i) the income, household size, race and ethnicity of each Homeowner, and (ii) the unit size, sales price and the amount of the first mortgage.
- (b) A copy of the certificate of occupancy or equivalent final permit sign-off.
- (c) A copy of the executed Disposition Agreement between Borrower and the Eligible Purchaser.
- (d) Evidence that Borrower has provided the Eligible Purchaser with homebuyer counseling in accordance with Section 4.2(c).
- (e) If Borrower is required to pay prevailing wages pursuant to Section 3.9 below, a confirmation from Borrower that Borrower has submitted all required documentation to the County, and any identified payment issues have been resolved, or Borrower is working diligently to resolve any such issues.

Section 2.10 Conditions Precedent to Note Cancellation. The County is not obligated to cancel the Note upon the sale of the last HOME-Assisted Unit until the County has received all of the following from Borrower with respect to the Development:

- (a) A financial accounting of all sources and uses of funds used in the construction.
- (b) All relevant contract activity information, including compliance with Section 3, and local hiring and MBE/WBE requirements as set forth in Section 3.14 below.
- (c) If Borrower was required to comply with relocation requirements, evidence of compliance with all applicable relocation requirements.
- (d) If Borrower is required to pay prevailing wages pursuant to Section 3.9 below, a confirmation from Borrower that Borrower has submitted all required documentation to the County, and any identified payment issues have been resolved.

Section 2.11 Non-Recourse. Except as provided below, Borrower does not have 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 Sections 3.9, 3.10, 3.11, 5.6, and 8.4 of this 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 3 CONSTRUCTION OF THE DEVELOPMENT

Section 3.1 Construction. Borrower shall complete the construction of the Development in accordance with the Approved Development Budget.

Section 3.2 Permits and Approvals. Borrower shall obtain all permits and approvals necessary for the construction of the Development no later than February 28, 2022 or such later date that the County approves in writing. Nothing in this Agreement, and none of the County actions taken pursuant to this Agreement, constitutes approval by the County of any required permit, application, map, license, or other required approval, or in any way limits the discretion of the County acting in its regulatory capacity with respect to the Property or the Development.

Section 3.3 Bid Package. Not later than thirty (30) days prior to Borrower's proposed date for advertising the Bid Package for the construction of the Development, Borrower shall submit to the County a copy of Borrower's proposed Bid Package for contracts over One Hundred Thousand Dollars (\$100,000). The County's Assistant Deputy 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. 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 3.4 Construction Contract.

(a) Not later than thirty (30) days prior to commencing construction of the Development, Borrower shall submit to the County for its approval a draft of the proposed construction contract(s) for the Development that exceed One Hundred Thousand Dollars (\$100,000). 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 Development is to provide that at least ten percent (10%) of the costs incurred will be payable only upon completion of the contractor's work, subject to early release of retention for specified

subcontractors upon approval by the County. The construction contract(s) will include all HOME requirements set forth in Section 5.5 below. The County's approval of the construction contract(s) 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 contracts exceeding One Hundred Thousand Dollars (\$100,000), the County shall promptly review same and approve or disapprove such contracts within ten (10) business days. If the construction contract(s) is/are 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 revised construction contract(s) for County approval, which approval is to be granted or denied in ten (10) business days in accordance with the procedures set forth above. Any construction contract(s) over One Hundred Thousand Dollars (\$100,000) executed by Borrower for the Development is to be in the form approved by the County.

Section 3.5 Intentionally Omitted.

Section 3.6 Commencement of Construction. Borrower shall cause the Commencement of Construction of the Development to occur no later than February 28, 2022, or such later date that the County approves in writing. For the purposes of this Agreement, "Commencement of Construction" of the Development is the date of the building permit issued for the first Unit to be constructed.

Section 3.7 Completion of Construction.

(a) Borrower shall diligently prosecute construction of the Development to completion. Borrower shall cause the Completion Date to be no later than September 30, 2023, or such later date that the County approves in writing.

(b) For each HOME-Assisted Unit, Borrower shall notify the County of the Completion Date. Upon receipt of such notice the County will perform an inspection of the HOME-Assisted Unit to determine if the HOME-Assisted Unit was constructed in accordance with the HOME Regulations, including the property standards set forth in 24 C.F.R. 92.251(a). If the County determines the HOME-Assisted Unit was not constructed in accordance with the HOME Regulations, 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 HOME-Assisted Unit may not be sold until such deficiencies have been corrected to the satisfaction of the County.

Section 3.8 Changes; Construction Pursuant to Plans and Laws.

(a) Changes. Borrower shall construct the Development in conformance with (i) the plans and specifications approved by the City and (ii) the Approved Development Budget as such budget is modified pursuant to Section 3.19. Borrower shall notify the County in a timely manner of any changes in the work required to be performed under this Agreement, including any material additions, changes, or deletions to the plans and specifications approved by the County. A written change order authorized by the County must be obtained before any of

the following changes, additions, or deletions in the construction work may be performed: (i) any change in the work the cost of which exceeds One Hundred Thousand Dollars (\$100,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds Two Hundred Fifty Thousand Dollars (\$250,000); or (iii) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Development 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, ordinances, codes (including building codes), rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter;

(ii) the property standards set out in 24 C.F.R. Section 92.251(a); and

(iii) 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 3.9 Prevailing Wages.

(a) To the extent applicable, Borrower shall:

(i) 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.;

(ii) 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., 1777.5 et seq., and implementing regulations of the DIR;

(iii) 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.;

(iv) 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;

(v) cause contractors and subcontractors constructing the Improvements to be registered as set forth in California Labor Code Section 1725.5;

(vi) 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:

(1) 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

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

(vii) 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/>);

(viii) cause its contractors to post job site notices, as prescribed by regulation by the DIR; and

(ix) 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.

(b) 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 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 Development. This obligation to indemnify survives termination of this Agreement, repayment of the Loan, and the reconveyance of the Deed of Trust.

Section 3.10 Accessibility. Borrower shall construct the Development in compliance with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act; Section 504 of the Rehabilitation Act of 1973 ("Section 504"); Title II and/or Title III of the Americans with Disabilities Act; and Title 24 of the California Code of Regulations (collectively, the "Accessibility Requirements"). In compliance with Section 504, a minimum of two (2) HOME-Assisted Units of all Units must be constructed to be fully accessible to households with a mobility impaired member and an additional one (1) HOME-Assisted Unit of all Units must be constructed to be fully accessible to hearing and/or visually impaired persons. In compliance with Section 504 Borrower shall provide the County with a certification from the Development architect that to the best of the architect's knowledge,

the Development complies with all federal and state accessibility requirements applicable to the Development. 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 Development 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 3.11 Relocation.

