

DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT
Orbisonia Heights Transit Oriented Development Project
Site A / Phase 1

This Disposition, Development, and Loan Agreement (the "Agreement") is dated _____, 2022, and is between the County of Contra Costa, a political subdivision of the State of California (the "County") and _____, a California limited partnership ("Developer").

RECITALS

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

B. The County has succeeded to the housing assets of the former Contra Costa County Redevelopment Agency (the "Former Agency") in accordance with California Health and Safety Code Section 34176. In its capacity as housing successor, the County owns approximately forty-four (44) parcels of real property consisting of approximately 7.767 acres, located near West Leland Road and Bailey Road, in the unincorporated area of Bay Point, commonly referred to as the Orbisonia Heights Site (the "Master Development Property"). The Master Development Property is located within the Bay Point Redevelopment Project Area.

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

D. The County issued a Request for Qualifications/ Request for Proposals (the "RFP") in March 2017 for a developer to develop the Master Development Property. After evaluating responses to the RFP, the County selected Pacific West Communities Inc., an Idaho corporation, as the developer of the Master Development Property (the "Master Developer"). The County and the Master Developer entered into that certain Master Development Agreement dated as of [_____, 2022] (the "Master Development Agreement" or "MDA") to facilitate the sale of the Master Development Property and the development of the Master Development Property. The Master Developer intends to develop the Master Development Property in three (3) phases (the "Master Development").

E. Pursuant to the Master Development Agreement, the County and Developer are entering into this Agreement in connection with the construction of approximately 150 multi-family housing units (including 1 manager's unit) (each a "Unit", and together, the "Housing Improvements"), and an approximately 20,000 square-foot public library (the "Library Improvements") as part of the Master Development. Together, the Housing Improvements and the Library Improvements are the "Development." The Housing Improvements will be located on a portion of the Master Development Property that is more particularly described in Exhibit A-1 (the "Housing Parcel") attached to and incorporated into this Agreement. The Library Improvements will be located on a portion of the Master Development Property that is more

particularly described in Exhibit A-2 (the "Library Parcel") attached to and incorporated into this Agreement. Together, the Housing Parcel and the Library Parcel are the "Property." The Development, as well as all landscaping, roads and parking spaces on the Property and any additional improvements on the Property, are the "Improvements." The Development is Phase 1 of the Master Development.

F. The County and Developer agree that the presence of a public library in a community enhances the quality of life in that community. As part of the consideration given to the County in exchange for entering into the Master Development Agreement and this Agreement, Developer has agreed to construct the Library Improvements, at a cost to Developer of not less than \$4,200,000, using plans and specifications approved by the County.

G. Following the issuance of a final certificate of occupancy for the Library Improvements and the Contra Costa County Board of Supervisors' acceptance of the conveyance of the Library Parcel to the County, Developer shall convey the Library Parcel to the County in fee simple absolute at no cost to the County. The County and Developer will simultaneously enter into reciprocal easements for the use of common areas.

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

I. Developer desires that the County provide seller carry-back financing in the amount of One Million Seven Hundred Ninety-Six Thousand Eight Hundred Seventy-Five Dollars (\$1,796,875) to assist in the purchase of the Housing Parcel (the "Loan"). The County is willing to provide the Loan under the terms of this Agreement and in accordance with Government Code Section 25522 and Health and Safety Code Section 33430.

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

K. The County has prepared the report (the "Section 33433 Report") required by, and has conducted a public hearing pursuant to, California Health and Safety Code Section 33433 with respect to the sale of the Property to Developer for redevelopment of the Property; and the County has made the findings required pursuant to California Health and Safety Code Section 33433 with respect to such sale. The County intends to convey the Property in its capacity as housing successor and as permitted under Health and Safety Code Section 33433.

L. Pursuant to the California Environmental Quality Act (Public Resource Code 21000 et seq.), and its implementing regulations ("CEQA"), following a duly noticed public hearing, the County has prepared, reviewed and approved the Environmental Impact Report dated June 18, 2002, for the Specific Plan (the "EIR"), which EIR contemplates the Development. The EIR has served as the environmental documentation for the County's consideration and approval of this Agreement and the transactions contemplated by this Agreement.

The parties therefore agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Master Development Agreement. The Master Development Agreement, as it may be amended, is hereby incorporated into this Agreement by reference as though fully set forth herein. The provisions of the Master Development Agreement and this Agreement shall be interpreted to have consistent terms and to give effect to both agreements to the greatest extent possible; however, in the event of a conflict, this Agreement shall control with respect to the Development. Notwithstanding the foregoing, a default by the Master Developer under the Master Development Agreement that is not directly related to the Development is not a default under this Agreement and does not, by itself, entitle the County to any recourse or remedies against Developer.

Section 1.2 Definitions.

The following terms have the following meanings:

"Accessibility Requirements" has the meaning set forth in Section 5.8.

"Agreement" has the meaning set forth in the first paragraph.

"Annual Operating Expenses" means for each calendar year, the following costs reasonably and actually incurred for operation and maintenance of the Housing Improvements:

- (i) property taxes and assessments imposed on the Development;
- (ii) debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Housing Improvements) on Approved Financing;
- (iii) on-site service provider fees for tenant social services, provided the County has approved, in writing, the plan and budget for such services before such services begin;
- (iv) property management fees and reimbursements, on-site property management office expenses, and salaries of property management and maintenance personnel, not to exceed amounts that are standard in the industry and which are pursuant to a management contract approved by the County;
- (v) fees for accounting, audit, and legal services incurred in the asset management of the Housing Improvements, not to exceed amounts that are standard in the industry;
- (vi) premiums for insurance required for the Development to satisfy the requirements of any lender of Approved Financing;

- (vii) utility services that are not paid for directly by tenants, including water, sewer, and trash collection;
- (viii) maintenance and repair expenses and services;
- (ix) any annual license or certificate of occupancy fees required for operation of the Development;
- (x) security services;
- (xi) advertising and marketing of the Housing Improvements;
- (xii) cash deposited into the Replacement Reserve Account in the amount set forth in Section 6.2(a);
- (xiii) cash deposited into the Operating Reserve Account to maintain the amount set forth in Section 6.2(b) (excluding amounts deposited to initially capitalize the account);
- (xiv) extraordinary operating costs specifically approved in writing by the County;
- (xv) payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved in writing by the County and not listed above.

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

"Annual Payment" has the meaning set forth in Section 3.5(a).

"Approved Financing" means all of the loans, grants and equity obtained by Developer and approved by the County for the purpose of financing the construction of the Housing Improvements.

"CEQA" has the meaning set forth in Recital L.

