

ATTACHMENT N 1

LOAN AGREEMENT

BY AND BETWEEN

**[ORANGE COUNTY HOUSING AUTHORITY,
acting solely as the Housing Successor Agency to the Orange County Development
Agency,]**

OR

[COUNTY OF ORANGE, a political subdivision of the State of California,]

AND

BORROWER

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LOAN AGREEMENT

THIS LOAN AGREEMENT ("the **Agreement**") is entered into as of this _____ day of _____, 2024, by and between the [ORANGE COUNTY HOUSING AUTHORITY, a public corporation created pursuant to California Health and Safety Code section 34200 et. seq., acting solely as the Housing Successor Agency to the Orange County Development Agency] [COUNTY OF ORANGE, a political subdivision of the State of California] ("**County**"), and [BORROWER] ("**Borrower**"), with reference to the following:

RECITALS

1. Borrower intends to construct a housing project on that certain real property located within the [LOCATION], County of Orange, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein (the "**Property**"). The Borrower further intends to [construct] operate a [number of units] (___) residential development consisting of [PROEJCT INFORMATION]] which shall be constructed by Borrower on the Property (collectively, the "**Project**").
2. The Borrower has submitted to County an application for funding of a project, described herein, under its 2023 Supportive Housing Notice of Funding Availability, as amended ("**2023 NOFA**").
3. The County desires to provide permanent financial assistance in the form of a loan to Borrower subject to the Borrower's agreement, amongst other things, to encumber the Property with certain rental restrictions, all as more particularly set forth in this Agreement and the Regulatory Agreement.
4. The Orange County Board of Supervisors [acting as the Board of Commissioners for the Orange County Housing Authority] approved a loan to the Borrower from County funds for financing on [DATE].
5. Borrower is financing the construction of the improvements and related costs and expenses through, among others, during the Qualified Project Period, as defined below, the following sources (collectively, the "**Permitted Financing**"):

[FINANCING SOURCES TO BE OUTLINED FORTHWITH]

NOW, THEREFORE, the parties agree as follows:

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ARTICLE I

DEFINITIONS

The following terms used in this Agreement shall have the respective meanings assigned to them in this Article I unless the context in which they are used clearly requires otherwise:

- 1.1. "Adjusted Income" shall mean the adjusted income of all persons who intend to reside in one residential unit, calculated in the manner which complies with determinations of income for low income families under the Department of Housing and Urban Development's Section 8 Program of the United States Housing Act of 1937, as amended.
- 1.2. "Agreement" shall mean this Loan Agreement.
- 1.3. "Area" shall mean Orange County.
- 1.4. "Assignment of Leases" shall mean that certain Assignment of Lessor's Interest in Leases, Rents and Profits executed by Borrower of even date herewith.
- 1.5. "Borrower" shall mean [XXXX]
- 1.6. "Close of Escrow" shall mean the date on which through the Escrow Holder and the Deed of Trust together with the other Loan Documents set up for recording are in fact recorded.
- 1.7. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time hereafter, or any successor statute thereto.
- 1.8. "Conversion Date" the date that a construction loan converts from the construction phase, as defined in the senior construction loan document, to the permanent phase and the County Loan is funded.
- 1.9. "County" shall mean the [County of Orange, a political subdivision of the state of California] or [Orange County Housing Authority, a public corporation created pursuant to California Health and Safety Code section 34200 et. seq., acting solely as the Housing Successor Agency to the Orange County Development Agency].
- 1.10. "Deed of Trust" shall mean that certain Deed of Trust, Assignment of Rents and Security Agreement executed by the Borrower in favor of the County of even date herewith.

