

AFFORDABLE HOUSING LOAN AGREEMENT

Between

COUNTY OF NAPA

and

963 POPE STREET, LLC

963 Pope Street

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Exhibit A: Legal Description of the Property
Exhibit B: Approved Project Budget

**AFFORDABLE HOUSING LOAN AGREEMENT
(963 Pope Street)**

This Affordable Housing Loan Agreement (the "Agreement") is entered into as of ____, 2024 (the "Effective Date") by and between the County of Napa, a political subdivision of the State of California (the "County"), and 963 Pope Street, LLC, a California limited liability company (the "Developer").

RECITALS

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

B. Developer is acquiring concurrently herewith of that certain real property located at 963 Pope Street, in the City of St. Helena, County of Napa, State of California, as more particularly described in Exhibit A (the "Property").

C. There is one existing unit on the Property and Developer intends to develop four additional units on the Property, together with other elements (the "Improvements"). All five of the dwelling units in the Development will be regulated by the County as affordable to low income and moderate income households as set forth in more detail in the Regulatory Agreement (the "Affordable Units"). The Property and the Improvements are collectively referred to as the "Development").

D. The City of St. Helena has determined that the project is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15194, which exempts affordable housing projects that meet certain criteria, Section 15301, which exempts the demolition and removal of small structures, and Section 15303, which exempts the construction of small structures including multi-family residential structure of four units or less. The City further determined that the project is not subject to any of the exceptions to the use of a categorical exemption as outlined in CEQA Guidelines Section 15300.2.

E. On April 9, 2024 the Board of Supervisors of the County (the "Board"), by Resolution No. 2024-30, reserved Two Hundred Thousand Dollars (\$200,000) of Affordable Housing Fund for permanent construction financing for the Development (the "Loan"), pending submittal confirming all necessary permanent sources of funds.

F. On _____, 2025 the Board, By Resolution No. ____, authorized the Loan on certain terms and conditions and further authorized the Chair of the Board (the "Chair") to execute all necessary loan documents to effect the Loan and all related loan documents as required for ongoing future maintenance and monitoring responsibilities, as approved by County Counsel.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

ARTICLE 1. DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

(a) "Accessibility Requirements" means 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.

(b) "Affordable Units" is defined in paragraph C of the Recitals.

(c) "Agreement" is this Affordable Housing Loan Agreement.

(d) "Annual Compliance Monitoring Fee" is defined in Section 3.14(b) below.

(e) "Annual Operating Expenses" is defined in Section 2.7(e) below.

(f) "Approved Financing" means all of the following loans and equity obtained by Developer for the acquisition of the Property and construction of the Improvements and included in the Approved Project Budget, in addition to the Loan:

(i) Permanent construction loan from the City of St. Helena in the amount of One Million Dollars (\$1,000,000) made up of funds from the City's Housing Trust Fund and Measure E (Affordable Housing) Fund (the "City Loan");

(ii) Permanent Loan from HCD HOME funds in the amount of Eight Hundred Thousand Eight Hundred Seventy-Two Dollars (\$854,872) (the "HCD HOME Loan");

(iii) Loan from Poppy Bank (the "Bank") in the approximate amount of Six Hundred Thousand Dollars (\$600,000) (the "Bank Loan");

(iv) Construction loan from Rural Community Assistance Corporation in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) (the "RCAC Loan");

(g) "Approved Project Budget" means the pro forma acquisition and construction budget for the Development, including sources and uses of funds and operating budget pro forma, as approved by the County, as may be modified from time to time by mutual agreement of County and Developer. The Approved Project Budget as of this date is attached as Exhibit B.

(h) "Board" is defined in paragraph E of the Recitals.

(i) "Chair" is defined in paragraph E of the Recitals.

- (j) "City" means the City of St. Helena, a California general law city.
- (k) "Construction Closing" means the closing of escrow on Developer's acquisition of the Property and on the financing for the construction of the Improvements.
- (l) "County" is defined in the first paragraph of this Agreement.
- (m) "County Loan Prorata Percentage" is defined in Section 2.7(e) below.
- (n) "Developer" is defined in the first paragraph of this Agreement.
- (o) "Deed of Trust" means the deed of trust of even date herewith, among Developer, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, that will encumber the Development to secure repayment of the Loan and performance of all covenants of the Loan Documents.
- (p) "Default" is defined in Section 6.1 below.
- (q) "Default Rate" is defined in Section 2.2(b).
- (r) "Development" is defined in paragraph C of the Recitals.
- (s) "Effective Date" is defined in the first paragraph of this Agreement.
- (t) "Gross Revenue" is defined in Section 2.7(e) below.
- (u) "Hazardous Materials" is defined in Section 3.12(a) below.
- (v) "Hazardous Materials Claims" is defined in Section 3.12(b) below.
- (w) "Hazardous Materials Law" is defined in Section 3.12(b) below.
- (x) "Improvements" is defined in paragraph C of the Recitals.
- (y) "Indemnitees" is defined in Section 7.5(a) below.
- (z) "Lenders' Share of Residual Receipts" is defined in Section 2.7(e) below.
- (aa) "Loan" is defined in paragraph E of the Recitals.
- (bb) "Loan Documents" means this Agreement, the Promissory Note, the Regulatory Agreement, and the Deed of Trust.
- (cc) "Modification Fee" is defined in Section 3.14(c) below.
- (dd) "Net Proceeds of Refinancing" is defined in Section 2.9 below.
- (ee) "Note" means the Promissory Note of even date herewith executed by Developer for the benefit of the County, evidencing Developer's obligation to repay the Loan.

(ff) "Notice of Completion" means the Notice of Completion executed by Developer in the form specified in California Civil Code Section 8182.

(gg) "Parties" means the County and Developer. Each is a "Party".

(hh) "Property" is defined in paragraph B of the Recitals.

(ii) "Regulatory Agreement" means the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Developer evidencing County requirements applicable to the Loan, to be recorded against the Development.