"Certificate of Completion" means the certificate(s) to be issued by the County pursuant to Section 5.5 of this Agreement, or comparable County sign-off on the completion of construction of the Improvements.

"Close of Escrow" means the date the Grant Deed and the Memorandum of DDLA are recorded against the Property.

"Commencement of Construction" has the meaning set forth in Section 5.3.

“Common Areas” means the lobby area on the ground floor of the Housing Improvement and the parking areas that are part of the Improvements.

"Completion Date" means the date a final certificate of occupancy, or equivalent document is issued by the County to certify that the Improvements may be legally occupied.

"Construction Plans" means the detailed plans, specifications, working drawings, elevations and other information that are (i) consistent with the Design Development Documents that are approved in accordance with Section 4.6, and (ii) used by the Developer, its contractors and subcontractors to construct the Improvements.

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

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

"Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing among Developer, as trustor, Commonwealth Title Company, as trustee, and the County, as beneficiary, in the form provided by the County, that will encumber the Housing Parcel upon transfer of the Property to Developer, to secure repayment of the Loan and performance of the covenants of the County Documents.

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

"Design Development Documents" means drawings, specifications and other documents that fix and describe the size, quality, and character of the Improvements as to architectural, basic structural and mechanical features and systems and that include a schematic design, a detailed site plan, floor plans, elevations, complete drawings with structural dimensions, materials, colors and other features.

"Developer" has the meaning set forth in the first paragraph of this Agreement.

"Development" has the meaning set forth in Recital E.

"Development Budget" means the proforma development budget, including sources and uses of funds, as approved by the County, pursuant to Section 4.5 below, for the construction and operation of the Housing Improvements and the Library Improvements.

"EIR" has the meaning set forth in Recital L.

"Escrow One" means the escrow established with the Title Company for the purpose of conveying the Property from the County to the Developer.

“Escrow Two” means the escrow established with the Title Company for the purpose of conveying the Library Parcel from the Developer to the County.

"Event of Default" has the meaning set forth in Section 8.1.

"Financing Plan" means Developer's current plan for financing the construction and operation of the Housing Improvements and the construction of the Library Improvements attached to this Agreement as Exhibit C.

"First Operating Year" has the meaning set forth in Section 3.5(a) below.

"Former Agency" has the meaning set forth in Recital B.

"Grant Deed" means the grant deed by which the County conveys the Property to Developer, in the form provided by the County.

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

- (xvi) all rents, fees and charges paid by tenants;
- (xvii) Section 8 payments and other rental or operating subsidy payments received for the dwelling units;
- (xviii) deposits forfeited by tenants;
- (xix) all cancellation fees;
- (xx) price index adjustments and any other rental adjustments to leases or rental agreements;
- (xxi) net proceeds from vending and laundry room machines;
- (xxii) the proceeds of business interruption or similar insurance not paid to Senior Lenders;
- (xxiii) the proceeds of casualty insurance not used to rebuild the Development and not paid to Senior Lenders; and
- (xxiv) condemnation awards for a taking of part or all of the Development for a temporary period and not paid to Senior Lenders.

Gross Revenue does not include tenants' security deposits, loan proceeds, unexpended amounts (including interest) in any reserve account, insurance proceeds used to restore a loss or damage, disbursements from reserve accounts, capital contributions or similar advances.

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

any Hazardous Materials Law.

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

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

"Housing Improvements" has the meaning set forth in Recital E.

"Housing Parcel" has the meaning set forth in Recital E.

"Improvements" has the meaning set forth in Recital E.

"Land Use Approvals" means the permits and approvals necessary for the development of the Improvements on the Property, including, but not limited to, overall design and architectural review, to the extent applicable, and environmental review.

"Lenders' Share of Residual Receipts" means fifty percent (50%) of Residual Receipts; provided, however, that if there are additional loans from public agencies, as set forth in the approved Financing Plan, then the Lenders' Share of Residual Receipts will be shared prorata between the public agency lenders based on loan amount.

"Library Improvements" has the meaning set forth in Recital E.

"Library Parcel" has the meaning set forth in Recital E.

"Loan" has the meaning set forth in Recital I.

"Master Development Agreement" or "MDA" has the meaning set forth in Recital D.

"Memorandum of DDLA" means the Memorandum of Disposition, Development, and Loan Agreement, in the form provided by the County, to be recorded against the Property at Close of Escrow.

"Memorandum of MDA" means the Memorandum of Master Development Agreement recorded against the Property on [_____, 2022] in the Official Records of Contra Costa County as Instrument No. [_____].

"Note" means the promissory note in the form provided by the County that evidences Developer's obligation to (i) repay the Loan, (ii) construct the Library Improvements at Developer's sole cost, and (iii) reconvey the Library Parcel to the County.

"Notice of Affordability Restrictions" means the Notice of Affordability Restrictions on Transfer of Property, between the County and Developer in the form provided by the County, that will encumber the Housing Parcel upon transfer of the Property to Developer, and will restrict the development and operation of the Housing Parcel to affordable housing.

"Operating Reserve Account" has the meaning set forth in Section 6.2(b).

"Option to Purchase" has the meaning set forth in Section 8.4(a).

"Partnership" has the same meaning as Developer.

"Partnership Agreement" means the limited partnership agreement of the Partnership subject to approval by the County.

"Predevelopment Obligation" or "Predevelopment Obligations" has the meaning set forth in Section 4.1 below.

"Promise to Construct" has the meaning set forth in Section 2.1(c).

"Property" has the meaning set forth in Recital E.

"Property Value" means the appraised value of the Master Development Property as determined by the County pursuant to the Section 33433 Report.

"Purchase Price" has the meaning set forth in Section 2.1.

"Redevelopment Plan" means the redevelopment plan entitled "Redevelopment Plan for the Bay Point Redevelopment Project Area," as adopted by the Board of Supervisors of the County by Ordinance No. 87-102, on December 29, 1987, as amended from time to time.

"Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants between the County and Developer, in the form provided by the County, evidencing County requirements applicable to the Loan, that will encumber the Housing Parcel upon transfer of the Property to Developer.

"Released Parties" has the meaning set forth in 2.7(e).

"Replacement Reserve Account" has the meaning set forth in Section 6.2(a).

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

"RFP" has the meaning set forth in Recital D.

"Schedule of Performance" means the schedule for performance of the Predevelopment Obligations that is attached as Exhibit C, as such may be modified pursuant to Section 4.1 below.

"Security Financing Interest" has the meaning set forth in Section 9.1.

"Security Financing Interest Assignment" has the meaning set forth in Section 9.4.

"Senior Lender" means a lender of a Senior Loan.

"Senior Loan" means an Approved Financing that is secured by an encumbrance on the Housing Parcel that is senior to the County Documents and has been approved by the County pursuant to Section 3.4.