(a) Borrower represents and warrants to the County that the Property was vacant at the time it was acquired by Borrower. If and to the extent that construction of the Improvements results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, Borrower shall comply with all applicable local, state, and federal statutes and regulations with respect to preparation of a relocation plan, relocation planning, advisory assistance, and payment of monetary benefits, including, without limitation, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601 et seq.) and implementing regulations at 49 C.F.R. 24 et seq.; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. Part 42 and 24 C.F.R. 92.353; and California Government Code 7260 et seq., and implementing regulations at 25 California Code of Regulations 6000 et seq. (together, the "Relocation Laws").

(b) Borrower shall prepare and submit a relocation plan to the County for approval as required by the Relocation Laws.

(c) Borrower is solely responsible for payment of any relocation benefits to any displaced persons and for compliance with the Relocation Laws.

(d) Borrower shall indemnify, defend and hold harmless, (with counsel reasonably acceptable to the County), the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns, against any claim for damages, compensation, fines, penalties, relocation payments or other amounts and expenses (including reasonable attorneys' fees) arising out of the failure or alleged failure of any person or entity (including Borrower, or the County) to satisfy relocation obligations related to the Development. This obligation to indemnify shall survive termination of this Agreement.

Section 3.12 Marketing Plan.

(a) No later than three (3) months prior to the date construction of the Development is projected to start, Borrower shall submit to the County for approval its plan for marketing the Development to income-eligible households as required pursuant to this Agreement (the "Marketing Plan").

(b) The Marketing Plan must include information on affirmative marketing efforts, compliance with fair housing laws and 24 C.F.R. 92.351(a), and a description of the homebuyer counseling to be provided to Eligible Purchasers. Borrower shall cause the homebuyer counseling procedures to be in compliance with policies and guidelines provided by

the County.

(c) The Marketing Plan must identify the criteria that applicants must satisfy to become Eligible Purchasers.

(d) Upon receipt of the Marketing Plan, the County will promptly review the Marketing Plan and will approve or disapprove it within thirty (30) days after submission. If the Marketing Plan is not approved, the County will give Borrower specific reasons for such disapproval and Borrower shall submit a revised Marketing Plan within fifteen (15) days after the County issues its notification. Borrower shall follow this procedure for resubmission of a revised Marketing Plan until the Marketing Plan is approved by the County. If Borrower does not submit a revised Marketing Plan that is approved by the County by three (3) months prior to the projected date of the completion of the Development, Borrower will be in default of this Agreement.

Section 3.13 Equal Opportunity. During the construction of the Development, 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 3.14 Minority-Owned Business Enterprise and Women-Owned Business Enterprise; Local Hiring. 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 Development. 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 Development. Documentation of such notifications must be maintained by Borrower and available to the County upon request.

Section 3.15 Progress Reports. Until such time as Borrower has received certificates of occupancy from the County for the Units, Borrower shall provide the County with quarterly progress reports regarding the status of the construction of the Development, 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 3.19 below.

Section 3.16 Construction Responsibilities.

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

(b) Borrower is solely responsible for all aspects of Borrower's conduct in connection with the Development, 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 Development 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 Development.

Section 3.17 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 Development, 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 Development 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 3.18 Inspections. Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate during reasonable business hours during the Term, County and other public authorities to observe and inspect that portion of the Development that is subject to the Deed of Trust, for the purpose of determining compliance with this Agreement.

Section 3.19 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. Written consent of the County will be required to amend the Approved Development Budget.

Section 3.20 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 Forty-Two Thousand Six Hundred Dollars (\$42,600) per Unit (the "Developer Fee").

Section 3.21 NEPA Mitigation Requirements. Borrower shall comply with the NEPA mitigation requirements set forth in the attached Exhibit C in the construction of the Development.

Section 3.22 Match Requirement. Borrower shall cause the Loan to be matched with a minimum of Four Hundred One Thousand Two Hundred Fifty Dollars (\$401,250) in other, non-federal sources, pursuant to and eligible under applicable HOME Regulations.

ARTICLE 4
DISPOSITION OBLIGATION

Section 4.1 Obligation to Sell, Rent or Repay.

(a) Borrower shall sell each HOME-Assisted Unit to an Eligible Purchaser, no later than the Disposition Date applicable to the HOME-Assisted Unit. If Borrower fails to sell a HOME-Assisted Unit by its Disposition Date, on or before the Disposition Date, Borrower must either (i) rent the HOME-Assisted Unit to an Eligible Tenant, or (ii) pay the County the Unit Allocation for the unsold HOME-Assisted Unit.

(b) A HOME-Assisted Unit will be deemed to have been sold or rented on the date that a Disposition Agreement for the HOME-Assisted Unit has been executed by both Borrower and the Eligible Purchaser or Eligible Tenant, as applicable.

(c) If a HOME-Assisted Unit is rented, the Term of this Agreement will expire on the date established by the County in accordance with the HOME Regulations and HUD policies. As of the date of this Agreement, the parties anticipate that if one or more HOME-Assisted Units are rented, the Term of this Agreement will expire twenty (20) years after the date the last HOME-Assisted Unit to be rented is rented.

(d) The conditions that apply to renting a HOME-Assisted Unit are set forth in Section 4.4.

(e) If a HOME-Assisted Unit is not sold and Borrower elects to repay the Unit Allocation for such HOME-Assisted Unit, upon the County's receipt of the Unit Allocation, the County shall (i) credit Borrower with a partial repayment of the Loan, as applicable, in the amount of the Unit Allocation received (excluding any interest, discussed in Section 4.5 below), (ii) execute and record a partial reconveyance of the Deed of Trust and a partial termination of the Affordability Covenant and the Intercreditor Agreement with respect to the HOME-Assisted Unit that was not sold or rented, and (iii) deem Borrower's obligations under this Agreement to be fully satisfied with respect to such HOME-Assisted Unit.

(f) If a HOME-Assisted Unit has not been sold by the date that is three (3) months after its Completion Date, Borrower shall submit to County evidence satisfactory to County that Borrower is making affirmative marketing efforts, in accordance with Section 3.12.

(g) Borrower shall comply with the terms of the Affordability Covenants in the sale of the HOME-Assisted Units. In the event of a conflict between the terms of the Affordability Covenants and this Agreement, this Agreement will control.

Section 4.2 Conditions Precedent to the Sale of a HOME-Assisted Unit. When Borrower sells a HOME-Assisted Unit to an Eligible Purchaser, Borrower shall cause all of the following conditions to be satisfied:

(a) When selecting an Eligible Purchaser to purchase a HOME-Assisted Unit, Borrower shall apply the selection criteria set forth in the Marketing Plan approved by the County pursuant to Section 3.12.