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- 1.11. "Director" shall mean the [Orange County Housing Authority Executive Director] OR [OC Community Resources Director] or her or his designee.
- 1.12. "Due Date" shall mean the date which is fifty-five (55) years following the Conversion Date, on which all principal and interest due on the Loan shall be fully paid.
- 1.13. "Escrow Holder" shall mean the escrowholder approved by the County for the escrow established to facilitate the Close of Escrow.
- 1.14. "Financing Plan" shall mean the financing plan described in Section 4.1 below.
- 1.15. "Financing Statement" shall mean the UCC-1 form to be prepared and executed by Borrower, in a form satisfactory to the County, and delivered to the County, the filing of which shall give the County a perfected security interest in Borrower's tangible personal property and fixtures located on or about the Project.
- 1.16. "Hazardous Materials" or "hazardous materials" shall mean:
- (a) any oil, flammable substance, explosive, radioactive material, hazardous waste or substance, toxic waste or substance or any other waste, material, or pollutant that
 - (i) poses a hazard to the Project or to persons on the Project or
 - (ii) causes the Project to be in violation of any Hazardous Substance Law;
 - (b) asbestos in any form;
 - (c) urea formaldehyde foam insulation;
 - (d) transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls;
 - (e) radon gas;
 - (f) any chemical, material, or substance defined as or included in the definition of "hazardous substance," "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state, or federal law or under the regulations adopted or publications promulgated pursuant to those laws, including, but not limited to, any Hazardous Substance Law, Code of Civil Procedure § 564, as amended from time to time, Code of Civil Procedure § 726.5, as amended from time to time, Code of Civil Procedure § 736, as amended from time to time, and Civil Code § 2929.5, as amended from time to time;
 - (g) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority or which may pose a hazard to the health and safety of the occupants of the Project or the owners or occupants of property adjacent to or surrounding the Project, or any other person coming on the Project or any adjacent property; and

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- (h) any other chemical, material, or substance that may pose a hazard to the environment flammable materials, explosives, radioactive materials, hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable law, including, without limitation the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq., as amended.
- 1.17. "Hazardous Substance Law" means any federal, state, or local law, ordinance, regulation, or policy relating to the environment, health, and safety, any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge, or storage of the substance), industrial hygiene, soil, groundwater, and indoor and ambient air conditions or the environmental conditions on the Project, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USCS §§ 9601 et seq.], as amended from time to time; the Hazardous Substances Transportation Act [49 USCS §§ 1801 et seq.], as amended from time to time; the Resource Conservation and Recovery Act [42 USCS §§ 6901 et seq.], as amended from time to time; the Federal Water Pollution Control Act [33 USCS §§ 1251 et seq.], as amended from time to time; the Hazardous Substance Account Act [Health and Safety Code §§ 25300 et seq.], as amended from time to time; the Hazardous Waste Control Law [Health and Safety Code §§ 25100 et seq.], as amended from time to time; the Medical Waste Management Act [Health and Safety Code §§ 25015 et seq.], as amended from time to time; and the Porter-Cologne Water Quality Control Act [Water Code §§ 13000 et seq.], as amended from time to time.
- 1.18. "Loan" shall mean the Loan in the amount of _____ (\$_____) by the County to the Borrower, which Loan is the subject of this Agreement.
- 1.19. "Loan Documents" shall mean the following documents evidencing the Loan: (a) the Note; (b) the Deed of Trust; (c) the Financing Statement; (d) the Regulatory Agreement; (e) Request for Notice of Default; (f) the Assignment of Leases; and (g) this Loan Agreement.
- 1.20. "Management Plan" shall mean that management plan submitted to and approved by the County pursuant to Section 4.1 below.
- 1.21. "Marketing Plan" shall mean that certain Marketing Plan submitted to and approved by the County pursuant to Section 7.8 hereof.
- 1.22. "Median Income for the Area" shall mean the median income for the Area as most recently determined by the United States Department of Housing and Urban Development ("HUD") and published by the State of California. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County shall provide the

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Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD and the State.

- 1.23. "Mortgage Loan" shall mean any of the following loans secured by a mortgage or deed of trust on the Project:
- (a) The Loan evidenced by the Note and the balance of the Loan Documents.
 - (b) Any other loan secured by a mortgage or deed of trust on the Project, either senior or junior to the Loan.
- 1.24. "Mortgage Loan Documents" shall mean all documents executed by the Borrower endorsing or securing a Mortgage Loan.
- 1.25. "Mortgagee" shall mean the mortgagee or beneficiary under a mortgage or a deed of trust executed in connection with a Mortgage Loan.
- 1.26. "Note" shall mean the promissory note in the principal amount of Loan evidencing the monies borrowed by Borrower from the County.
- 1.27. "Operating Reserves" shall mean reserves maintained during the Qualified Project period and funded out of Residual Receipts, loan advances, equity, or other sources and set aside for taxes and assessments, insurance premiums, operating expenses, and debt service. Operating Reserves shall not exceed the amount required to pay three (3) months of operating expenses and three (3) months of mandatory debt service.
- 1.28. "Parties" shall mean the County and the Borrower.
- 1.29. "Partnership" shall mean [NAME OF PARTNERSHIP].
- 1.30. "Permanent Lender" shall mean the permanent lender designated by Borrower and approved in advance by the County as the Permanent Lender for the Project.
- 1.31. "Permitted Financing" shall have the meaning given in Recital 5.
- 1.32. "Plans and Specification" shall mean the final set of architectural, structural, mechanical, electrical, grading, sewer, water, street and utility plans and specifications for the Project, including all supplemental, amendments and modifications.