"Specific Plan" has the meaning set forth in Recital D of the Master Development Agreement.

"Statement of Residual Receipts" means an itemized statement of Residual Receipts.

"TCAC" means the California Tax Credit Allocation Committee.

"Term" means the period of time that commences on the date of this Agreement, and expires, unless sooner terminated in accordance with this Agreement, (1) as to the Housing Improvements on the fifty-fifth (55th) anniversary of the Completion Date; provided, however, if a record of the Completion Date cannot be located or established, the Term will expire on the fifty-seventh (57th) anniversary of this Agreement, and (2) as to the Library Improvements, upon the issuance of the Certificate of Completion for the Library Improvements.

"Title Company" means Commonwealth Title Company.

"Title Report" means that certain preliminary title report dated _____, issued by the Title Company for the Property.

"Transfer" has the meaning set forth in Section 6.12.

Section 1.3 Exhibits

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

- Exhibit A-1: Legal Description of the Housing Parcel
- Exhibit A-2: Legal Description of the Library Parcel
- Exhibit B: Conceptual Site Plan
- Exhibit C: Financing Plan
- Exhibit D: Schedule of Performance
- Exhibit E: Mitigation Requirements

ARTICLE 2
DISPOSITION OF PROPERTY

Section 2.1 Purchase Price.

(a) The purchase price for the Housing Parcel is One Million Seven Hundred Ninety-Six Thousand Eight Hundred Seventy-Five Dollars (\$1,796,875) (the "Purchase Price"). None of the Purchase Price is allocated to the Library Parcel. The Purchase Price is equal to an amount determined by multiplying the Property Value by a fraction, the numerator of which is the number of Units in the Property and the denominator of which is the total number of units expected to be developed on the Master Development Property, rounded to the nearest whole dollar.

(b) The Purchase Price will be evidenced by the execution of the Note by Developer and recordation of the Deed of Trust against the Housing Parcel.

(c) The consideration to be paid by Developer for the Library Parcel is Developer's promise to construct the Library Improvements at a cost to Developer of not less than \$4,200,000 (the "Promise to Construct"). The Promise to Construct will be evidenced by the execution of the Note by Developer.

Section 2.2 Opening Escrow.

(a) To accomplish the conveyance of the Property from the County to Developer, the parties have established Escrow One with the Title Company. The parties will execute and deliver all written instructions to the Title Company to accomplish Close of Escrow, which instructions must be consistent with this Agreement.

(b) To accomplish the conveyance of the Library Parcel from Developer to the County (the "Reconveyance"), the parties have established Escrow Two with the Title Company. The parties will execute and deliver all written instructions to the Title Company to complete the Reconveyance after the completion of the Library Improvements, which instructions must be consistent with this Agreement.

Section 2.3 Close of Escrow – Conveyance to Developer.

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

(a) The County and Developer shall have negotiated and executed the County Documents and all other documents and instruments required to be executed and delivered, all in form and substance satisfactory to the County;

(b) There exists no condition, event or act which would constitute a breach or default under this Agreement, the County Documents, the Master Development Agreement, or

under any other project financing agreements or contracts related to the Development, or which, upon the giving of notice or the passage of time, or both, would constitute such a breach or default;

(c) All representations and warranties of Developer contained in this Agreement and in any of the County Documents being true and correct in all material respects as of Close of Escrow;

(d) The County shall have approved the Approved Financing and the Partnership Agreement;

(e) Developer shall have provided the County with copies of Developer's organizational documents and a certified copy of Developer's authorizing resolution, approving the transactions contemplated under the County Documents and all other Approved Financing, and authorizing Developer's execution of the County Documents;

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

(g) Developer shall have furnished the County with evidence of the insurance coverage meeting the insurance requirements set forth in Section 6.12;

(h) Developer shall have obtained all permits and approvals necessary for the construction of the Improvements;

(i) Developer shall have provided the County a certification from the Development architect or qualified accessibility specialist that the construction plans for the Housing Improvements are in conformance with the Accessibility Requirements;

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

(k) All environmental review necessary for the construction of the Improvements shall have been completed, and Developer shall have provided the County evidence of planned compliance with all CEQA requirements and mitigation measures applicable to construction, and evidence of compliance with all CEQA requirements and mitigation measures applicable to preconstruction;

(l) The Grant Deed, the Memorandum of DDLA, the Deed of Trust, the Regulatory Agreement, and the Notice of Affordability Restrictions shall have been, or concurrently with Close of Escrow, being recorded against the Property;

(m) If applicable, Developer has provided the County all information required

by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 (<https://www.dir.ca.gov/pwc100ext/>);

(n) Developer shall have satisfied the Predevelopment Obligations in Article 4; and

(o) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing to the County 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.

Section 2.4 Condition of Title – Conveyance to Developer.

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

- (a) applicable building and zoning laws and regulations;
- (b) the provisions of the Redevelopment Plan;
- (c) the provisions of this Agreement (as disclosed by the Memorandum of DDLA), the Memorandum of MDA, and the Grant Deed;
- (d) the provisions of the Regulatory Agreement, Deed of Trust, and Notice of Affordability Restrictions (Housing Parcel only);
- (e) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed; and
- (f) exceptions in the Title Report approved by Developer and the County.

Section 2.5 Condition of Property – Conveyance to Developer.

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

(b) **"AS IS" PURCHASE. PRIOR TO THE DATE OF THIS AGREEMENT, DEVELOPER WAS PROVIDED THE OPPORTUNITY TO INVESTIGATE THE PROPERTY, AND HAS APPROVED THE PHYSICAL CONDITION OF THE PROPERTY. DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE COUNTY IS SELLING AND DEVELOPER IS BUYING THE PROPERTY (AND ALL IMPROVEMENTS THEREON) ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE COUNTY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE**

QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY; (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY; (F) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY; (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY; AND (H) THE CONDITION OF TITLE TO THE PROPERTY. DEVELOPER AFFIRMS THAT DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE COUNTY OR ANY OF ITS AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE COUNTY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

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

with Developer's counsel and understands the significance and effect thereof.

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

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

(d) Scope of Release. The release set forth in Section 2.5(e) above includes claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer's release of the Released parties. Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, Developer agrees, represents and warrants that Developer realizes and acknowledges that factual matters now unknown to Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Developer nevertheless hereby intends to release, discharge and acquit the Released parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, Developer, on behalf of itself and anyone claiming by, through or under Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right Developer and anyone claiming by, through or under Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Developer's Initials: _____

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

Section 2.6 Costs of Escrow and Closing – Conveyance to Developer.

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

Section 2.7 Close of Escrow – Reconveyance to County.