(jj) "Residual Receipts" is defined in Section 2.7(e) below.

(kk) "Senior Lender" is defined in Section 2.5(d) below.

(ll) "Senior Loan" is defined in Section 2.5(a) below.

(mm) "Term" is defined in Section 2.7(a) below.

(nn) "Transfer" is defined in Section 3.17(a) below.

(oo) "Unit" means one of the five (5) rental housing dwelling units to be constructed on the Property.

Section 1.2 Exhibits.

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

Exhibit A: Legal Description of the Property
Exhibit B: Approved Project Budget

ARTICLE 2. LOAN PROVISIONS

Section 2.1 Loan and Applications for Additional Financing.

Upon satisfaction of the conditions set forth in Section 2.6 and Section 2.7 of this Agreement the County shall loan to Developer the Loan in the principal amount of Two Hundred Thousand Dollars (\$200,000) for the purposes set forth in Section 2.3 of this Agreement.

Section 2.2 Interest.

(a) Subject to the provisions of Section (b) below, the outstanding principal balance of the Loan bears simple interest from the date of the Note at 3.00% annually, until full repayment of the outstanding balance of the Loan.

(b) Default Interest. In the event of a Default, interest on the Loan shall begin to accrue, as of the date of Default and continuing until such time as the Loan is repaid in full or the Default is cured, at the default rate of the lesser of eight percent (8%) per annum, compounded annually and the highest rate permitted by law (the "Default Rate").

Section 2.3 Use of Loan Funds.

(a) Developer shall use the Loan to fund construction of the Improvements, and subsequent permanent financing of the Development in a manner consistent with the Approved Project Budget.

(b) No Other Uses. Developer shall not use the Loan for any other purposes without the prior written consent of the County.

Section 2.4 Security.

Developer shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and recording it as a lien against the Development senior in lien priority to all other deeds of trust recorded against the Development except as provided in Section 2.5 below. Developer shall also cause or permit the Regulatory Agreement to be recorded against the Development in a position superior to all other deeds of trust recorded against the Development, except as provided in Section 2.5 below.

Section 2.5 Subordination.

(a) Applicability. The Deed of Trust and/or Regulatory Agreement may be subordinated to liens securing other loans approved by the County (in each case, a "Senior Loan"), but only on condition that all of the conditions set forth below are satisfied. The Bank Loan, the HCD Loan, the City Loan, and the RCAC Loan are the only loans in Approved Financing that are considered Senior Loans.

(b) Subordination to Construction Financing. The County shall subordinate the Deed of Trust and Regulatory Agreement to Senior Loans proposed for Construction Closing if all of the conditions contained in Section 2.6 and subsection (d) of this Section have been complied with.

(c) Subordination to Permanent Financing. The County shall subordinate the Deed of Trust and/or Regulatory Agreement to Senior Loans proposed for permanent closing if all of the conditions contained in Section 2.7 and in subsection (d) of this Section have been complied with.

(d) Conditions Applicable to All Subordination Agreements. In addition to compliance with the requirements of subsection (b) or (c) above, all of the following conditions must be satisfied in all agreements subordinating the Loan Documents:

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

(ii) The proposed lender (each, a "Senior Lender") must be 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 must demonstrate to the County's reasonable satisfaction that subordination of the Deed of Trust and/or Regulatory Agreement 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 Loan 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) must be structured to minimize the risk that the Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Loan. To satisfy this requirement, the subordination agreement must provide the County with adequate rights to cure any defaults by Developer, including: (a) 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 (b) providing the County with a cure period of at least sixty (60) days to cure any default;

(v) No subordination may limit the effect of the Deed of Trust and/or Regulatory Agreement before a foreclosure, nor require consent of the holder of the Senior Loan to exercise any remedies by the County under the Loan Documents;

(vi) The subordination(s) described in this Section may be effective only during the original term of the Senior Loan and any extension of its term or refinancing approved in writing by the County which approval shall not be unreasonably delayed, conditioned or withheld provided that such refinancing (i) is on market rate terms existing at the time of such refinancing; and (ii) does not create an adverse effect on the County's regulatory requirements and Developer's ability to comply with such regulatory requirements; and

(vii) In the event there is a foreclosure of the Property, the Regulatory Agreement shall be revived according to its original terms if, during the original Regulatory Agreement term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Development or Property.

(e) Determination. Upon a determination by County Counsel, or designee that the conditions in this Section have been satisfied, the Chair or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

Section 2.6 Conditions Precedent to Disbursement of Loan Funds.

The County shall not be obligated to make any disbursement of the Loan for construction and permanent financing of the Development or take any other action under the Loan Documents unless all of the following conditions precedent are satisfied:

(a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under the Loan Documents or under any other agreement between County and Developer;

(b) Developer is the owner of the Property or will become the owner of the Property concurrently with the Construction Closing;

(c) Developer has delivered to the County a copy of all of Developer's organization documents, a certificate of status for Developer dated within thirty (30) days of the Effective Date, and a copy of a corporate authorizing resolution authorizing Developer's execution of the Loan Documents;

(d) 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;

(e) Developer has furnished the County with evidence of the insurance coverage meeting the requirements of Section 3.18 below;

(f) Developer has caused to be executed and delivered to the County all Loan Documents and any other instruments and policies required under the Loan Documents;

(g) The Deed of Trust and the Regulatory Agreement will be recorded against the Development in the County's Office of the Recorder concurrently with the Construction Closing;

(h) Developer will pay to the County a loan origination fee and a monitoring set up fee in the total amount of Six Thousand Dollars (\$6,000);

(i) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing an ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of Two Hundred Thousand Dollars (\$200,000), 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. Developer shall provide whatever documentation (including an indemnification agreement), deposits or surety is reasonably required by the title company in order for the County's Deed of Trust to be senior in lien priority to any other liens, except approved Senior Loans and other liens approved in writing by the County;