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- 1.33. "Project" means collectively the Property and the structures and related buildings and other improvements now or hereafter located on the Property from time to time together with all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements.
- 1.34. "Property" means the real property legally described on Exhibit "A", which is attached hereto and by this reference incorporated herein, and all rights and appurtenances thereunto appertaining.
- 1.35. "Qualified Project Period" shall mean the period beginning upon the Conversion Date and ending on the date which is fifty-five (55) years after the beginning of the Qualified Project Period.
- 1.36. "Qualified Tenant" or "Qualified Tenants" shall collectively mean the individuals occupying the Restricted Units with the Adjusted Incomes more particularly described in Exhibit "B" attached hereto and incorporated herein. The income of individuals shall be determined in a manner consistent with determinations of lower income households under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, in a manner consistent with such determinations under such program as is in effect immediately before such termination). In no event, however, will the occupant of a Restricted Unit be considered to be a Qualified Tenant if the occupant is a student, and is not entitled to file a federal income tax return.
- 1.37. "Regulations" shall mean the Income Tax Regulations promulgated by the United States Department of the Treasury pursuant to the Code from time to time.
- 1.38. "Regulatory Agreement" shall mean that certain Regulatory Agreement and Declaration of Restrictive Covenants between the County and the Borrower of even date herewith.
- 1.39. "Replacement Reserves" shall mean reserves maintained during the Qualified Project period and funded out of Residual Receipts, loan advances, equity, or other sources and set aside for replacement of roofing, furniture, fixtures, equipment and other capital expenditures. The annual amount set aside for Replacement Reserves shall not be more than four hundred dollars (\$400) per unit. Exceptions may be considered where required for continued feasibility of projects with short-term rent subsidy commitments, or when required by other funding agencies when approved in writing by the County.
- 1.40. "Request for Notice of Default" shall mean a request for notice of default to be recorded against the Property in a form approved by the County.
- 1.41. "Residual Receipts" means, during the Qualified Project Period, the Annual Project Revenue less (A) Annual Operating Expenses (as defined in the Note), (B) obligated debt service on permanent loan(s) for the Project senior to the County's Loan approved in writing by the County at the closing of the Loan, (C) payment obligations (e.g. partnership management fees, and deferred developer fees) approved in writing by the County at the closing of the Loan, and (D) scheduled deposits to reserves approved in writing by the County.
- 1.42. "Restricted Unit" or "Restricted Units" means the dwelling units in the Project identified on Exhibit "B" attached hereto and incorporated herein required to be rented to, or held available for occupancy by, Qualified Tenants pursuant to

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the terms, covenants and conditions of the Regulatory Agreement, this Agreement, including, but not limited to, the rental restrictions and other matters set forth in said Exhibit "B" and the other Loan Documents.

- 1.43. "Tax Credit Investor" shall mean the tax credit investor designated by Borrower and approved in advance by the County as the Tax Credit Investor for the Project.
- 1.44. "Term" shall mean the period of time commencing on the date of this Agreement and ending with the last date of the Qualified Project Period, for a total possible term of up to fifty-eight (58) years..

ARTICLE II

LOAN

2.1 Amount. Subject to the terms of this Agreement, the County hereby agrees to lend and the Borrower hereby agrees to borrow, the Loan, evidenced by the Note, the proceeds of which shall be used to acquire the Property and upon fulfillment of certain conditions, as set forth herein, to permanently finance the Project and for the other purposes set forth herein.

2.2 Repayment of Loan. Borrower shall repay the Loan, with interest, in accordance with the provisions of the Note and this Agreement. Except as otherwise provided, all payments shall be applied first to interest and then to principal.

2.3 Prepayment. Borrower may pay the principal and any interest due the County under the Note prior to or in advance of the time for payment thereof as provided in the Note, without penalty; provided, however, that Borrower acknowledges that in the event the Conversion Date occurs the provisions of this Agreement and the Regulatory Agreement will be applicable to the Project throughout the Qualified Project Period even though Borrower may have prepaid the Note.