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

- (a) The County and Developer shall have negotiated and executed a grant deed for the conveyance of the Library Parcel to the County (the “Library Parcel Grant Deed”) and all other documents and instruments required to be executed and delivered, including reciprocal easements, all in form and substance satisfactory to the County;
- (b) Developer shall have completed the Library Improvements in accordance with plans and specifications approved by the County at a cost to Developer of not less than \$2,400,000.00;
- (c) A final certificate of occupancy has been issued for the Library Improvements;
- (d) The Library Parcel is free of liens and encumbrances;
- (e) The Library Parcel Grant Deed shall have been, or concurrently with the Reconveyance, being recorded against the Library Parcel; and

Section 2.8 Condition of Title – Library Parcel.

Upon the Reconveyance, the County will have insurable title to the Library Parcel which will be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (a) applicable building and zoning laws and regulations;
- (b) the provisions of the Redevelopment Plan;
- (c) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Library Parcel Grant Deed; and
- (d) exceptions in the Title Report approved by the County.

Section 2.9 Costs of Escrow - Reconveyance.

Ad valorem taxes, if any, will be prorated as of the date of the Reconveyance from Developer to the County. The County shall pay the cost of title insurance. The County and Developer shall share equally the costs incurred for transfer tax, Title Company document

preparation, recordation fees and the escrow fees of the Title Company, if any, and any additional costs incurred to close the Reconveyance.

ARTICLE 3
LOAN PROVISIONS

Section 3.1 Loan.

Upon satisfaction of the conditions set forth in Section 2.3 of this Agreement, the County shall lend to Developer the Loan.

Section 3.2 Interest.

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

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

Section 3.3 Security.

In consideration of the Loan, Developer shall (i) secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and cause or permit it to be recorded as a lien against the Housing Parcel, and (ii) execute the Regulatory Agreement and the Notice of Affordability Restrictions, and cause or permit them to be recorded against the Housing Parcel.

Section 3.4 Subordination.

(a) Any agreement by the County to subordinate the Memorandum of DDLA, the Memorandum of MDA, Deed of Trust, Regulatory Agreement and/or Notice of Affordability Restrictions to a Senior Loan will be subject to the satisfaction of each of the following conditions:

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

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

(iii) Developer demonstrates to the County's satisfaction that subordination of the Memorandum of DDLA, the Memorandum of MDA, Deed of Trust, Regulatory Agreement and/or Notice of Affordability is necessary to secure adequate acquisition, construction, and/or permanent financing to ensure the viability of the Development,

including the operation of the Development as affordable housing, as required by the County Documents. To satisfy this requirement, Developer must provide to the County, in addition to any other information reasonably required by the County, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate acquisition, construction, and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

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

(v) The subordination(s) of the Loan is effective only during the original term of the Senior Loan and any additional extension of its term that is approved in writing by the County; provided that the Loan shall be resubordinated in connection with the conversion of the construction loan to permanent (without requiring additional County approval).

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

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

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

Section 3.5 Repayment Schedule.

(a) Annual Payments of Loan. Commencing on May 1 of the first calendar year after the Housing Improvements receive a certificate of occupancy (the "First Operating Year"), and on May 1 of each year thereafter during the Term, Developer shall make a Loan payment to the County in an amount equal to the County's pro rata share of the Lenders' Share of Residual Receipts (each such payment, an "Annual Payment"). The County shall apply all Annual Payments first, to accrued interest; and second, to principal.

(b) Payment in Full of Loan. Developer shall pay all outstanding principal and accrued interest on the Loan, in full, on the earliest to occur of: (i) any Transfer other than as permitted pursuant to Section 6.12; (ii) an Event of Default; and (iii) the expiration of the Term.

(c) Prepayment. Developer may prepay the Loan at any time without

premium or penalty. However, the Regulatory Agreement, the Notice of Affordability Restrictions and the Deed of Trust (as security for the Regulatory Agreement and the Notice of Affordability Restrictions) will remain in effect for the entire Term, regardless of any prepayment or Transfer.

Section 3.6 Reports and Accounting of Residual Receipts.

(a) Developer shall keep and maintain at the principal place of business of Developer set forth in Section 10.9 below, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts necessary or prudent to evidence and substantiate in full detail Developer's calculation of Residual Receipts and disbursements of Residual Receipts.

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

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

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

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

(c) The receipt by the County of any statement pursuant to subsection (b) above or any payment by Developer or acceptance by the County of any Loan repayment for any period does not bind the County as to the correctness of such statement or payment. The County may audit the Residual Receipts and all books, records, and accounts pertaining thereto pursuant to Section 6.5 below.

Section 3.7 Non-Recourse.

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

the County Documents and Developer shall be fully and personally liable 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 Housing Parcel 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 Developer other than in accordance with the Deed of Trust; (iv) willful or grossly negligent violation of applicable law; and (v) 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 Housing Improvements.

ARTICLE 4
PREDEVELOPMENT OBLIGATIONS

Section 4.1 Predevelopment Obligations.

(a) Within the time periods set forth in the Schedule of Performance and prior to the Close of Escrow, Developer shall (i) cause the Design Development Documents to be completed by a licensed architect, (ii) submit the Design Development Documents to the County for review, (iii) apply for all necessary Land Use Approvals, other than the building permit, (iv) prepare and submit a Development Budget to the County for approval, (v) cause Construction Plans to be prepared, and (vi) submit the Construction Plans to the County for review, each as more fully described below and each a "Predevelopment Obligation" and collectively, the "Predevelopment Obligations".

(b) Developer shall complete each of the Predevelopment Obligations no later than the date set forth in the Schedule of Performance attached to this Agreement as Exhibit D, subject to Force Majeure as described in Section 10.14. The Schedule of Performance may be modified by the County Director – Department of Conservation and Development, or his/her designee, on behalf of the County without formal amendment of this Agreement.

(c) Satisfaction of these conditions depends on performance by Developer. Only the County can waive satisfaction of the conditions in this Article 4. If Developer fails to satisfy all Predevelopment Obligations within the time period set forth in the Schedule of Performance, the County may terminate this Agreement pursuant to Section 8.1 and exercise any and all remedies available to it.

(d) During the performance of the Predevelopment Obligations, Developer shall, each month, and from time to time as reasonably requested by the County, provide the County with written progress reports regarding the status of the performance of the Predevelopment Obligations and community outreach regarding the Development.