(j) Developer has provided to the County and the County has approved the final Approved Project Budget;

(k) Developer has received all permits, including but not limited to building permits, necessary to perform the construction of the Improvements;

(l) Developer has provided certification from the Development architect or qualified accessibility specialist that the construction plans are in conformance with the Accessibility Requirements;

(m) Developer has closed, or is closing concurrently with the Construction Closing, the Approved Financing that are construction sources, and all other financing to be used for construction approved by the County, and is eligible to receive the proceeds thereof;

(n) The County has determined that the proceeds of the Loan, together with other funds or firm commitments for funds that Developer has obtained, are not less than the amount that is necessary to pay for acquisition of the Property and construction of the Development; and

(o) At the time the County receives a written draw request with complete documentation for construction expenses from Developer not to exceed the Loan amount, which demonstrates that the undisbursed proceeds of the Loan are necessary to pay for construction and permanent financing of the Development, as determined by the County.

Section 2.7 Term; Repayment Schedule.

(a) Term. The Loan and this Agreement shall have a term that commences on the Effective Date and expires on the date fifty-five (55) years from the date of issuance of the last certificate of occupancy or equivalent certification provided by the Building Division of the City for the Improvements (the "Term"), provided, however, if a record of the City's certification cannot be located or established, the Term will expire on the fifty-seventh (57th) anniversary of the Effective Date. Upon the expiration of the Term, this Agreement and the rights and obligations of the Parties under this Agreement shall terminate, except as provided in Section 7.6 of this Agreement, which states that certain obligations of Developer shall survive the expiration of the Term and the termination of this Agreement.

(b) Annual Payments. Commencing on April 30, 2024 and on April 30 of each year thereafter during the Term, Developer shall make repayments of the Loan for that prior calendar year in an amount equal to the sum of the County Loan Prorata Percentage of the Lenders' Share of Residual Receipts. The payments shall be credited first against accrued interest and then against outstanding principal of the Loan, and shall be accompanied by Developer's report of Residual Receipts (including an independent auditor's report regarding the auditor's review of Gross Revenue and Annual Operating Expenses). Developer shall provide the County with any documentation reasonably requested by the County to substantiate Developer's determination of Residual Receipts.

(c) Payment in Full of Loan. All principal and accrued interest on the Loan shall be due in full on the earlier to occur of: (i) the date of any Transfer not authorized by this Agreement or the County; (ii) the date of any Default; or (iii) the expiration of the Term.

(d) Prepayment. Developer shall have the right to prepay the Loan at any time without penalty. However, the Regulatory Agreement and the Deed of Trust will remain in effect for the entire Term, regardless of any prepayment or Transfer.

(e) Definitions. The following definitions shall apply for purposes of Section 2.7:

(i) "Annual Operating Expenses", with respect to a particular calendar year during the Term, means the following costs reasonably and actually incurred for operation and maintenance of the Development to the extent that they are consistent with an annual

independent audit performed by a certified public accountant using generally accepted accounting principles:

(A) Property taxes and assessments imposed on the Development;

(B) Debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on permanent loans that are part of the Approved Financing;

(C) Payment to HCD of a portion of the accrued interest on the HCD HOME Loan pursuant to California Code of Regulations, Title 25, Section 7308;

(D) Property management fees and reimbursements, excluding incentive management fees, not to exceed fees and reimbursements which are standard in the industry, and pursuant to a management contract approved by the County;

(E) Payment of any previously unpaid portion of Developer Fee;

(F) Annual monitoring fees, if any, payable to the City and HCD and the Annual Compliance Monitoring Fee payable to the County and set forth in Section 3.14(b) below;

(G) Premiums for insurance required for the Development to satisfy the requirements of any lender of Approved Financing;

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

(I) Maintenance and repair expenses and services, and administrative costs that are included in the approved operating budget;

(J) Any annual license or certificate of occupancy fees required for operation of the Development;

(K) Security services;

(L) 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;

(M) Advertising and marketing;

(N) Cash deposited into reserves for capital replacements of the Development in the amount required by Senior Lenders;

(O) Cash deposited into an operating reserve for the Development in an amount required by Senior Lenders;

(P) Extraordinary operating costs specifically approved in writing by the County;

(Q) 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 not listed above; and

(R) County approved company management fees (including any asset management fee) payable pursuant to any member of Developer in an amount not to exceed Six Thousand Five Hundred Dollars (\$6,500) per year, plus 3.5% per year, or such greater amount subsequently approved by the County. The partnership/asset fee may accrue for a period not to exceed three (3) years following the year during which it is earned; and

(S) Other ordinary and reasonable operating expenses approved by the County.

Annual Operating Expenses shall not include the following: depreciation, amortization, depletion or other non-cash expenses or any amount expended from a reserve account.

(ii) "County Loan Prorata Percentage" means the result, expressed as a percentage, obtained by dividing the Loan, by the sum of the Loan, the City Loan, and the HCD HOME Loan, using the principal amounts of such loans actually disbursed.

(iii) "Developer Fee" means the amount of developer fee paid to any entity or entities providing development services to the Development in an aggregate amount not to exceed One Hundred Seventy Thousand Dollars (\$170,000).

(iv) "Gross Revenue," with respect to a particular calendar year during the Term, means all revenue, income, receipts, and other consideration actually received from operation and leasing of the Development. "Gross Revenue" shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; subject to the rights of Senior Lenders, the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development (or applied toward the cost of recovering such proceeds) and not payable to the Senior Lenders; and condemnation awards for a taking of part or all of the Development for a temporary period and not payable to the Senior Lenders. "Gross Revenue" shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Development. "Gross Revenue" shall not include tenants' security deposits, loan proceeds, capital contributions, interest income earned on reserves, provided that the interest shall be considered reserve funds and is being used for the purposes for which the applicable reserve was established; lender impounds, provided that the interest is held by the lender and used for the purposes of the impound account; or similar advances.