2.4 Assumption. Subject to the provisions of Section 7.7 hereof, the Note shall not be assumable by successors and assigns of Borrower, either voluntarily or by operation of law, without the prior written discretionary consent of the County and any such assignment or assumption without said prior consent of the County shall be void.

2.5 Loan Disbursement. Upon satisfaction of the conditions to disbursement set forth in Section 4.1 below and pursuant to the disbursement procedures set forth in Section 4.2 below, the County, through the approved Escrowholder, will cause the disbursement of the Loan as provided for in Section 4.2.

2.6 Security for Loan. The Loan shall be secured by the Deed of Trust, Regulatory Agreement, the Financing Statement, Assignment of Leases and the Request for Notice of Default.

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2.7 Approval of Additional Financing. Except as to the Permitted Financing and as otherwise described herein, the Borrower shall not place or permit (either voluntarily or involuntarily) to be placed any encumbrances, including, but not limited to any additional liens or financing of any kind on the Project without the prior written discretionary consent of the County.

2.8 Subordination of Deed of Trust.

The County agrees that the Deed of Trust may be subordinate to the lien of a permanent loan secured by a Senior Construction/Permanent Deed of Trust (and any refinancing of said permanent loan secured by the Senior Construction/Permanent Deed of Trust) securing financing in an amount not to exceed \$[XXX,XXX] so long as (i) the documentation for said loan is approved by the County and (ii) said loan is otherwise provided for and approved by the County in the Financing Plan. Any other financing, refinancing or encumbrance of the Project is prohibited without the County's prior written consent which consent the County may arbitrarily withhold in the exercise of its discretion

In order to affect the subordinations described above and elsewhere in this Agreement, the County and Borrower agree to execute and acknowledge for recordation a subordination agreement (in a form acceptable to the County) in favor of the senior lender, as requested by such senior lender.

ARTICLE III

RENTAL RESTRICTIONS DURING THE QUALIFIED PROJECT PERIOD

3.1 Use and Rent Restrictions.

(a) During the Qualified Project Period, the Project shall be "Affordable" as defined in 24 CFR Part 92.252 and in compliance with County policies associated with the 2023 NOFA for a period of not less than fifty-five (55) years.

(b) In accordance with the provisions of the Regulatory Agreement, this Loan Agreement and Exhibit "B" attached hereto and incorporated herein, the Borrower has agreed to rent the Restricted Units of the Project to Qualified Tenants for the Qualified Project Period at the rents described in said Exhibit "B."

(c) Borrower agrees to provide to Qualified Tenants notice of all rent increases pursuant to applicable California law.

(d) Borrower agrees to limit rent increases to (i) the Department of Housing and Urban Development's (HUD) annually published Rent Adjustment factor for the Section 8 program, or (ii) no more than the rent established as affordable based on the

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Median Income for the Area and the affordability restrictions set forth in Exhibit “B”, which is adjusted annually by HUD and published by the State of California.

3.2 Income Determination. For the purposes of this section, the income of individuals and families and the area median gross income shall be determined in a manner consistent with determinations of lower income families and the Median Income for the Area under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, in a manner consistent with such determinations under such program as is in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for household size.

3.3 Certifications. With respect to those Restricted Units subject to the rental restrictions described above, during the Qualified Project Period the Borrower will comply with the Qualified Tenant certifications and recertifications in the same manner as prescribed under the Regulatory Agreement. Said certifications and recertifications shall include, but not be limited to, client name, address, and verifiable income level (as documented by income tax returns, employee payroll records, retirement statements, etc. or other third party documentation approved by the County for determining eligibility). Such information shall be made available to County monitors, or their designees, for review upon request.

3.4 Records.

(a) The Borrower will maintain complete and accurate records as required by Federal Regulations specified in 24 CFR 92.508, which shall contain a description of each activity undertaken, records pertaining to the Restricted Units, records documenting compliance with fair housing and equal opportunity components, financial records as required by 24 CFR 92.508 (a)(5), other records to document compliance with Subpart K of 24 CFR 92, and records documenting the continued affordability and income restrictions outlined in Exhibit “B”.