Section 4.2 Right of Entry. Prior to the Close of Escrow, Developer shall have the right to enter the Property during normal business hours to conduct investigations in accordance with this Agreement. In the event Developer or its consultants enter upon the Property, Developer shall:

(a) Give the County seventy-two (72) hours' notice of intent to enter the

Property and the purpose for such entry;

(b) Repair and restore any damage it may cause;

(c) Deliver to the County, within ten (10) days of receipt thereof, a complete copy of any investigation, test, report or study which Developer conducts, or causes to be conducted, with respect to the Property;

(d) Indemnify, defend and hold the County and its directors, officers, employees and agents harmless from any and all claims, liabilities, damages, losses, expenses, costs and fees (including attorneys' fees and costs) that may proximately arise out of Developer's entry upon the Property or the investigation(s) and test(s) which Developer may conduct; and

(e) Prior to entry, cause the County to be named as an additional insured on a Commercial General Liability insurance policy 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. The required insurance is to be provided under an occurrence form by an insurer authorized and licensed to provide such insurance in the State of California.

Section 4.3 Design Development Documents.

(a) During the preparation of the Design Development Documents, Developer shall hold regular progress meetings with the County and communicate and consult informally with the County as frequently as necessary to ensure that the proposed Design Development Documents receive the County's prompt consideration. Developer shall cause the Design Development Documents to be consistent, and in substantial conformity, with the Conceptual Site Plan. In addition, Design Development Documents related to the Library Improvements must be consistent, and in substantial conformity, with the criteria established by the County Librarian.

(b) The County shall review Developer's proposed Design Development Documents and either approve or disapprove them within thirty (30) days after receipt. Any disapproval shall state in writing the specific reasons for the disapproval and specify in reasonable detail all of the changes the County requests be made in order to obtain approval. Developer shall thereafter submit revised proposed Design Development Documents within thirty (30) days after notification of disapproval. The County shall either approve or disapprove the revised proposed Design Development Documents within thirty (30) days after the date such revised proposed Design Development Documents are received by the County, and shall approve the revised proposed Design Development Documents if the requested changes have been made.

(c) If Developer fails to submit proposed Design Development Documents within the time required by the Schedule of Performance, or if the County disapproves of the revised proposed Design Development Documents because the requested changes identified under Section 4.3(b) have not been made, the County may terminate this Agreement pursuant to Section 8.1 and exercise its remedies pursuant to this Agreement. Only upon County approval of Design Development Documents will Developer's obligation to prepare and submit Design

Development Documents be deemed satisfied.

Section 4.4 Land Use Approvals.

To satisfy its obligation to apply for all necessary Land Use Approvals, other than the building permit, Developer shall deliver evidence of having applied for such permits and approvals to the County not later than the date for performance set forth in the Schedule of Performance. Only upon the County's receipt of satisfactory evidence of Developer having applied for all necessary Land Use Approvals, other than the building permit, will Developer's obligation to submit such evidence be deemed satisfied.

Section 4.5 Development Budget.

(a) Developer shall cause the Development Budget to include a breakdown of the costs of constructing the Improvements, based on the Financing Plan previously approved by the County, and an operating proforma for the operation of the Development. Developer shall also submit to the County copies of all required funding commitments for construction and permanent financing for the Development, and any other information that is reasonably necessary to enable the County to determine, in its reasonable judgment, that Developer has the financial capability to pay all costs of constructing and operating the Development, taking into account all committed funds and all realistically established costs of constructing and operating the Development. The Development Budget must show the development and operating costs of the Housing Improvements separate from the development costs of the Library Improvements.

(b) The County shall review the proposed Development Budget and shall either approve or disapprove the proposed Development Budget in writing within thirty (30) days after receipt. Any disapproval shall state in writing the specific reasons for the disapproval and specify in reasonable detail the required revisions to the previously-submitted proposed Development Budget. Developer shall thereafter submit a revised proposed Development Budget within thirty (30) days after notification of disapproval. The County shall either approve or disapprove the revised proposed Development Budget within thirty (30) days after the date the revised proposed Development Budget is received by the County.

(c) If Developer fails to submit a Development Budget within the time required by the Schedule of Performance, or if the County disapproves of the revised Development Budget and if no resolution is identified within a reasonable timeframe, the County may terminate this Agreement pursuant to Section 8.1 and exercise its remedies pursuant to this Agreement. Only upon County approval of a Development Budget will Developer's obligation to prepare and submit a Development Budget be deemed satisfied.

(d) Developer shall submit any material revision to an approved Development Budget to the County for its review and approval. Any proposed revised Development Budget shall be considered and approved or disapproved by the County in the same manner and according to the same timeframe set forth above for the initial Development Budget. Until a revised Development Budget is approved by the County, the previously-approved Development Budget shall govern the financing of the Development.

Section 4.6 Construction Plans.

(a) The County shall review Developer's proposed Construction Plans and either approve or disapprove them within thirty (30) days after receipt. Any disapproval shall state in writing the specific reasons for the disapproval and specify in reasonable detail all of the changes the County requests be made in order to obtain approval. Developer shall thereafter submit revised proposed Construction Plans within thirty (30) days after notification of disapproval. The County shall either approve or disapprove the revised proposed Construction Plans within thirty (30) days after the date such revised proposed Construction Plans are received by the County, and shall approve the revised proposed Construction Plans if the requested changes have been made. The Developer acknowledges that approval of the Construction Plans by the County pursuant to this Agreement does not constitute approval as required for issuance of a building permit or otherwise in connection with the Land Use Approvals.

(b) If Developer fails to submit proposed Construction Plans within the time required by the Schedule of Performance, or if the County disapproves of the revised proposed Construction Plans, the County and Developer shall work together in good faith to resolve any disapproval. Only upon County approval of Construction Plans will Developer's obligation to prepare and submit Construction Plans be deemed satisfied.

ARTICLE 5
CONSTRUCTION OF THE IMPROVEMENTS

Section 5.1 Permits and Approvals.

Developer shall obtain all permits approvals necessary for the construction of the Improvements no later than one hundred eighty days (180) days after Developer's receipt of an award of low income housing tax credits from the California Tax Credit Allocation Committee, or such later date that the County approves in writing.

Section 5.2 Construction Bonds.

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

Section 5.3 Commencement of Construction.

Developer shall cause the Commencement of Construction of the Improvements to occur no later than ninety (90) days after receipt of building permit approval, or such later date that the County approves in writing. For the purposes of this Agreement, "Commencement of Construction" means the date set for the start of construction of the Improvements in the notice to proceed issued by Developer to Developer's general contractor.

Section 5.4 Completion of Construction.

Developer shall diligently prosecute construction of the Improvements to completion, and shall cause the construction of the Improvements to be completed no later than thirty (30) months following Commencement of Construction, or such later date that the County approves in writing, subject to the any applicable extensions for force majeure pursuant to Section 10.14.

Section 5.5 Certificate of Completion.