(b) The purchase price must be approved by the County. Once approved by the County, the purchase price of a HOME-Assisted Unit is the "Approved Purchase Price." The Approved Purchase Price must: (i) meet applicable HOME Regulations, and (ii) not exceed ninety-five percent (95%) of the median purchase price for the area as described in 24 C.F.R. 92.254(a)(2)(iii).

(c) Prior to the sale of a HOME-Assisted Unit, Borrower shall provide the purchaser with homebuyer counseling in accordance with policies and guidelines provided by the County, as outlined in the Marketing Plan by a certified housing counselor who has passed the HUD certification examination and is employed by a HUD-approved housing counseling agency. Borrower shall cause its homebuyer counseling to include a description of the County's homebuyer assistance program for the Development. Borrower may charge a reasonable fee to persons who receive homebuyer counseling from Borrower.

(d) Borrower shall obtain an Income Certification from the Proposed Purchaser pursuant to Section 4.5 below, at or shortly after the date the Proposed Purchaser and Borrower execute the Habitat Partnership Agreement, and transmit it to the County at least fifteen (15) working days prior to the sale of the HOME-Assisted Unit.

(e) Borrower shall obtain a certification from the Proposed Purchaser that he or she will occupy the HOME-Assisted Unit as his or her principal place of residence and that in no event will he or she lease the Unit to another (the "Owner Occupancy Certification"), using a form provided by the County and transmit it to the County at least fifteen (15) working days prior to the sale of the HOME-Assisted Unit.

(f) The County shall have received, in form and substance reasonably satisfactory to the County the Homeowner Resale Restriction duly executed by the Eligible Purchaser, and any other documents required by the County in its reasonable discretion.

Section 4.3 HOME Requirements for Homeowner Resale Restriction. The Homeowner Resale Restriction to be recorded against the HOME-Assisted Units must be consistent with HOME program resale requirements set out in 24 CFR 92.254(a)(5)(i) as explained in CPD Notice 12-003, and include the following provisions:

(a) the County must be included as a third party beneficiary;

(b) the resale restrictions must be for a period of at least fifteen (15) years;

(c) the Homeowner must occupy the Unit as his or her principal place of residence;

(d) if during the term of the Homeowner Resale Restriction, the HOME-Assisted Unit is sold, it must be sold to another Low-Income Household who will use the Unit as his or her principal place of residence;

(e) the Homeowner selling the Unit must receive a "fair return on their investment" which takes into account the Homeowner's down-payment and capital improvements made to the Unit by the Homeowner; and

(f) the Unit must be sold at a price that is affordable to Low Income Households at a price not exceeding a maximum resale price approved by the County.

Section 4.4 Conditions to the Rental of HOME-Assisted Unit. If Borrower elects to rent a HOME-Assisted Unit, Borrower shall cause all of the following conditions to be satisfied:

(a) The Rental Unit must be rented to an Eligible Tenant at a rent not exceeding the Tenant Rent.

(b) The form of lease or rental agreement must be approved by the County.

(c) The terms of the lease or rental agreement must comply with the HOME Regulations.

(d) Borrower shall obtain an Income Certification from the Proposed Tenant no more than six (6) months prior to the date the Rental Unit is rented or leased. In addition, Borrower must satisfy the requirements of Section 4.5 below.

(e) If requested by the County, Borrower shall enter into an agreement that restricts the use of the rented property (a "Regulatory Agreement") and cause or permit the Regulatory Agreement to be recorded against the rented property.

(f) All rent received from a Rental Unit will be applied first to the actual costs incurred by Borrower in managing and maintaining the Rental Unit, and second to the County. The County shall apply any amounts received pursuant to this Section to the reduction of the outstanding Loan. If requested by the County, Borrower shall provide the County with an accounting of the receipt and application of all rent received as a result of renting or leasing a Rental Unit.

Section 4.5 Income Certification. With respect to each member of the Proposed Purchaser household, or Proposed Tenant household, as applicable, Borrower must verify that the information provided in an Income Certification is accurate by taking two or more of the following steps: (i) obtaining a pay stub for his or her most recent pay period; (ii) obtaining a copy of his or her income tax return for the three (3) most recent tax years; (iii) conducting a credit agency search or similar search; (iv) obtaining an income certification from his or her current employer verifying income; (v) obtaining an income verification form from the Social Security Administration and/or the California Department of Social Services, if he or she receives assistance from either agency; or (vi) if he or she is unemployed and has no such tax return, obtaining another form of independent income verification. Where applicable, Borrower shall examine at least two (2) months of relevant source documentation.

Section 4.6 Acceleration of Unit Allocation. If Borrower fails to satisfy its obligation to sell or rent a HOME-Assisted Unit or to pay the HOME-Assisted Unit's Unit Allocation by the HOME-Assisted Unit's Disposition Date, then:

(a) The Unit Allocation for the subject HOME-Assisted Unit will be immediately due and payable;

(b) An Event of Default will be deemed to have occurred in accordance with Section 8.1(b) and the County will be entitled to exercise any and all remedies available to it under this Agreement and under law; and

(c) Notwithstanding any remedies the County elects to exercise in accordance with Section 4.5(b), the Unit Allocation for the subject HOME-Assisted Unit will accrue interest at the Default Rate beginning on the day after the HOME-Assisted Unit's Disposition Date and continuing until the Unit Allocation is paid in full with interest.

Section 4.7 Borrower First Mortgage Assistance and Other Homebuyer Financing. Borrower must obtain the County's approval of the terms of (i) any first mortgage assistance provided to an Eligible Purchaser by Borrower or by any other loan provider and (ii) any other financial assistance to an Eligible Purchaser (once approved by County, all such assistance is the "Mortgage Assistance"). If the County disapproves the terms of the proposed financial assistance, the County shall give specific reasons for its disapproval and Borrower shall, within ten (10) calendar days of disapproval, submit a revised financial assistance plan to the County for approval. The County's review of Eligible Purchaser financing will be to ensure that such financing meets responsible lending practices consistent with 24 CFR 92.254(f)(2) such that the Eligible Purchaser's mortgage is sustainable over the long term and does not contain risky loan features that could threaten the Eligible Purchaser's ability to meet the obligations of the mortgage.

Section 4.8 Translation of Documents. As a condition of this Agreement, if an Eligible Purchaser submits a verbal or written request to either the County or Borrower to have the Loan Documents and forms translated in a language other than English, then Borrower shall have the Loan Documents and forms translated into the requested language in written form, and ensure the translation is accurate and done by a qualified translator in the requested language.

ARTICLE 5 LOAN REQUIREMENTS

Section 5.1 Financial Accountings and Post-Completion Audits. No later than sixty (60) days following the Completion Date of the Development, Borrower shall provide to the County for its review and approval a financial accounting of all sources and uses of funds used in the Development.