(b) The Borrower will permit any duly authorized representatives of the County to inspect and copy the books and records of the Borrower pertaining to the Project, including those books and records pertaining to the occupancy of the Restricted Units provided that the County will make a reasonable effort to provide notice of at least forty-eight (48) hours to inspect, examine, or make copies of such information.

(c) Borrower will retain such records for a period of five (5) years after the termination of all activities funded under this Agreement.

3.5 Leases. Each lease pertaining to a Restricted Unit shall contain provisions to the effect that the Borrower has relied on the income certification and supporting information supplied by the Qualified Tenant in determining qualification for occupancy of the Restricted Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease. County reserve the right to require additional non-financial terms or clauses that are reasonably related to

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such qualifications (including, but not limited to additional disclosure clauses) that the County may from time to time deem appropriate or necessary to be included in said leases.

ARTICLE IV

DISBURSEMENT OF LOAN

4.1 Conditions Precedent to Disbursement of Loan Proceeds. The County shall cause Loan proceeds to be disbursed through escrow to the Borrower as set forth in this Article IV. No disbursement shall be made until all of the following conditions precedent are satisfied:

(a) Execution and Delivery of Documents. Borrower shall have executed and delivered to the County (i) this Agreement, the Note, the Deed of Trust, the Financing Statement, the Regulatory Agreement, and the Assignment of Leases, (ii) all resolutions and certificates necessary or appropriate in the opinion of the County to evidence the Borrower's authority to enter into the Loan and be bound by the Loan Documents, and (iii) all other documents and instruments required by the County to be executed and delivered, all in form and substance satisfactory to the County.

(b) Insurance. Borrower shall have furnished the County with certificates of insurance for all policies required under this Agreement.

(c) Phase One Environmental Assessment Report. Borrower shall have provided the County with a Phase One Environmental Assessment Report on the Property prepared by a licensed and registered environmental engineer or other qualified party satisfactory to County, along with any other information the County may require, in each case stating that no hazardous substances are present in, on, under or around the Property and that no condition or circumstances warranting further investigation now exists.

(d) Notice of Completion; Compliance with Applicable Requirements; Senior Permanent Loan Conversion Conditions Precedent The Borrower shall have submitted to the County and the County shall have approved the recorded Notice of Completion, the final certificate of occupancy and evidence that the Property and its intended use are in compliance with all applicable building, zoning and other requirements of applicable public authorities.

(e) Financing Plan. The Borrower shall have submitted and the County shall have approved the Borrower's plan for the permanent financing of the Project ("**Financing Plan**").

(f) Management Plan. The Borrower shall have submitted and the County shall have approved a Management Plan ("**Management Plan**"). The Management Plan shall include a management contract with a manager approved in writing by the County

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for management of the Project and a plan for long-term marketing, operation, maintenance, repair and security of the Project, method of selection of tenants, and for rental policies in compliance with any applicable requirements, policies and procedures and with the Regulatory Agreement, along with any other policies or procedures required by the County. The Management Plan shall also include an initial budget for the Project.

(g) Mechanic's Liens. The Borrower shall have submitted to County for County approval evidence that all construction costs have been paid in full and that the period for filing of mechanic's liens has expired without the filing of any lien.

(h) As-Built Survey. Borrower shall have delivered and the County shall have approved a final, as-built ALTA survey for the Project showing the location of all improvements in and to the Project as well as (i) all "setbacks" and other restrictions applicable to the Project pursuant to requirements of applicable public authorities (ii) all easements, licenses and other rights of way, (iii) shows no encroachments onto the Project or from the Project onto adjoining property and (iv) certifies the legal description of the Project as insured in the title policy.

(i) Title Policy. Borrower shall, at its sole expense, have delivered to County an ALTA loan policy-2006, with ALTA endorsement Form 1 coverage, amended 6/1/87, without further revision or amendment, issued by an insurer satisfactory to County, together with an unconditional CLTA 100 endorsement, a CLTA 103.7 endorsement, a CLTA 116.1 endorsement, an ALTA Form 8.1 endorsement and all other endorsements and binders required by County, naming County as the insured, in a policy amount of not less than the Loan, showing Borrower as the owner of the Project and insuring the Deed of Trust to be a valid **[LIEN PRIORITY]** lien on the Project, subject only to those exceptions approved by the County in Section 2.8 above.

(j) Recordation. The Regulatory Agreement, Deed of Trust, Assignment of Leases and Financing Statement shall have been recorded, in that order, in the Official Records of Orange County.