(a) Promptly after completion of the Improvements in accordance with the provisions of this Agreement the County will provide Developer a Certificate of Completion certifying to the completion of the Improvements. Separate Certificates of Completion may be issued for the Housing Improvements and the Library Improvements. The Certificate of Completion will be conclusive determination that the covenants in this Agreement with respect to the obligations of Developer to construct the Improvements (excluding Developer's compliance with Section 5.7) and the dates for the beginning and completion of construction have been met. The Certificate of Completion will be in such form as will enable it to be recorded against the Property in the official records of Contra Costa County. The Certificate of Completion will not constitute evidence of compliance with or satisfaction of any obligation of Developer: (a) to any holder of a Security Financing Interest; (b) to pay prevailing wages; and (c) to rent the housing units that are part of the Housing Improvements in accordance with the terms of this Agreement and the Regulatory Agreement. The Certificate of Completion may not be deemed a notice of completion under the California Civil Code.

(b) With respect to the Housing Improvements, the issuance of the Certificate of Completion by the County shall have no effect on the Term of this Agreement and the provisions of this Agreement remain in effect.

Section 5.6 Changes; Construction Pursuant to Plans and Laws.

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

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

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

(ii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. Developer 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 Developer is responsible to the County for the procurement and maintenance thereof.

Section 5.7 Prevailing Wages.

State Prevailing Wages.

(i) To the extent applicable (in conformance with Contra Costa County Resolution 88-9), Developer shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Indemnity. Developer 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 Developer, its contractor and subcontractors) to comply with the County Local Prevailing Wage Requirement, to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., to meet the conditions of California Labor Code Section 1771.4, and implementing regulations of the DIR, or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and 1771.4, and the implementing regulations of the DIR, in connection with the construction of the Improvements or any other work undertaken or in connection with the Property. The requirements in this Section survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

Section 5.8 Accessibility.

(a) Developer shall cause the Housing Improvements to be constructed and operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the

"Accessibility Requirements").

(b) In compliance with the Accessibility Requirements, a minimum of five percent (5%) of the Units must be constructed to be fully accessible to households with a mobility impaired member and an additional two percent (2%) of the Units must be constructed to be fully accessible to hearing and/or visually impaired persons. In compliance with the Accessibility Requirements Developer shall provide the County with a certification from the Development architect that to the best of the architect's knowledge, the Housing Improvements comply with all federal and state accessibility requirements applicable to the Housing Improvements.

(c) Developer 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 Developer, its architect, contractor and subcontractors) to construct the Housing Improvements in accordance with the Accessibility Requirements. The requirements in this Subsection survive repayment of the Loan and the reconveyance of the Deed of Trust.

Section 5.9 Equal Opportunity.

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

Section 5.10 Minority and Women-Owned Contractors.

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

Section 5.11 Progress Reports.

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

Section 5.12 Construction Responsibilities.

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

(b) Developer is solely responsible for all aspects of Developer's conduct in connection with the Improvements, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the County with reference to the Improvements is solely for the purpose of determining whether Developer is properly discharging its obligations to the County, and may not be relied upon by Developer or by any third parties as a warranty or representation by the County as to the quality of the design or construction of the Improvements.

Section 5.13 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on the County or any other lender or other third party in connection with the Improvements, then Developer 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 Developer 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 Developer's expense. Alternately, the County may require Developer 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 Developer.

(c) Developer shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Improvements for a continuous period of thirty (30) days or more, and take all other steps necessary to forestall the assertion of claims of lien against the Property. Developer 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 5.14 Inspections.

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

(b) The County has no duty to visit the Property, or to observe or inspect it in connection with this Agreement. Any site visit or observation by the County is solely for the purpose of protecting the County's rights and interests under this Agreement. No site visit or observation by the County will impose any liability on the County or result in a waiver of any default of Developer. Neither Developer nor any other party is entitled to rely on any site visit or observation by the County. The County owes no duty of care to protect Developer or any other

party against, or to inform Developer or any other party of, any adverse condition affecting the Property in connection with this Agreement.

Section 5.15 CEQA Mitigation Requirements.

Developer shall comply with the CEQA mitigation requirements set forth in the attached Exhibit E in the construction of the Improvements.

ARTICLE 6
ON-GOING REQUIREMENTS

Section 6.1 Applicability. The conditions and obligations set forth in this Article apply throughout the Term with respect to the Housing Improvements, and, with respect to the Library Parcel, until the Library Parcel has been reconveyed to the County, unless a different period of applicability is specified for a particular condition or obligation.

Section 6.2 Reserve Accounts.

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

(b) Operating Reserve Account. Developer shall establish and maintain an account that is available to fund operating deficits (which is the amount by which Annual Operating Expenses exceed Gross Revenue for any period) (the "Operating Reserve Account"). Developer shall capitalize the Operating Reserve Account in the amount required by TCAC (currently three months of Annual Operating Expenses); provided, however that if the Partnership Agreement and/or the documents evidencing the Senior Loan require the Operating Reserve Account to be capitalized in an amount greater than the TCAC requirement, Developer shall capitalize the Operating Reserve Account as required by the Partnership Agreement and/or the documents evidencing the Senior Loan, as applicable, for as long as the Partnership Agreement and/or the documents evidencing the Senior Loan, as applicable, is outstanding. In no event may the amount held in the Operating Reserve Account exceed six (6) months gross rent from the Development (as such rent may vary from time to time) which limitation does not include amounts held in any other reserves required for the Development.

Section 6.3 Financial Accountings and Post-Completion Audits.

(a) No later than ninety (90) days following completion of construction of the Housing Improvements, Developer shall provide to the County for its review and approval a

financial accounting of all sources and uses of funds for the construction of the Housing Improvements.

(b) No later than one hundred twenty (120) days after completion of construction of the Housing Improvements, Developer shall submit an audited financial report showing the sources and uses of all funds utilized for the construction of the Housing Improvements prepared using generally accepted accounting standards in effect in the United States of America from time to time, consistently applied.

Section 6.4 Approval of Annual Operating Budget.

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

Section 6.5 County Audits.

(a) Developer shall provide any information reasonably requested by the County in connection with the Housing Improvements.

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

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

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

Section 6.6 Hazardous Materials.

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

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

(c) The County has the right to join and participate in, as a party if it so elects, and be represented by counsel acceptable to the County (or counsel of its own choice if a conflict exists with Developer) in any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Developer.

(d) Developer shall indemnify and hold harmless the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or alleged past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or alleged past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials (whether on the Property or any other property); and (v) the breach of any representation of warranty by or covenant of Developer in this Section 6.6, and Section 7.1(l). Such indemnity shall include, without limitation: (x) all consequential damages; (y) the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by the County in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property, (2) loss or restriction of use of rentable space on the Property, (3) adverse effect on the marketing of any rental space on the Property, and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify will survive termination of this Agreement and will not be diminished or affected in

any respect as a result of any notice, disclosure, knowledge, if any, to or by the County of Hazardous Materials.