(v) "Lenders' Share of Residual Receipts" means fifty percent (50%) of Residual Receipts.

(vi) "Residual Receipts", with respect to a particular calendar year during the Term, means the amount by which Gross Revenue (as defined above) exceeds Annual Operating Expenses (as defined above).

(f) Residual Receipts Calculation. In connection with the annual payments required by Section 2.7(b), within one hundred twenty (120) days of the end of Developer's fiscal year, Developer shall furnish to the County an audited statement duly certified by an independent firm of certified public accountants approved by the County, setting forth in reasonable detail the computation and amount of Residual Receipts during the preceding calendar year.

(g) Books and Records.

(i) In accordance with Section 3.10, Developer shall keep and maintain on the Development, or at its principal place of business, 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.

(ii) The receipt by the County of any statement pursuant to Section 2.8(b) above or any payment by Developer or acceptance by the County of any loan repayment for any period shall not bind the County as to the correctness of such statement or such payment. Within three (3) years after the receipt of any such statement, the County or any designated agent or employee of the County at any time shall be entitled to audit the Residual Receipts and all books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of Developer and other places where records are kept. Immediately after the completion of an audit, the County shall deliver a copy of the results of such audit to Developer. If it shall be determined as a result of such audit that there has been a deficiency in a loan repayment to the County, then such deficiency shall become immediately due and payable with interest at the non-default rate set forth in the Note (unless Developer's failure, refusal, or repeated failure to correctly calculate and/or submit the repayment constitutes an event of default, in which case interest shall be paid at the Default Rate), determined as of and accruing from the date that said payment should have been made. In addition, if Developer's auditor's statement for any calendar year shall be found to have understated Residual Receipts by more than five percent (5%) and at least Five Thousand Dollars (\$5,000), and the County is entitled to any additional Loan repayment as a result of said understatement, then Developer shall pay, in addition to the interest charges referenced hereinabove, all of the County's reasonable costs and expenses connected with any audit or review of Developer's accounts and records.

Section 2.8 Non-Recourse.

Except as provided below, neither Developer, nor any partner of Developer shall have any direct or indirect personal liability for payment of the principal of, and interest on, the Loan. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the principal of, and interest on, the Note shall be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall: (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the County thereunder; or (b) be deemed in any way to impair the right of the 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 for the repayment of the principal of, and payment of interest on the Note. Except as hereafter set forth, nothing contained

herein is intended to relieve Developer of its obligation to indemnify the County under the Loan Documents, or liability for: (1) fraud or willful misrepresentation; (2) the failure to pay taxes, assessments or other charges which may create liens on the Development 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); (3) 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; and (4) 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 Development.

Section 2.9 Use of Refinancing Proceeds.

The County shall receive an amount equal to the County Loan Prorata Percentage of fifty percent (50%) of the Net Proceeds of Refinancing of any refinancing approved in writing by the County and shall not be credited against the payments set forth in Section 2.8 above. "Net Proceeds of Refinancing" is defined as proceeds remaining after accounting for the payment of refinancing costs, the use of proceeds invested in the Development, and the takeout of Approved Financing, all subject to County approval.

Section 2.10 Use of Operating and Capital Reserves; Exit of Limited Partner.

In no case may a limited partner exiting the Partnership be entitled to receive the Development's operating reserves and capital replacement reserves upon exit.

**ARTICLE 3.
LOAN REQUIREMENTS**

Section 3.1 Construction Reporting.

During construction of the Improvements, Developer shall provide to the County, on a monthly basis, copies of construction inspection reports and draw reports provided to construction lenders, at the same time as those reports are provided to construction lenders and regardless of whether the County is at the time being requested to make construction disbursements.

Section 3.2 Completion of Construction.

Developer shall diligently prosecute construction of the Improvements to completion, and shall cause the completion of the Development no later than August 31, 2026, or such later date as the Board may approve.

Section 3.3 Construction Pursuant to Plans and Laws; Prevailing Wages.

(a) Compliance with Project Documents. Developer shall construct the Development in conformance with the Approved Financing and Approved Project Budget and consistent with the plans and specifications utilized to obtain City permits. 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 City.

(b) Compliance with Laws. Developer shall cause all construction work to be performed in compliance with: (i) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, including without limitation and to the extent applicable, state prevailing wages pursuant to Labor Code Section 1770 et seq., and the regulations pursuant thereto, as further set forth in subsection (c) below; 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. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Developer shall be responsible to the County for the procurement and maintenance thereof, as may be required of Developer and all entities engaged in work on the construction.

(c) Prevailing Wages.

(i) This Agreement has been prepared with the intention that County assistance under this Agreement meets the exception set forth in Labor Code Section 1720(c)(6)(E) to the general requirement that state prevailing wages be paid in connection with construction work that is paid for in whole or in part out of public funds; provided, however, that nothing in this Agreement constitutes a representation or warranty by the County regarding the applicability to the Approved Financing of the provisions of Labor Code Section 1720 et seq., and the hiring of apprentices pursuant to Labor Code Sections 1777.5 et seq.

(ii) If applicable to the Approved Financing or Approved Project Budget, Developer shall:

(A) 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.;

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

(C) 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.;

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

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

(F) 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.

(G) 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/>);

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

(I) 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.

(iii) 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 pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., to meet the conditions of California Labor Code Section 1771.4, and implementing regulations of the DIR, or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and 1771.4, and the implementing regulations of the DIR, in connection with the construction of the Improvements or any other work undertaken or in connection with the Development. The requirements in this subsection shall survive the repayment of the Loan and the reconveyance of the Deed of Trust.

Section 3.4 Construction Responsibilities.

(a) It shall be the responsibility of Developer to coordinate and schedule the construction work to be performed so that commencement and completion of the construction will take place in accordance with this Agreement.

(b) Developer shall be solely responsible for all aspects of Developer's conduct in connection with the construction of 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 construction of the Improvements is solely for the purpose of determining whether Developer is properly discharging its obligations to the County and should 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.