(k) Senior Acquisition Deed of Trust. The Mortgage Loan Documents for the first trust deed permanent Mortgage Loan shall have been recorded in such order as directed by the said senior first trust deed lender.

(l) No Default. There shall exist no condition, event or act which would constitute an Event of Default (as hereinafter defined) hereunder or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(m) Representations and Warranties. All representations and warranties of Borrower herein contained shall be true and correct.

(n) Availability of Funds. The Borrower has submitted to the County and the County has approved in the exercise of its discretion evidence that the funds identified as committed to the acquisition of the Property in the approved Financing Plan to be

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available on the Conversion Date are in fact unconditionally and readily available to Borrower for the Property as of the Close of Escrow.

(o) Priority of Regulatory Agreement. The Regulatory Agreement has been executed and recorded as a lien senior to the Deed of Trust.

4.2 Procedure for Disbursement of Loan Proceeds. When all the conditions to disbursement have been satisfied, the County shall deposit the Loan with the Escrowholder for disbursement upon the Close of Escrow with the Permanent Lender in accordance with the terms of separate written escrow instructions between the County and Borrower. Said agreement shall be deposited into escrow.

4.3 Waiver; Termination. No waiver of any of the conditions to the Close of Escrow and disbursement of the Loan shall be permitted unless agreed to in writing by the Director. If any of the conditions to disbursement of the Loan are not satisfied within [X] (X) months following the date of this Agreement, County may terminate this Agreement by the Director giving written notice to Borrower. Upon such termination, the parties shall have no further rights or obligations under this Agreement.

ARTICLE V

LEASES

5.1 Standard Form Leases. On or before the commencement of the Qualified Project Period, Borrower shall submit to County for its written approval a standard form of residential lease to be used for leasing of the Project (the “Standard Lease”). The Standard Lease shall be in compliance with all applicable laws and Borrower shall be obligated to revise said Standard Lease from time to time to comply with any changes in said applicable laws.

5.2 Leasing Program. Borrower shall market and lease the Project consistent with the Marketing Plan described in Section 7.8 hereof.

5.3 Pro-Forma Schedules. Attached hereto and incorporated herein as Exhibit “B” is the rental rate schedule for the Units at the Project approved by County.

5.4 No Changes. Borrower shall not materially modify the approved Standard Lease or materially deviate from the approved rental rate schedule for the Units without the County’s prior written consent in each instance, which consent shall not be unreasonably withheld or delayed.

5.5 Landlord’s Obligations. Borrower shall timely and in good faith, perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Project. If any tenant at any time claims any breach of landlord’s obligations and the amount of such claim (in excess of available

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insurance coverage) is \$10,000 or more, Borrower shall promptly notify County of such claim.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BORROWER

6.1 Representations and Warranties. Borrower hereby makes the following representations and warranties to the County, each of which shall also be deemed a covenant and all of the following, Borrower agrees, shall continue to be true and accurate in all material respects so long as the Loan or any portion thereof remains outstanding:

(a) Organization. Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted. The copies of the documents evidencing the organization of Borrower delivered to the County are true and correct copies of the originals, as amended to the date of this Agreement, and Borrower will promptly provide the County with copies of any modifications thereto.

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

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

(d) Valid Binding Agreements. 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 Borrower enforceable against the Borrower 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,

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decree or order of any court, board, commission or agency whatsoever binding on Borrower and in effect at the time of execution of this Agreement, or any provision of the organizational documents of Borrower or, if applicable, of its constituent partners, or will conflict with or constitute a breach of or a default under any agreement to which Borrower, or, if applicable, its constituent partners, is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

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

(g) Compliance with Laws; Consents and Approvals. The Project shall comply at all times with all applicable laws (including but not limited to all Hazardous Substances Laws), ordinances, rules and regulations of federal, state, and local governments and agencies, and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector, and other officers of any such government or agency. All consents, permissions and licenses required by any federal, state, or local government or agency to which the Borrower, the Property or the Project is subject, which may be necessary in relation to this Agreement or the ownership or operation of the Project, have been or will be obtained.

(h) Financial Statements. The financial statements of the Borrower and its constituent partners, if any, and other financial data and information furnished by the Borrower for review by the County relating to the financial condition of Borrower or any of Borrower's constituent partners or the Project, fairly present the information contained therein. As of the date of Loan disbursement, there will not have been any adverse material change in the financial condition of the Borrower or its constituent partners from that shown by such financial statements and other data and information.