Section 5.2 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 in connection with Borrower's use of the Loan funds.

Section 5.3 Records.

(a) Borrower shall keep and maintain at the principal place of business of Borrower set forth in Section 8.9 below, or elsewhere with the County's written consent, full,

complete and appropriate books, records and accounts relating to the Development. Books, records and accounts relating to its compliance with the terms, provisions, covenants and conditions of this Agreement to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this Agreement. Borrower shall cause all books, records, and accounts are to be open to and available for inspection and copying by HUD, the County, its auditors or other authorized representatives at reasonable intervals during normal business hours. Borrower shall cause copies of all tax returns and other reports that Borrower may be required to furnish to any government agency to be open for inspection by the County at all reasonable times at the place that the books, records and accounts of Borrower are kept. Borrower shall preserve such records for a period of not less than five (5) years after their creation in compliance with all HUD records and accounting requirements. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Loan is pending at the end of the record retention period stated herein, then Borrower shall retain the records until such action and all related issues are resolved. Borrower shall cause the records to include all invoices, receipts, and other documents related to expenditures from the Loan funds. Borrower shall cause records to be accurate and current and in such a form as to allow the County to comply with the record keeping requirements contained in 24 C.F.R. 92.508. Such records are to include but are not limited to:

- (i) Records providing a full description of the activities undertaken with the use of the Loan funds.
- (ii) Records demonstrating the eligibility of activities under the HOME Regulations and that use of the HOME Funds meets one of the eligible activities of the HOME program set forth in 24 C.F.R. 92.205;
- (iii) Records demonstrating compliance with the HUD property standards and lead-based paint requirements;
- (iv) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;
- (v) Financial records as required by 24 C.F.R. 92.505, and 2 C.F.R. Part 200;
- (vi) Records demonstrating compliance with local hiring and MBE/WBE requirements;
- (vii) Records demonstrating compliance with Section 3;
- (viii) Records demonstrating compliance with applicable acquisition and relocation requirements, which must be retained for at least five (5) years after the date by which persons displaced from the property have received final payments;
- (ix) Records demonstrating compliance with labor requirements including certified payrolls from Borrower's contractors evidencing that applicable prevailing wages have been paid.

(b) The County shall notify Borrower of any records it deems insufficient. Borrower has fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the County in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

Section 5.4 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. Any such audit is to be conducted during normal business hours at the principal place of business of Borrower 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, as a result of an audit, it is determined 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.

Section 5.5 HOME Requirements.

(a) Borrower shall comply with all applicable laws and regulations governing the use of the HOME Funds as set forth in 24 C.F.R. 92 et seq. In the event of any conflict between this Agreement and applicable laws and regulations governing the use of the Loan funds, the applicable laws and regulations govern.

(b) The laws and regulations governing the use of the Loan include (but are not limited to) the following:

(i) Environmental and Historic Preservation. 24 C.F.R. Part 58, which prescribes procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5;

(ii) Applicability of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The applicable policies, guidelines, and requirements of 2 C.F.R. Part 200 and 24 C.F.R. 92.505;

(iii) Debarred, Suspended or Ineligible Contractors. The prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 C.F.R. Part 24;

(iv) Civil Rights, Housing and Community Development, and Age Discrimination Acts. The Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the

Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.); the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by Executive Order 12608;

(v) Lead-Based Paint. The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. Part 35;

(vi) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24; 24 C.F.R. 92.353; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq. (if applicable); and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Sections 6000 et seq.;

(vii) Discrimination against the Disabled. The requirements of the Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), and federal regulations issued pursuant thereto;

(viii) Clean Air and Water Acts. The Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 1500, as amended from time to time;

(ix) Section 3. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u and implementing Regulations at 24 C.F.R. 75 ("Section 3");

(1) Pursuant to Section 3, to the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations Borrower shall ensure:

(A) that employment and training opportunities arising in connection with the Development are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the Development is located. Where feasible, priority for opportunities and training described above should be given to: (i) Section 3 workers residing within the service area or the neighborhood of the project, and (ii) participants in YouthBuild programs; and

(B) that contracts for work awarded in connection with the Development are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the Development is located. Where feasible, priority for opportunities and training described above should be given to: (i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the Development, and (ii) participants in YouthBuild programs.

(2) Borrower will be considered to have complied with the Section 3 requirements, in the absence of evidence to the contrary, if it certifies that it has followed the prioritization of effort set forth in subsection (1) above, and meets or exceeds the applicable Section 3 benchmark as described in 24 C.F.R. 75.23(b).

(3) Borrower shall maintain records of its Section 3 activities and cause such records to be accurate and current and in a form that allows the County to comply with the reporting requirements of 24 C.F.R. 75.25.

(4) Borrower shall require all contractors and subcontractors performing work on the Development to comply with the Section 3 requirements.

(x) Labor Standards. The labor requirements set forth in 24 C.F.R. 92.354; the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 3141-3148); the Copeland "Anti-Kickback" Act (40 U.S.C. 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended;

(xi) Drug Free Workplace. The requirements of the Drug Free Workplace Act of 1988 (P.L. 100-690) and implementing regulations at 24 C.F.R. Part 24;

(xii) Anti-Lobbying; Disclosure Requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 C.F.R. Part 87;

(xiii) Historic Preservation. The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. Section 470) and the procedures set forth in 36 C.F.R. Part 800. If archeological, cultural, or historic period resources are discovered during construction, all construction work must come to a halt and Borrower shall immediately notify the County. Borrower shall not alter or move the discovered material(s) until all appropriate procedures for "post-review discoveries" set forth in Section 106 of the National Historic Preservation Act have taken place, which include, but are not limited to, consultation with the California State Historic Preservation Officer and evaluation of the discovered material(s) by a qualified professional archeologist;

(xiv) Religious Organizations. If Borrower is a religious organization, as defined by the HOME Regulations all conditions prescribed by HUD for the use of HOME Funds by religious organizations, including the First Amendment of the United States Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 C.F.R. 92.257;

(xv) Violence Against Women. The requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4, 127 Stat. 54) applicable to HUD-funded programs; and

(xvi) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the Loan funds.

Section 5.6 Hazardous Materials.