(c) If any phase of construction results in the permanent or temporary displacement of any residents of the Development, then Developer shall comply with all applicable state laws and regulations regarding relocation (including without limitation Government Code Section 7260 et seq. and implementing regulations). Developer shall be solely responsible for payment of any relocation benefits to any displaced person and any other relocation obligations

and shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages or other amounts arising out of the failure or alleged failure of Developer to comply with applicable state laws and regulations regarding relocation. The requirements in this subsection shall survive the repayment of the Loan and the reconveyance of the Deed of Trust.

(d) Until such time as Developer has received a final inspection from the City for the completed Development, Developer shall provide the County with quarterly progress reports regarding the status of the construction of the Improvements.

Section 3.5 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Development or a stop notice affecting the Loan is served on the County or any other lender or other third party in connection with the Development, then Developer shall, within thirty (30) 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 shall be 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 on the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Development. Developer authorizes the County, but without any 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.

Section 3.6 Inspections.

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

Section 3.7 Equal Opportunity.

During construction of the Improvements there shall be no discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, gender identity, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work.

Section 3.8 Financial Accountings and Post-Completion Audits.

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

(b) No later than one hundred eighty (180) days following completion of construction of the Improvements, Developer shall submit an audited financial report prepared using generally acceptable standards, showing the sources and uses of all funds utilized for the Development.

Section 3.9 Information and Annual Reporting.

(a) Developer shall provide any information reasonably requested by the County in connection with the Development in connection with Developer's use of the Loan funds. In particular, Developer shall provide the County with the annual reports required by the Regulatory Agreement, including but not limited to reports regarding the Development's rent and occupancy levels, as well as the annual operating budget. Without limitation, Developer shall provide the County no later than the one hundred and eightieth (180th) day after the close of each calendar year following the Effective Date (and no later than December 1 for the operating budget and replacement budgets for the following year), hardcopies and PDF copies of the following documents:

(i) insurance certificates detailing all coverage required under Section 3.18 below;

(ii) evidence of payment of property taxes or property tax exemption for the Development, as applicable;

(iii) audited financial statements for the Development and Developer;

(iv) an occupancy report from Developer including: (i) the verified income, household size, and ethnicity of tenants of the Development; (ii) the Unit size, rent amount and whether these rents include utilities for all Units in the Development; (iii) the date tenancy commenced for each Affordable Unit; (iv) the percentage of Affordable Units occupied by persons meeting the County preference as may be further described in the Regulatory Agreement;

(v) a management report detailing the activities of the management agent;

(vi) a list of any substantial physical defects in the Affordable Units, including a description of any major repair or maintenance work undertaken or needed in the previous year and measures taken to maintain the Affordable Units in a safe and sanitary condition in accordance with applicable codes;

(vii) the operating reserve balance;

(viii) the replacement reserve balance;

(ix) the proposed annual operating budget for the subsequent fiscal year; and

(x) the proposed annual replacement budget for the subsequent fiscal year.

(b) Substitution of Monitoring and Compliance Reports Prepared for Other Financing Programs. If similar reports on some or all of the Affordable Units are required for regulatory compliance with other financing programs, those reports may be deemed satisfactory for the purpose of this Section 3.9 by the County, with respect to the portion of the requirements of this Section covered by such reports, provided that copies are provided on an annual basis to the County with an owner certification addressed to the County certifying that Developer has complied with this Agreement.

Section 3.10 Records.

(a) Developer shall keep and maintain at the Development, or elsewhere with the County's written consent, full, complete and appropriate books, record and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Developer's compliance with the terms and provisions of this Agreement including but not limited to Developer's calculation of Residual Receipts. Developer shall appoint and submit to the County the name of a fiscal agent who shall be responsible for the financial and accounting activities of Developer. Books, records and accounts shall be consistent with requirements of this Agreement. All such books, records, and accounts shall be open to and available for audit, inspection and copying by the County, their auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Developer may be required to furnish any governmental agency shall at all reasonable times be open for inspection by the County at the place that the books, records and accounts of Developer are kept. Developer shall preserve such records for a period of not less than five (5) years after the creation of such records. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Loan is pending at the end of the record retention period stated herein, then Developer shall retain such records until such action and all related issues are resolved. Such records shall include all invoices, receipts, and other documents related to expenditures from the Loan funds. Records must be kept accurate and current.

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

(c) If so directed by the County, upon termination of this Agreement, Developer shall cause all records, accounts, documentation, and all other materials relevant to the Agreement to be delivered to the County as depository.

Section 3.11 County Audits.

Developer shall comply with any reasonable demand by the County for an audit of Developer's activities related to this Agreement. The County may make audits of any conditions relating to this Agreement.

Section 3.12 Hazardous Materials.

(a) Developer shall keep and maintain the Development in compliance with, and shall not cause or permit the Development to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Development including, but not limited to, soil and ground water conditions. Developer shall not use, generate, manufacture, store or dispose of on, under, or about the Development or transport to or from the Development any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in construction and operation of projects like the Development or kept and used in and about residential property of this type, provided that such materials are used, stored, and disposed of in accordance with Hazardous Materials Law.

(b) Developer shall immediately advise the County in writing if at any time it receives written notice of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Developer or the Development pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Developer or the Development relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Development that could cause the Development or any part thereof to be classified as "border-zone property" under any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Development under any Hazardous Materials Law.

(c) The County shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Developer. 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 Development; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Development relating to Hazardous Materials (whether on the Development or any other property); and (v) the breach of any representation of warranty by or covenant of Borrower in this Section 3.12, and Section 5.1(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 Development 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 Development; (2) loss or restriction of use of rentable space on the Development; (3) adverse effect on the marketing of any rental space on the Development; 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 Development and surrounding properties). This obligation to indemnify shall survive termination of this Agreement.