(e) Without the County's prior written consent, which will not be unreasonably withheld, Developer 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 Developer 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) Developer will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Developer establishes to the satisfaction of the County that there is no reasonable alternative to such remedial action which would result in less impairment of the County's security hereunder; or (iv) the action has been agreed to by the County.

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

(g) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the County's or the trustee's rights and remedies under the Deed of Trust, the County may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to: (i) waive its lien on such environmentally impaired or affected portion of the Property; and (ii) exercise, (1) the rights and remedies of an unsecured creditor, including reduction of its claim against Developer 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), Developer 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 Developer knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) 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 6.7 Use of the Property.

Developer shall use the Property for the purposes set forth in this Agreement and the Land Use Approvals.

Section 6.8 Maintenance; Damage and Destruction.

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

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

Section 6.9 Fees and Taxes.

(a) Developer is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property. Developer is also solely responsible for payment of all personal property taxes, and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property.

(b) However, Developer 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, Developer 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.

(c) In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, will immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 6.10 Notices.

Developer shall promptly notify the County in writing of any and all of the following:

(a) Any litigation known to Developer materially affecting Developer, or the Property and of any claims or disputes that involve a material risk of litigation;

(b) Any written or oral communication Developer receives from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Property or the 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 Developer's financial condition, any material adverse change in Developer's operations, or any change in the management of Developer;

(e) That any of the statements in Section 7.1(1) 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 Developer's ability to timely perform any of its obligations under any of the Loan Documents.

Section 6.11 Nondiscrimination.

(a) Consistent with Section 5.9 above, Developer 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 Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenant will run with the land.

(b) Nothing in this Section prohibits Developer from requiring the Housing Improvements in the Development to be available to and occupied by income eligible households in accordance with the Regulatory Agreement.

Section 6.12 Transfer.

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

(b) Except as otherwise permitted in this Section 6.12, no Transfer is permitted without the prior written consent of the County, which the County may withhold in its sole discretion. The Loan will automatically accelerate and be due in full upon any Transfer made without the prior written consent of the County.

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

(d) Subject to the issuance of a final certificate of occupancy for the Library Improvements and the Contra Costa County Board of Supervisors' acceptance of the conveyance of the Library Parcel to the County, the County hereby approves the Transfer of the Library Parcel to the County.

Section 6.13 Insurance Requirements.

Developer 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 coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

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

(iv) Builders' Risk insurance during the course of construction, and upon completion of construction, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for

one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the County, naming the County as a Loss Payee, as its interests may appear. Flood insurance must be obtained if required by applicable federal regulations.

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

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

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

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

(e) All policies and bonds are to contain: (i) the agreement of the insurer to give the County at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the County; (iii) a provision that no act or omission of Developer 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 6.14 Covenants Regarding Approved Financing.

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

(b) Developer 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) Developer may not amend, modify, supplement, cancel or terminate the Partnership Agreement or any documents related to any loan that is part of the Approved Financing without the prior written consent of the County. Developer shall provide the County copies of all amendments, modifications, and supplements to any document related to any loan

that is part of the Approved Financing.

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

Section 6.15 Affordability Restrictions.

The affordability restrictions for the Housing Improvements are set forth in the Notice of Affordability Restrictions and the Regulatory Agreement. The Notice of Affordability Restrictions and the Regulatory Agreement provide that to the extent that TCAC rents are higher than HCD rents, TCAC rents will govern.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Section 7.1 Representations and Warranties.

Developer hereby represents and warrants to the County as follows and acknowledges, understands, and agrees that the representations and warranties set forth in this Article 7 are deemed to be continuing during all times when any portion of the Loan remains outstanding:

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

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

(d) Valid Binding Agreements. The County Documents and all other documents or instruments executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Developer enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of

the County Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will: (i) conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever that is binding on Developer, or conflict with any provision of the organizational documents of Developer, or conflict with any agreement to which Developer is a party; or (ii) result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

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

(g) Pending Proceedings. Developer 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 Developer, threatened against or affecting Developer, Master Developer, or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Developer or Master Developer, materially affect Developer's ability to construct the Improvements, repay the Loan, or impair the security to be given to the County pursuant hereto.

(h) Title to Land. At the time of recordation of the Deed of Trust, Developer will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens shown on the County's title policy provided pursuant to Section 2.4(f) above, or approved in writing by the County.

(i) Financial Statements. The financial statements of Developer and other financial data and information furnished by Developer 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 Developer from that shown by such financial statements and other data and information.

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

(k) Taxes. Developer 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 unpaid tax assessed against Developer or any of its subsidiaries that is reasonably expected to have a material adverse effect on the property, liabilities (actual or contingent), operations, condition (financial

or otherwise) or prospects of Developer and its subsidiaries, taken as a whole, or which could result in (i) a material impairment of the ability of Developer 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 Developer of any County Document.

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

ARTICLE 8 DEFAULT AND REMEDIES

Section 8.1 Events of Default.

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

- a. Failure to Satisfy Predevelopment Obligations. If Developer fails to satisfy any of the Predevelopment Obligations set forth in Article 4.
- b. Failure to Construct. If Developer fails to obtain permits, or to commence and prosecute construction of the Improvements to completion, within the times set forth in Article 5 above.
- c. Failure to Expend Sufficient Funds in Construction of Library Improvements. If Developer fails to spend at least \$4,200,000 for the construction of the Library Improvements.
- d. Failure to Convey Library Parcel. If Developer fails to transfer the Library Parcel to the County in fee simple absolute at no cost to the County following the issuance of a final certificate of occupancy for the Library Improvements and the Contra Costa County Board of Supervisors' acceptance of the conveyance of the Library Parcel to the County.
- e. Failure to Make Payment. If Developer fails to make any payment when such payment is due pursuant to the County Documents.
- f. Failure to Grant Reciprocal Easements. If Developer fails to grant reciprocal easements to the County for the use of Common Areas.
- g. Breach of Covenants. If Developer fails to duly perform, comply with, or observe any other condition, term, or covenant contained in this Agreement, or in any of the other County Documents, and Developer fails to cure such default within thirty (30) days after receipt of written notice thereof from the County to Developer.
- h. 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.

i. Insolvency. If a court having jurisdiction makes or enters any decree or order: (i) adjudging Developer to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Developer, or seeking any arrangement for Developer 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 Developer in bankruptcy or insolvency or for any of their properties; (iv) directing the winding up or liquidation of Developer 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) Developer 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.

j. Assignment; Attachment. If Developer 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.