(a) Borrower shall keep and maintain that portion of the Property that is subject to the Deed of Trust in compliance with, and may not cause or permit such Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about such Property including, but not limited to, soil and ground water conditions. Borrower may not use, generate, manufacture, store or dispose of on, under, or about such Property or transport to or from such Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in construction of single-family homes 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 (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions related to the Property instituted, completed or threatened against Borrower or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"), (ii) all claims made or threatened by any third party related to the Property against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"), and (iii) 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 classified as "border-zone property" (as defined in California Health and Safety Code Section 25117.4) under the provision of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The County has the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower. 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, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on or under the Property, including without limitation: (i) all foreseeable consequential damages, (ii) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans, and (iii) all reasonable costs and expenses incurred by the County in connection with clauses (i) and (ii), including but not limited to reasonable attorneys' fees and consultant's 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, which results from contamination emanating from the Property). This obligation to indemnify will survive termination of this Agreement.

(d) 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.

(e) 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.

(f) 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 and Damage.

(a) During the construction, marketing, and sale of the Units, and during any period of time Borrower owns one or more Rental Units, Borrower shall maintain the Development and that portion of the Property that is subject to the Deed of Trust in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving a County notice of such a condition, then in addition to any other rights available to the County, the County may perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property, subject to the provisions provided in subsection (b) below.

(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 that portion of the Property that is subject to the Deed of Trust 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 proceeds, and is to be complete within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction are to be applied to the cost of such repairs or restoration and, if such insurance proceeds are insufficient for such purpose, then Borrower shall make up the deficiency. If Borrower does not promptly make such repairs then any insurance 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. 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.

Section 5.9 Notices. Borrower shall promptly notify the County in writing of any and all of the following:

- (a) Any litigation known to Borrower materially affecting Borrower, or the Property and of any claims or disputes that involve a material risk of litigation;
- (b) Any written or oral communication Borrower receives from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Property or Improvements fail in any respect to comply with any applicable governmental law;
- (c) Any material adverse change in the physical condition of the Property (including any damage suffered as a result of fire, earthquakes, or floods);
- (d) Any material adverse change in Borrower's financial condition, any material adverse change in Borrower's operations, or any change in the management of Borrower;
- (e) That any of the statements in Section 6.1(l) regarding Hazardous Materials are no longer accurate;
- (f) Any Event of Default or event which, with the giving of notice or the passage of time or both, would constitute an Event of Default; and
- (g) Any other circumstance, event, or occurrence that results in a material adverse change in Borrower's ability to timely perform any of its obligations under any of the Loan Documents.

Section 5.10 Nondiscrimination. 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.

Section 5.11 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 Borrower or 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 sale of a HOME-Assisted Unit to an Eligible Purchaser in compliance with this Agreement.

(b) 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 the grant of the security interests in the Development for Approved Financing.

Section 5.12 Insurance Requirements.

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

(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 coverage 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 coverage for owned, non-owned and hired vehicles, as applicable.

(iv) Builder's Risk insurance during the course of construction of the Development, and beginning on the Completion Date if there are Rental Units in the Development, 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 comprehensive 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, Commercial Automobile Liability and Property insurance policies must be endorsed to name as an additional insured Contra Costa County and its officers, agents, employees and members of the County Board of Supervisors. The endorsement for additional insureds must be on a separate additional page. This endorsement page must name Contra Costa County and its officers, agents, employees, and members of the County Board of Supervisors as additional insureds; include the address of the department (Contra Costa County, Department of Conservation and Development, 30 Muir Road, Martinez, CA 94553); include the name of the insured (HEBSV Esperanza Place LLC); and include the insurance policy number.

(e) All policies and bonds are to contain: (i) the agreement of the insurer to give the County at least ten (10) days' notice prior to cancellation or material change for non-payment of premium, and thirty (30) days' notice prior to cancellation for any other change or cancellation 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 5.13 Anti-Lobbying Certification.

(a) Borrower certifies, to the best of Borrower's knowledge or belief, that:

(i) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(b) This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and no more than One Hundred Thousand Dollars (\$100,000) for such failure.

Section 5.14 Covenants Regarding Approved Financing.

(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 provide the County copies of any notice of default.

(c) Borrower may not amend, modify, supplement, cancel or terminate any documents related to any financing that is part of the Approved Financing without the prior written consent of the County.

(d) Borrower may not incur any indebtedness where Borrower provides a security interest in the Property in connection with such 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.

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 6 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 Loan 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 Loan 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 Loan 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 Loan 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 Loan 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 Development 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 repay the Loan or impair the security 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 for current real property taxes and liens in favor of the County or approved in writing by the County, or Approved Financing, as defined in Section 1.1(f).

(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 Development 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, or under, 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 Development to completion, within the times set forth in Article 3 above.

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

(c) Failure to Submit Plans. If Borrower fails to submit a Marketing Plan that is approved by the County in accordance with Section 3.12.

(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(l)), or in any of the other Loan Documents, and Borrower fails to cure such default within thirty (30) days

after receipt of written notice thereof from the County to Borrower; provided, however, that if a different period or notice requirement is specified under any other section of this Article 8, the specific provisions shall control.

(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 its business is dissolved or terminated.

(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 5.11.

(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 Loan Documents, proves to have

been incorrect in any material respect when made.

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 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 Loan 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 Loan Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Loan Documents.

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

Section 7.3 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 7.4 Remedies Cumulative. No right, power, or remedy given to the County by the terms of this Agreement or the other Loan 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.

ARTICLE 8
GENERAL PROVISIONS

Section 8.1 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 marketing 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 8.2 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 marketing of the Development, and Borrower shall include similar requirements in any contracts entered into for the construction or marketing of the Development.

Section 8.3 Amendments. No alteration or variation of the terms of this Agreement is valid unless made in writing by the parties. The County Assistant Deputy Director – Department of Conservation and Development is authorized to execute on behalf of the County amendments to the Loan Documents or amended and restated Loan 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 8.4 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, the development, construction and marketing of the Development and the sale of the Units, 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 expiration of the Term and the reconveyance of the Deed of Trust.

Section 8.5 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 8.6 No Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

Section 8.7 Discretion Retained By County. The County's execution of this Agreement in no way limits discretion the County may have in the permit and approval process related to the construction of the Development.

Section 8.8 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 8.8(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 8.8(a) is followed.

(b) The conflict of interest provisions of Section 8.8(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.

(d) Borrower shall comply with the conflict of interest provisions set forth in 24 C.F.R. 92.356.

Section 8.9 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: Housing & Community Improvement Division/C.
Louie

Borrower: HEBSV Esperanza Place, LLC
c/o Habitat for Humanity East Bay/Silicon Valley, Inc.
2619 Broadway
Oakland, CA 94612
Attn: President and Chief Executive Officer

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 8.10 Applicable Law. This Agreement is governed by the laws of the State of California.

Section 8.11 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 8.12 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 8.13 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 8.14 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 8.15 County Approval. The County has authorized the County Assistant Deputy Director-Department of Conservation and Development to execute the Loan 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 Loan Documents.