(d) Without the County's prior written consent, which shall not be unreasonably withheld, Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Development, 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 reasonable judgment, impair the value of the County's security hereunder; provided, however, that the County's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Development 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 reasonable satisfaction of the County that there is no reasonable alternative to such remedial action which would result in less impairment of the County's security hereunder; or (iv) the action has been agreed to by the County.

(e) 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 Development 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 Development is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(f) In the event that any portion of the Development 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 Development; 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 shall be deemed to have willfully permitted or acquiesced in a release or threatened release of Hazardous Materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Development 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) reasonable 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 Development is environmentally impaired, plus interest thereon at the Default Rate, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the County upon its demand made at any time following the conclusion of such action.

Section 3.13 Maintenance and Damage.

(a) During the course of both construction and operation of the Development, Developer shall maintain the Development in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Developer has not cured such condition within thirty (30) days after receiving a County notice of such a condition, then in addition to any other rights available to the County, the County shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Development.

(b) Subject to the requirements of Senior Lenders, and if economically feasible in the County's reasonable judgment after consultation with Developer, if any improvement now or in the future on the Development 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 for the Development. Such work or repair shall 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 shall be complete within one (1) year thereafter. In the event that any improvement is damaged or destroyed during construction of the Improvements, the County shall permit Developer to extend the construction completion date. Any insurance or condemnation proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance or condemnation proceeds shall be insufficient for such purpose, then Developer shall make up the deficiency. If Developer does not make repairs, then any insurance or condemnation proceeds collected for such damage or destruction shall be promptly delivered to the County as a special repayment of the Loan, subject to the rights of the Senior Lenders, if any.

Section 3.14 Fees and Taxes.

(a) Developer shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Development to the extent owned by Developer, and shall pay such charges prior to delinquency. However, Developer shall not be 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.

(b) Developer shall pay an annual compliance monitoring fee to the County for administration of the Loan (the "Annual Compliance Monitoring Fee") of One Hundred Nineteen Dollars (\$119) per Unit. This Annual Compliance Monitoring Fee will escalate at three percent (3%) per year starting in the first calendar year after issuance of the Notice of Completion

for the Development. The first Annual Compliance Monitoring Fee for the fiscal year 2024/2025 shall be due on January 1, 2026. The County may withhold the first two (2) years of the Annual Compliance Monitoring Fee from the Final Disbursement.

(c) Developer shall pay a Five Thousand Dollar (\$5,000) fee (the "Modification Fee") to the County for amendments or modifications to the Loan or any Loan Document requested by Developer after the closing of the Permanent Loan. This Modification Fee will escalate at three percent (3%) per year starting in the first calendar year after issuance of the Notice of Completion for the Development.

Section 3.15 Notice of Litigation.

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

Section 3.16 Nondiscrimination.

(a) Developer covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, gender identity, marital status, family status, source of income, ancestry or national origin, HIV/AIDS, or any other arbitrary basis in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Development. Notwithstanding the above, with respect to familial status, the above should not be construed to apply to housing for older persons as defined in Section 12955.9 of the Government Code and other applicable sections of the Civil Code as identified in Health and Safety Code Section 33050(b). The foregoing covenant shall run with the land.

(b) Developer shall design and construct the Development in compliance with the Accessibility Requirements. 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 Development complies with all Accessibility Requirements applicable to the Development. 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 Development in accordance with the Accessibility Requirements.

(c) The requirements in this Section shall survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

Section 3.17 Transfer.

(a) For purposes of this Agreement, "Transfer" is 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. "Transfer" shall exclude the leasing of any single Unit in the Development to an occupant and the transfer of an easement interest in the Development for utility purposes. The County Administrator or his/her designee is authorized to execute assignment and assumption agreements on behalf of the County to implement any approved Transfer.

(b) County is entering into this Agreement based on the experience, skill, and ability to perform of Developer. Developer recognizes that its qualifications and identity are of particular concern to the County, in view of: (i) the importance of affordable housing to the general welfare of the community; (ii) the reliance by the County upon the unique qualifications and ability of Developer to ensure the quality of the affordability, use, operation, and maintenance of the Development; (iii) the requirement that the Development be used for affordable housing; and (iv) Developer's representation that the Development is not to be acquired or used for speculation, but only for operation by Developer in accordance with the Regulatory Agreement.

(c) No Transfer not specifically authorized in this Section 3.17 shall be permitted without the prior written consent of the County, which the County may withhold in its sole discretion. The Loan shall automatically accelerate and be due in full upon any Transfer made without the prior written consent of the County.

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

(e) Notwithstanding anything to the contrary in the Loan Documents, the County hereby approves a future Transfer of the membership interest in the Developer to any existing member of the Developer or its affiliate, provided that the transferee expressly assumes the obligations of the Developer under the Loan Documents, utilizing a form of assignment and assumption agreement provided by the County.

Section 3.18 Insurance Requirements.

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

(i) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident and including a waiver of subrogation, for the performance of any of Developer's duties under this Agreement.

(ii) Comprehensive 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 (occurrence form CG-0001).

(iii) Comprehensive 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 shall be obtained if required by applicable federal regulations.

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 (a)(i), (a)(ii), and (a)(iii) above, except that the limit of liability for comprehensive general liability insurance for subcontractors shall be One Million Dollars (\$1,000,000), and shall require that such insurance shall meet all of the general requirements of subsections (b), (c), and (d) below, including, without limitation, the requirement of subsection (c). Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and agents pursuant to this subsection shall name as additional insureds the County, its officers, officials, agents, employees and volunteers.

(b) The required insurance shall 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 shall be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above. Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII.