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

l. 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.

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

n. Unauthorized Transfer. If any Transfer occurs other than as permitted pursuant to Section 6.12.

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

Section 8.2 Remedies.

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

(a) Acceleration of Note. The County may cause all indebtedness of Developer to the County under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. Developer 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. Developer 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 Developer to perform its obligations and covenants under the County Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the County Documents.

(c) Termination. The County may terminate this Agreement by giving written notice to Developer; provided, however, that the County's remedies pursuant to this Article 8, and the indemnification provisions of this Agreement survive such termination.

(d) Additional Remedies. The County may exercise any of the remedies specified in Sections 8.3 and 8.4 below.

Section 8.3 Right of Reverter.

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

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

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

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

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

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

(5) Fifth, any balance to the County.

Section 8.4 Reserved.

Section 8.5 Right to Cure Monetary Default at Developer's Expense.

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

(b) Investor Limited Partner shall have the right to cure any default by Developer hereunder, and the County shall accept any cure by Investor Limited Partner as if made by Developer itself.

Section 8.6 Right of Contest.

Developer 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 8.7 Remedies Cumulative.

No right, power, or remedy given to the County by the terms of this Agreement or the other County Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy is cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Developer 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 9
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 9.1 No Encumbrances Except for Development Purposes.

Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon Developer's interest in the Property, but only for the purpose of securing Approved Financing. Mortgages, deeds of trust, or other reasonable security instruments securing Approved Financing, are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development.

Section 9.2 Rights of Holders of Security Financing Interests.

Any rights of the County under Sections 8.3 and 8.4 will not defeat, limit or render invalid any Security Financing Interest permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of Security Financing Interests. Any conveyance or reverter of the Property to the County pursuant to Sections 8.3 and 8.4 will be subject to Security Financing Interests permitted by this Agreement.

Section 9.3 Holder Not Obligated to Construct.

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

Section 9.4 Notice of Default and Right to Cure.

Whenever the County pursuant to its rights set forth in Article 8 of this Agreement delivers any notice or demand to Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the County will at the same time deliver to each holder of record of any Security Financing Interest, a copy of such notice or demand. Each such holder (insofar as the rights of the County are concerned) has the right, but not the obligation, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement is deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing Developer's obligations to the County relating to such Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the County and recordable among the official records of the County (the "Security Financing Interest Assignment"). The holder in that event must agree to complete, in the manner provided in this

Agreement (or as may be amended by the Security Financing Interest Assignment; provided, however, the County is under no obligation to extend the dates for performance set forth in this Agreement), the Improvements to which the lien or title of such holder relates. Any such holder properly completing such Improvements pursuant to this paragraph must assume all rights and obligations of Developer under this Agreement and will be entitled, upon completion and written request made to the County, to a Certificate of Completion from the County.

Section 9.5 Failure of Holder to Complete Improvements.

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

Section 9.6 Right of County to Cure.

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

Section 9.7 Right of County to Satisfy Other Liens.

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

Section 9.8 Holder to be Notified.

Developer will insert each term contained in this Article 9 into each Security Financing Interest to the extent deemed necessary by, and in form and substance reasonably satisfactorily to the County, or will procure acknowledgement of such terms by each prospective holder of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

ARTICLE 10
GENERAL PROVISIONS

Section 10.1 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 Developer or its agents, employees or contractors, and Developer 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. Developer has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the construction and operation of the Development, Developer 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. Developer is solely responsible for its own acts and those of its agents and employees.

Section 10.2 No Claims.

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

Section 10.3 Amendments.

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

Section 10.4 Indemnification.

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

Section 10.5 Non-Liability of County Officials, Employees and Agents.

No member, official, employee or agent of the County is personally liable to Developer 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 10.6 No Third-Party Beneficiaries.

There are no third-party beneficiaries to this Agreement.

Section 10.7 Discretion Retained By County.

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

Section 10.8 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 10.8(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. Developer shall exercise due diligence to ensure that the prohibition in this Section 10.8(a) is followed.

(b) The conflict of interest provisions of Section 10.8(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 Developer, 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 Developer. Interpretation of this section is governed by the definitions and provisions used in the Political Reform Act, California Government Code Section 87100 et seq., its implementing regulations manual and codes, and California Government Code Section 1090.

Section 10.9 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: Deputy Director – Policy Planning

Developer: [Partnership]
c/o Pacific West Communities Inc.
430 E. State Street, Ste. 100
Eagle, ID 83616
Attention: President and CEO

with a copy to: Katten Muchin Rosenman LLP
525 West Monroe Street
Chicago, IL 6066-3693
Attention: David P. Cohen

with a copy to: [Investor Limited Partner]

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 10.10 Applicable Law.

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

Section 10.11 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 Developer 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 10.12 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 10.13 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 10.14 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, public health crises, pandemics, government shutdown order, 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 10.15 County Approval.

The County has authorized the County Director, Department of Conservation and Development to execute the County Documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel certificates concerning the status of the Loan and the existence of Developer defaults under the County Documents. Developer acknowledges that nothing in this Agreement (including any approval by the County Director in accordance with this Agreement) shall limit, waive, or otherwise impair the authority and discretion of: (a) the County's planning department, in connection with the review and approval of the proposed Construction Plans for the Development, or any use, or proposed use, of the Property; (b) the County's issuance of a building permit; or (c) any other office or department of the County acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Development.

Section 10.16 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 Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer 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 Developer 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 10.17 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 10.18 Entire Understanding of the parties.

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

Section 10.19 Multiple Originals; Counterpart.

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

Section 10.20 No Brokers.

Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim must indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's reasonable attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this section survive expiration of the Term or other termination of this Agreement, and will remain in full force and effect.

Section 10.21 Provision Not Merged with Deed.

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

Remainder of Page Left Intentionally Blank

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

COUNTY:

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

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

APPROVED AS TO FORM:

MARY ANN McNETT MASON,
County Counsel

By: _____
Kathleen Andrus
Deputy County Counsel

DEVELOPER:

[PARTNERSHIP], a California limited partnership

By: [Pacific West Communities Inc.,
an Idaho corporation, its general partner]

By: _____
Caleb Roope, President and CEO

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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

EXHIBIT B

CONCEPTUAL SITE PLAN

EXHIBIT C
FINANCING PLAN

EXHIBIT D

SCHEDULE OF PERFORMANCE

EXHIBIT E

MITIGATION REQUIREMENTS

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DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT

Between

COUNTY OF CONTRA COSTA

And

[PARTNERSHIP]

Orbisonia Heights Transit Oriented Development Project

dated _____, 202_