Section 8.16 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 8.17 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 8.18 Entire Understanding of the Parties. The Loan Documents constitute the entire agreement of the parties with respect to the Loan.

Section 8.19 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.

[signatures on following page]

The parties are entering into this Agreement as of the last date set forth below.

COUNTY:

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

By: _____
John Kopchik, Director
Department of Conservation and
Development

Date: November 16, 2021

APPROVED AS TO FORM:

MARY ANN McNETT MASON
County Counsel

By: _____
Kathleen Andrus
Deputy County Counsel

BORROWER:

HEBSV ESPERANZA PLACE, LLC, a California
limited liability company

By: _____
Janice Jensen, Manager

Date: November 16, 2021

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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

PARCEL ONE:

Lots 1 through 4, inclusive, as shown on the map of Subdivision 9470, filed October 18, 2021, in Map Book 549, Pages 13 through 17, inclusive, Contra Costa County Records.

PARCEL TWO:

The right of way granted in the Deed from Dorothy Marion Hunt to C.L. Greenwell, et ux, dated August 7, 1952 and recorded August 20, 1952 in [Volume 1979 of Official Records, at Page 11](#), as follows:

A right of way (not to be exclusive) as an appurtenance to a portion of Parcel One, above, for use as roadway for vehicles of all kinds; pedestrians and animals, for water, gas, oil and sewer pipe line, and for telephone, electric light and power lines, together with the necessary poles or conduits to carry said lines, over a portion of the Rancho Las Juntas being a strip of land 20 feet in width the South line of which is parallel with and 20 feet Southerly at right angles from the North line thereof and which North line is described as follows: Beginning on the North line of the Parcel of Land described in the Deed from John W. Cuthbertson, et ux, to Dorothy Marion Hunt, dated March 18, 1952 and recorded March 26, 1952 in [Volume 1910 of Official Records, at Page 311](#), distant thereon North 61°26'40" East, 340.75 feet from the Northwest corner thereof; thence from said point of beginning North 61°26'40" East along said North line 502.20 feet to the center line of the County Road known as Las Juntas Way.

APN'S 148-180-050, 051 & 052

EXHIBIT B

APPROVED DEVELOPMENT BUDGET

Habitat For Humanity East Bay/Silicon Valley
 Project Name: Esperanza Place, 1250 Las Juntas Way, Walnut Creek
 Summary Budget
 10/21/2021

42 Units - 32 Unit @ Low <80% AMI, 10 Units @Mod (80%AMI-120%AMI)						
	1 BR	2 BR	3 BR	4 BR	Total Homes	Percentage
Living Sq. Ft.	638	992	1,192	1,442		
Very Low	-	0	0	0	-	0%
Low	8	10	13	1	32	76%
Moderate	2	3	4	1	10	24%
Market	-	0	0	0	-	0%
Total Units	10	13	17	2	42	100%
Total Sq. Ft.	6,380	12,896	20,264	2,884	42,424	

Project Time Line

	Start	Finish
Land Contract	2016	2017
Entitlement & CD	2017	2021
Infrastructure and Site Development	2021	2022
Construction of All Homes	2022	2025

Esperanza Place
 Permanent Sources

	Budget	Per Unit	% of Total Cost	Phase 1 (23 Units)	Phase 2 (19 Units)
Contributions - Habitat for Humanity	\$ 2,614,563	\$ 62,252	10.87%	\$ 1,696,929	\$ 917,634
City Financing	\$ 5,150,000	\$ 122,619	21.41%	\$ 3,657,139	\$ 1,492,861
County Financing - HOME	\$ 1,605,000		6.67%	\$ 1,605,000	\$ -
Funding Gap	\$ -			\$ -	\$ -
Construction Loan (Equal to Home Sales Proceeds)	\$ 13,979,993			\$ 7,414,743	\$ 6,565,250
Home Sales Proceeds - Low	\$ 9,026,150	\$ 282,067	37.53%		
Home Sales Proceeds - Mods	\$ 4,953,843	\$ 495,384	20.60%		
Home Sales Proceeds - Market Rate	\$ -	\$ -		\$ -	\$ -
Home Sales Proceed - AHP/WISH Funds	\$ 704,000	\$ 22,000	2.93%	\$ 352,000	\$ 352,000
Added Inflation for Home Sales Proceeds (Included)	\$ -	\$ -	0.00%	\$ -	\$ -
Total Permanent Sources	\$ 24,053,556	\$ 572,704	100%	\$ 14,725,811	\$ 9,327,745

Development Costs

	Budget	Per Unit	% of Total Cost	Phase 1 (23 Units)	Phase 2 (19 Units)
Site Acquisition/Due Diligence	\$ 3,045,000	\$ 72,500	12.66%	\$ 1,667,500	\$ 1,377,500
Site Remediation & Demolition	\$ 215,303	\$ 5,128	0.90%	\$ 215,303	\$ -
Design Consultants	\$ 882,431	\$ 21,010	3.67%	\$ 816,249	\$ 66,182
Site Development	\$ 3,685,718	\$ 87,755	15.32%	\$ 3,285,718	\$ 400,000
Home Construction	\$ 9,036,619	\$ 215,158	37.57%	\$ 4,804,490	\$ 4,232,129
Permits and Fees	\$ 2,166,730	\$ 51,589	9.01%	\$ 1,186,543	\$ 980,187
Administration	\$ 1,791,486	\$ 42,654	7.45%	\$ 981,052	\$ 810,434
Finance & Carrying	\$ 1,479,548	\$ 35,227	6.15%	\$ 810,229	\$ 669,319
Marketing/Homeowner Relations	\$ 528,530	\$ 12,584	2.20%	\$ 289,433	\$ 239,097
Project Contingency	\$ 1,222,191	\$ 29,100	5.08%	\$ 669,295	\$ 552,896
Total Development Costs	\$ 24,053,556	\$ 572,704	100%	\$ 14,725,811	\$ 9,327,745

EXHIBIT C

NEPA MITIGATIONS

NEPA Mitigation and Monitoring Plan – Esperanza Place – 1250 Las Juntas Way, Walnut Creek

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	Comments
1 Air Quality/ Clean Air AQ1 AQ2 AQ3	BAAQMD CEQA Guidelines; CalEEMod Version 2013.2.2 Annual Emissions Report by AEM Consulting		<input type="checkbox"/>	<input type="checkbox"/> City of Walnut Creek Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post construction	Project sponsor, architect, and contractor	Ongoing	<input type="checkbox"/> Letter from Architect <input type="checkbox"/> Copy of final building permit		
2 Contamination and Toxic Substances CT1 CT2	Remedial Action Workplan by Gencon Consultants Voluntary Cleanup Agreement (DTSC)		<input type="checkbox"/>	<input type="checkbox"/> City of Walnut Creek Approved Construction Plans	Project Sponsor, architect, contractor	Pre construction	Project sponsor, architect, and contractor	Ongoing	<input type="checkbox"/> Letter from Architect <input type="checkbox"/> DTSC Site Certification of Compliance Letter		