(c) Certificates. All insurance coverages referenced in subparagraph (a) above, shall be evidenced by one or more certificates of coverage or, with the consent of County's Risk Manager, demonstrated by other evidence of coverage acceptable to County's Risk Manager, which shall be filed by Developer with the Housing and Intergovernmental Affairs Department and approved by the County's Risk Manager prior to disbursement of the Loan. Such certificates shall reference this Agreement by its County number or title and department; shall be kept current during the term of this Agreement; shall provide that County shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. For the workers' compensation insurance coverage referenced in subparagraph (a)(i) of this Section, Developer shall also file with the County evidence of coverage an endorsement from the insurance provider waiving subrogation. For the commercial general liability insurance coverage referenced in subparagraph (a)(ii) of this Section, and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in subparagraph (a)(iii) of this Section, Developer shall also file with the County evidence of coverage an endorsement from the insurance provider naming County, its officers, employees, agents and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of Developer not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of County shall pertain only to liability for activities of Developer under this Agreement, and that the insurance provided is primary coverage to County with respect to any insurance or self-insurance programs maintained by County. The additional insured endorsements for the general liability coverage

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

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, County's Risk Manager, which approval shall not be denied unless the County's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to the Loan and the Development and the risks of liability associated with the activities required of Developer by this Agreement. At the option of and upon request by County's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects County, its officers, employees, agents and volunteers or Developer shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

Section 3.19 Covenants Regarding Approved Financing and Partnership Agreement.

(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 any defaults under the Partnership Agreement, 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 except for amendments solely to effectuate Transfers permitted under Section 3.17 above. Developer shall provide the County copies of all amendments, modifications, and supplements to the Partnership Agreement and any document related to any loan that is part of the Approved Financing.

(d) 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.

(e) To the extent the Partnership Agreement is inconsistent with this Agreement with respect to the repayment of the Loan including, without limitation, the Residual Receipts definition and the payment provisions of Section 2.8 above, this Agreement will control. Any payments made in conflict with the Residual Receipts definition and payment requirements of this Agreement will be considered a Default.

ARTICLE 4. AFFORDABLE HOUSING REQUIREMENTS

Section 4.1 Affordability Restrictions.

In consideration for the Loan to be provided to Developer on below-market terms, Developer hereby agrees five (5) Units shall be affordable to low and moderate income households for fifty-five (55) years and as further specified in the Regulatory Agreement and other regulatory agreements between Developer and providers of the Approved Financing. Developer shall record against the Development, prior to the disbursement of any Loan funds, the Regulatory Agreement.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Section 5.1 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 5 are deemed to be continuing during all times when any portion of the Loan remains outstanding:

(a) Organization. Developer is a duly organized California limited liability company, 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 Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of 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 Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been 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 this Agreement and the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any

provision, condition, covenant or other term hereof or thereof, will 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 binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

(f) Compliance with Laws; Consents and Approvals. The construction and operation of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of officers of any 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 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, materially affect Developer's ability to 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 acquired the Property, and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and liens in favor of the County or approved Senior Loans, except for liens 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 adverse, material change in the financial condition of Developer from that shown by such financial statements and other data and information.

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

(k) Compliance with County Guidelines. Developer will develop and operate the Development in conformance with the County's Multifamily Rental Housing Transaction Underwriting Guidelines.

(l) 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 Development; (ii) neither the Development nor Developer is in violation of any Hazardous Materials Law; and (iii) neither the Development nor Developer is subject to any existing, pending or threatened Hazardous Materials Claims.

(m) 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.

ARTICLE 6. DEFAULT AND REMEDIES

Section 6.1 Events of Default.

Each of the following shall constitute a "Default" by Developer under this Agreement:

(a) Failure to Construct. Failure of Developer to obtain permits, or to commence and prosecute construction of the Improvements to completion, within the times set forth in the documents evidencing Approved Financing.

(b) Failure to Make Payment. Failure to repay the principal and any interest on the Loan when such payment is due pursuant to the Loan Documents.

(c) Breach of Covenants. Failure by Developer to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents (other than as set forth in the other Subsections of this Section 6.1), and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the County to Developer or, if the breach cannot be cured within thirty (30) days, Developer shall not be in breach so long as Developer is diligently undertaking to cure such breach and such breach is cured within sixty (60) days; provided, however, that if a different period or notice requirement is specified under any other Section of this Article 6, the specific provisions shall control.

(d) Default Under Other Loans. 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.

(e) Insolvency. A court having jurisdiction shall have made or entered 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; or (iv) directing the winding up or liquidation of Developer, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) calendar days; or Developer shall have admitted in writing its inability to pay its debts as they fall due or shall 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 shall

act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

(f) Assignment; Attachment. Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) 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.

(g) Suspension; Termination. Developer shall have voluntarily suspended its business or, shall have been dissolved or terminated.

(h) Liens on the Development. There shall be filed any claim of lien (other than liens approved in writing by the County) 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) reasonably satisfactory to the County.

(i) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Development other than by the County.

(j) Unauthorized Transfer. Any Transfer other than as permitted by Section 3.17.

(k) Failure to Timely Lease. Failure of Developer to initially lease all of the Units within eighteen (18) months of the recordation of the Notice of Completion.

(l) Representation or Warranty Incorrect. 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 Loan Documents, proving to have been incorrect in any material respect when made or when later due to be performed.

In the event that Developer is a limited partnership or limited liability company, then the occurrence of any of the events set forth in subsections (e), (f), or (g) by Developer's general partner or managing member, as applicable, shall also constitute a Default under this Agreement.

Section 6.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the County or automatically where so specified, relieve the County of any obligation to make or continue the Loan and shall give the County the right to proceed with any and all remedies available under law, in equity, or set forth in this Agreement and the Loan Documents, including but not limited to the following:

(a) Acceleration of Note. The County shall have the right to 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, and including foreclosure under the Deed of Trust. Developer shall be 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 shall have 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 Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Developer's Expense. The County shall have the right (but not the obligation) to cure any monetary default by Developer under a loan other than the Loan. Developer agrees to reimburse the County for any funds advanced by the County to cure a monetary default by Developer upon demand therefor, together with interest thereon at the lesser of the maximum rate permitted by law and the Default Rate from the date of expenditure until the date of reimbursement.