3 Endangered Species ES1 ES2	Biological Resources Analysis by Monk & Associates, August 2020		<input type="checkbox"/>	<input type="checkbox"/> City of Walnut Creek Approved Construction Plans <input type="checkbox"/> Pre-construction survey	Project Sponsor, architect, contractor	Pre-construction and during construction	Project sponsor, architect, and contractor	Ongoing	<input type="checkbox"/> Letter from Biologist <input type="checkbox"/> Letter from Architect		
4 Historic Preservation CR1 CR2 CR3 CR4 CR5 CR6 CR7 CR8 CR9 CR10 CR11	Cultural Resources Evaluation by Archeo-Tec Inc, April 2020; Historic & Cultural Resources Evaluation by AEM Consulting, April 2020		<input type="checkbox"/>	<input type="checkbox"/> City of Walnut Creek Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post ground disturbing activities	Project sponsor, architect, and contractor	Ongoing	<input type="checkbox"/> Letter from Archaeological consultant <input type="checkbox"/> Copy of final building permit		
5 Noise Abatement and Control N1 N2 N3 N4 N5 N6	Environmental Noise Assessment by Illington and Rodkin, 2018		<input type="checkbox"/>	<input type="checkbox"/> City of Walnut Creek Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post construction	Project sponsor, architect, and contractor	Ongoing	<input type="checkbox"/> Letter from Architect <input type="checkbox"/> Copy of Final Building Permit		

6 Soil Suitability G1	Geotechnical Investigation Report by Rockridge Geotechnical, 2017		<input type="checkbox"/>	<input type="checkbox"/> City of Walnut Creek Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post construction	Project sponsor, architect, and contractor	Ongoing – during construction	<input type="checkbox"/> Letter from Architect <input type="checkbox"/> Copy of final building permit	
7 Storm Water SW1 SW2	Stormwater Control Plan by Kier & Wright, 2019		<input type="checkbox"/>	<input type="checkbox"/> City of Walnut Creek Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post construction	Project sponsor, architect, and contractor	Ongoing	<input type="checkbox"/> Letter from Architect <input type="checkbox"/> Copy of final building permit	

Conditions for Approval: (List all mitigation measures adopted by the responsible entity to eliminate or minimize adverse environmental impacts. These conditions must be included in project contracts and other relevant documents as requirements). [24 CFR 58.40(d), 40 CFR 1505.2(c)]

Air Quality/Clean Air

AQ1. Consistent with the BAAQMD’s preferred approach, the project developer shall ensure that the following measures are included in construction contracts and specifications to control fugitive dust emissions:

- Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives;
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
- Sweep daily (with water sweepers) all paved access roads, parking areas and staging area at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality;
- Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets; • Hydroseed or apply non-toxic soil stabilizers to inactive construction areas;
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Limit traffic speeds on unpaved roads to 15 mph;
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways; and
- Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts.

AQ2. The project developer shall ensure that emissions from construction equipment exhaust, and from workers commuting to the site, are reduced

from implementation of the following measures:

- Store construction tools on-site in secure facilities to encourage commuting by transit;
- Use alternative fueled construction equipment to the fullest extent possible;
- Minimize idling time (e.g., 5-minute maximum);
- Maintain properly tuned equipment according to equipment manufacturer's guidelines; and
- Limit hours of operation of heavy duty equipment to the hours between 7:00 A.M. and 7:00 P.M. Monday through Friday, and between 8:00 A.M. and 5:00 P.M. on Saturday, as specified in Walnut Creek Municipal Code Section 4-6.203.

AQ3. Compliance with City of Walnut Creek's Standard Conditions of Approval for standard dust control practices is required.

Contamination and Toxic Substances

CT1. Compliance with the Remedial Action Workplan prepared by Gencon Consultants as approved by the California Department of Toxic Substance Control (DTSC).

CT2. Compliance with terms of Voluntary Cleanup Agreement entered into with the Department of Toxic Substance Control (DTSC).

Endangered Species

ES1. Owing to the mobility of nesting birds, nesting bird surveys typically remain valid for 7 days after completion of a nesting bird survey in the nesting season (nesting season is from February 1 to September 1). Thus if there are any delays in work where earth-moving or construction is stopped for more than a few days, and then needs to be restarted, then repeated surveys for nesting birds would have to be conducted to ensure a new nesting attempt has not taken place and could be impacted by the restarting of activities.

ES2. If birds construct nests within a zone of influence of the ongoing construction in the nesting season, but not in the immediate construction area, these nesting birds would be assumed to be acclimated to the construction activities. No further protection actions would be warranted (i.e., nest protection buffers would be unnecessary). However, if construction were to move closer to and/or within a line of sight of the nesting birds as the project continues, then this could be a concern. Nesting bird buffers may be required at the discretion of a qualified ornithologist.

Historic Preservation

CR1. The project application shall adhere to the Memorandum of Agreement (MOA) between Habitat for Humanity and Wilton Rancheria, dated October 8, 2020 at all times.

CR2. If any human remains or artifacts are found, the California Valley Miwok tribe shall be notified within 48 hours. Call or email Silvia Burley (209) 931-4567 office@cvtmt.net .

CR3. A limited program of pre-construction subsurface testing shall be combined with construction crew training and with the possibility of limited construction monitoring during ground disturbances (to be determined based on the findings of the subsurface testing).