Section 6.3 Right of Contest.

Developer shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the County or the rights of the County hereunder.

Section 6.4 Remedies Cumulative.

No right, power, or remedy given to the County by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be 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 shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 6.5 Notice and Cure Rights of Non-Managing Member

The County shall provide the non-managing member of Developer ("Permitted Member") a duplicate copy of all notices of default that the County may give to or serve in writing upon Developer pursuant to the terms of the Loan Documents, at the address set forth in Section 7.11, provided, the County shall have no liability to the Permitted Member for its failure to do so. The Permitted Member has the right, but not the obligation, to cure any default of Developer set forth in such notice, during the applicable cure period described in the Loan Documents, and the County will accept tender of such cure as if delivered by Developer.

ARTICLE 7. GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

Nothing contained in this Agreement shall 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 shall at all times be deemed an independent contractor and shall 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 acquisition, construction, and operation of the Development, Developer shall be 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 shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Developer shall be solely responsible for its own acts and those of its agents and employees.

Section 7.2 No Claims.

Nothing contained in this Agreement shall create or justify 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 of the Improvements or operation of the Development.

Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties. The Chair is authorized to execute on behalf of the County amendments to the Loan Documents or amended and restated Loan Documents so long as the Board first approves any material change in the amount or terms of this Agreement or any material change in the amounts or terms of financing provided by other parties for the Development. Developer shall pay the Modification Fee to the County if Developer requests amendments or modifications to the Loan or any Loan Documents.

Section 7.4 Loan Documents Conflict.

In the event of any conflict among the Loan Documents, the most restrictive requirements shall apply.

Section 7.5 Indemnification.

(a) To the full extent permitted by law, Developer shall indemnify, defend at its own expense, and hold the County and its elected officials, officers, employees and agents in their official capacity (collectively "Indemnitees") 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, development, construction, marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the County or Indemnitees. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either Party to disclose any documents, records or communications that are protected under the attorney-client privilege or attorney work product privilege.

(b) The provisions of this Section shall survive the expiration of the Term, the reconveyance of the Deed of Trust, and any release of part or all of the Development from the burdens of this Agreement.

Section 7.6 Survival.

Notwithstanding anything in this Agreement to the contrary, the following provisions of this Agreement shall survive and remain in effect following expiration of the Term or termination of this Agreement for so long as necessary to give them full force and effect with respect to claims or rights of County arising prior to the expiration of the Term or termination:

- (a) Section 3.3(c) (compliance with prevailing wage laws);
- (b) Section 3.4(c) (compliance with relocation requirements);
- (c) Section 3.12(c) (Hazardous Materials claims);
- (d) Section 3.16 (nondiscrimination and Accessibility Requirements); and
- (e) Section 7.5 (Indemnification).

Section 7.7 Non-Liability of County Officials, Employees and Agents.

No member, official, employee or agent of the County shall be personally liable to Developer in the event of any default or breach by the County or for any amount which may become due to Developer or its successor or on any obligation under the terms of this Agreement.

Section 7.8 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement.

Section 7.9 County Agent.

The County, in its sole discretion, may assign its rights and responsibilities to a third party agent in the performance of this Agreement.

Section 7.10 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in subsection (b) below who exercises or has exercised any functions or

responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Developer shall exercise due diligence to ensure that the prohibition in this Section is followed.

(b) The conflict of interest provisions of subsection (a) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the County, or any person related within the third (3rd) degree of such person.

(c) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code Section 87100 et seq., no person who is a director, officer, partner, trustee or employee or consultant of Developer, or immediate family member of any of the preceding, shall 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 shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 et seq., its implementing regulations manual and codes, and Government Code Section 1090.

Section 7.11 Notices, Demands and Communications.

Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched 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:

Developer: 963 Pope Street, LLC
c/o Napa Valley Community Housing
150 Camino Dorado, Napa CA 94558
Attn: Karina O'Briain, Senior Project Manager

with a copy to:

Our Town St. Helena
1250 Church Street
St. Helena, CA 94574
Attn: Executive Director

County: Napa County Department of Housing & Homeless Services
2751 Napa Valley Corporate Drive, B206-09
Napa, CA 94558
Attention: Director of Housing & Homeless Services

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 shall 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). Any notice sent to Developer will also be sent to Developer's limited partner.

Section 7.12 Applicable Law and Venue.

This Agreement shall be governed by and construed in accordance with California law. Venue shall be Napa County.

Section 7.13 Parties Bound.

Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure 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 shall bind Developer and its successors and assigns in the Development for the entire Term, and the benefit hereof shall inure to the benefit of the County and its successors and assigns.

Section 7.14 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 shall 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 7.15 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall 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, pandemics, supply chain disruptions, 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 of receipt of the notice. In no event shall the County be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 7.16 County Approval.

The County has authorized the Chair to execute the Loan Documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel certificates concerning the status of the Loan and the existence of Developer defaults under the Loan Documents. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

Section 7.17 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 shall 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 shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 7.18 Title of Parts and Sections.

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

Section 7.19 Entire Understanding of the Parties.

This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Loan. If there is any conflict between this Agreement and any other Loan Documents, the most restrictive provisions shall control.

Section 7.20 Multiple Originals; Counterparts.

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

[Signatures on following page.]

[Remainder of page intentionally blank.]

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

COUNTY:

COUNTY OF NAPA, a political subdivision of the State of California

By: _____
Anne Cottrell
Chair, Napa County Board of Supervisors

APPROVED AS TO FORM BY:
County Counsel

S. Darbinian
Deputy County Counsel

DEVELOPER:

963 Pope Street, LLC,
A California limited liability company

By: Napa Valley Community Housing,
a California nonprofit public benefit
corporation,
its Managing Member

By:  _____
Erica R. Sklar
CEO

Date: January 17 2025

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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

EXHIBIT B

APPROVED PROJECT BUDGET