- CR4.** A limited program of pre-construction test trenching is recommended for those areas deemed most likely to contain intact/undisturbed subsurface soils (based on an interpretation of previous disturbances). The proposed testing would entail the excavation of 4-6 mechanical trenches by a small backhoe under the direct supervision and monitoring by trained archaeologists. The purpose of this approach would be to assess subsurface soil contexts for cultural sensitivity and to identify and mitigate impacts to potential resources efficiently and with minimal cost/potential delay should cultural resources be encountered within areas of planned subsurface construction disturbance.
- CR5.** The need for monitoring during construction excavations is based on stratigraphic observations regarding the extent of prior disturbance and the depths and locations of archaeological finds during testing. Based on the findings of the mechanical test trenching, limited and targeted construction monitoring may be recommended. Archaeological monitoring consists of the observation of soils-disturbing construction activities by an archaeologist to ensure that no potentially significant cultural resources are impacted during construction without adequate mitigation. If such a resource is encountered, ground disturbance in the area of the resource shall cease until the resource is evaluated for historical significance and, if warranted, a data recovery plan is formulated and implemented.
- CR6.** The archaeological consultant and the Project construction manager/sponsor will coordinate to ensure that the archaeological monitor is informed in advance of the schedule of soil disturbing activities for which monitoring is advised.
- CR7.** Regardless of whether monitoring is required and implemented, at a very minimum, the developer is required to have a qualified firm conduct Construction Crew Training, wherein an archaeologist will train construction crews to recognize potential archaeological resources. This training program would take place on-site as a tailgate meeting prior to the start of construction soil disturbance. The training would take approximately 1 hour and would include the distribution of an Alert Sheet that guides identification of features and artifacts (with labels in English and Spanish) and defines protocols for contacting the archaeologist should a potential archaeological deposit or feature be identified. One or more key members of the construction crew will be designated as the contact for the archaeologist (by phone, text, or email).
- CR8.** If during project construction activities previously unidentified archeological resources are discovered, all project activities in the immediate vicinity of the discovery would be halted and the procedures of 36 CFR Part 800.13(b) and (c) would be followed. [Paragraph I.A. Inadvertent Archeological Resource Discovery]
- CR9.** Upon discovery of Native American human remains and associated or unassociated funerary objects, the City of Walnut Creek shall treat them in accordance with provisions of California Public Resources Code Section 5097.94, 5097.98, and 5097.99 and the California Health and Safety Code Section 7050.5 or as provided in federal implementing regulations found in 36 CFR 800.13(b)(2). [Paragraph I.B. Treatment of Native American human remains and cultural properties]
- CR10.** For any archaeological resources discovered during the excavation and construction phase, all project activities in the immediate vicinity of the discovery would halt. Procedures of 36 CFR Part 800.13(b) and (c); PRC Sections 5097.94, 5097.98 and 5097.99; and the California Health and Safety Code Section 7050.5 would be followed, including calling an archaeologist or paleontologist to evaluate the materials.
- CR11.** If paleontological resources were found during site excavation and construction, work would be halted until a paleontologist could evaluate the nature and significance of the resources. If significant resources were confirmed, the OHP and the California Department of State Parks would be contacted for further guidance on documentation and preservation. Protocol for the discovery of paleontological resources during construction would be the same as that for archaeological resources: project activities in the immediate vicinity of the discovery would halt, and

procedures of 36 CFR Part 800.13(b) and (c); PRC Sections 5097.94, 5097.98 and 5097.99; and the California Health and Safety Code Section 7050.5 would be followed, including calling an archaeologist or paleontologist to evaluate the materials.

Noise Abatement and Control

N1. Mechanical Ventilation of Residential Interiors. To meet the City interior noise standard of 45 dBA Ldn standard at the residential interiors, all residences with windows and/or doors with views the BART line will require mechanical ventilation to allow the windows to remain closed at the residents' option as the interior noise standards would not be met with open windows. A standard central air conditioning system or a central heating system equipped with a 'summer switch' which allows the fan to circulate air without furnace operation in each residence requiring mechanical ventilation will provide a habitable interior environment and thus meet the building code requirement referenced above.

N2. Exterior Window and Door Upgrades. Though standard thermal insulating exterior windows and doors in units with mechanical ventilation will be sufficient to reduce interior maximum noise levels at within residences with facades which face directly away from the BART line or those that have all views to the BART line blocked by intervening buildings, a detailed analysis of the noise-reduction requirements at residences with facades which have windows and/or doors with views the BART line was conducted to determine the noise mitigation needed to meet the City's recurring maximum noise level (Lmax30) standard of 50 dBA or less within bedrooms and 55 dBA Lmax30 in other rooms. Based on the use of the exterior wall type as discussed above, and an analysis of the proposed window and door areas as a percentage of exterior wall areas, the following sound ratings will be needed at all windows and doors with views of the BART line to reduce maximum interior noise levels to the City's recurring interior maximum noise level standards:

N3. Facades of Units 30 and 31 with views of the BART line will be exposed Lmax30 levels of 87 to 90 dBA as shown in Figure 3 (See Environmental Noise Assessment, Appendix H) and will require acoustical upgrades of walls, windows and doors to meet the City's recurring maximum noise level (Lmax30) standard of 50 dBA or less within bedrooms and 55 dBA Lmax30 in other rooms as follows:

- a. Exterior Wall Upgrade: To reduce maximum noise levels to acceptable levels, an exterior wall upgrade, below, is recommended for the exterior walls of rooms which face or are perpendicular to the BART line.
- b. Exterior: Cementitious plank siding.
- c. Cavity: Wood studs with 3 ½" thick sound attenuation blankets in the cavity. INTERIOR: 1 layer of 5/8" gypsum board on ½" resilient channels at 24" o.c.

N4. Window and Door Upgrades:

With the use of the acoustically upgraded exterior wall, facades of Units 30 and 31 with views of the BART line will require windows with an STC rating of 38 or greater in bedrooms, and windows with an STC rating of 35 or greater and doors with an STC rating of 32 or greater in other rooms; The facades of all other units with views of the BART line will be exposed Lmax30 levels of 83 dBA or less as shown in Figure 3 (see Environmental Noise Assessment, Appendix H), and will only require acoustical upgrades of windows and doors to meet the City's recurring maximum noise level (Lmax30) standard of 50 dBA or less within bedrooms and 55 dBA Lmax30 in other rooms as follows:

Facades of residences with views of the BART line that are exposed 83 dBA Lmax30, as shown in Figure 3 (see Environmental Noise Assessment, Appendix H), will require windows with an STC rating of 33 or greater in bedrooms, and windows with an STC rating of 29 or greater and doors with an STC rating of 26 or greater in other rooms,

N5. Facades of residences with views of the BART line that are exposed 82 dBA Lmax30, as shown in Figure 3 (see Environmental Noise Assessment, Appendix H), will require windows with an STC rating of 32 or greater in bedrooms, and windows with an STC rating of 28 or greater and doors with an STC rating of 26 or greater in other rooms,

N6. Facades of residences with views of the BART line that are exposed 81 dBA Lmax30, as shown in Figure 3 (see Environmental Noise Assessment, Appendix H), will require windows with an STC rating of 31 or greater in bedrooms, and windows with an STC rating of 28 or greater and doors with an STC rating of 26 or greater in other rooms.

Soil Suitability

G1. Follow all recommendations in the Geotechnical Investigation Report prepared for the project by Rockridge Geotechnical in 2017 and found in Appendix G.

Storm Water

SW1. Comply with terms of Stormwater Control Plan prepared by Kier & Wright in 2019 and submitted to the City of Walnut Creek.

SW2. Implement Best Management Practices (BMPs) and Low Impact Development (LID) measures to ensure post-development impacts to water quality are minimal.