(i) Adequacy of Loan. The amount of the Loan, together with any funds to be provided by the Borrower or to the Borrower from any other sources, is adequate to pay all costs incurred in connection with the acquisition of the Property and to enable the Borrower to satisfy the covenants contained in this Agreement.

(j) Payment of Taxes. All federal, state, county, and municipal taxes required to be paid by the Borrower or on account of the Property have been paid in full as of the date of this Agreement or will be paid in full by the Close of Escrow. Borrower knows of no basis for any additional assessment of taxes as of this date.

(k) Regulatory Agreement. The Project is, and will at all times remain, in compliance with all requirements of this Agreement and the Regulatory Agreement. The

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units in the Project shall be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement. All leases will comply with all applicable laws and the Regulatory Agreement.

ARTICLE VII

CONTINUING OBLIGATIONS OF BORROWER

7.1 Applicability. For the longer of the entire Term, or so long as the Note remains outstanding, the Borrower shall comply with the provisions of this Article VII.

7.2 Compliance with Loan Documents. Borrower shall promptly comply with all the terms, covenants and provisions of the Loan Documents.

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

7.4 Indemnity.

(a) To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the County and its elected officials, officers, governing members, employees, attorneys and agents (collectively, the "Indemnified Parties"), from and against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any and every conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject to under any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

1. the Loan Documents or the execution or amendment thereof or in connection with the transactions contemplated thereby;

2. Borrower's ownership or operation of the Project or any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or

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management of work done in or about, or from the planning, design, acquisition, installation, operation or rehabilitation of, the Project or any part thereof;

3. any lien or charge upon payments by the Borrower to the County, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the County in respect of any portion of the Project;

4. any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof;

5. any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any Loan Document or any of the documents or instruments relating to said Loan Documents that the County relied upon in making the Loan except to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment and payment for counsel selected by the Indemnified Party, and shall assume the payment of all reasonable expenses related thereto, with full power to litigate, compromise or settle the same; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement.

6. If judgment is entered against Borrower and County by a court of competent jurisdiction because of the concurrent active negligence of County or Indemnified Parties, Borrower and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

7.5 Entry by the County. Borrower shall permit the County, through its officers, agents, or employees, at all reasonable times to enter into or onto the Property or the Project and inspect the Project to determine that the same is in conformity with the Loan Documents and all the requirements hereof. Borrower acknowledges that the County is under no obligation to supervise, inspect, or inform Borrower of the results of its said inspection(s) and Borrower shall not rely upon the County therefor. Any inspection by the County is entirely for its purposes in determining whether Borrower is in default under this Agreement or the Loan Documents. Borrower shall rely entirely upon its own supervision and inspection.

7.6 Hazardous Materials. Borrower shall indemnify, defend and hold harmless the County, and its respective elected and appointed officials, members, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on, under, or about the Project, including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair,

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cleanup or detoxification of the Project and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the County or County in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees.

7.7 Transfers. During the Term, Borrower shall not sell or otherwise transfer the Project or any portion thereof, and none of the constituent general partners of Borrower shall sell or otherwise transfer their interests in Borrower, and none of the constituent general partners in a partnership that is a partner in Borrower shall sell or otherwise transfer their interest in such partnership without first obtaining the approval of the County, which consent the County may withhold or grant in the exercise of its good faith discretion. The County shall not approve any such transfer request if the Borrower is in default under any of the Loan Documents or the Management Plan.

7.8 Management; Annual Marketing and Management Plans. Any management company of the Project and the management agreement with such management company shall be subject to the prior written approval of the County. The management agreement shall not be amended, modified, supplemented, terminated or canceled without the prior written consent of the County. Borrower and the County (if it so elects) will cooperate in the marketing of the units on the Property pursuant to a marketing plan (the “**Marketing Plan**”) prepared by the Borrower and approved by the County. Said Marketing Plan and the Management Plan described in Section 4.1 hereof shall be prepared by the Borrower and approved by the County on an annual basis; however, the Borrower shall provide quarterly written supplements to said approved plans (or more frequently if requested by the County).

7.9 Operation and Maintenance of Project.

(a) Operation. During the Qualified Project Period, Borrower shall at all times operate on the Project an affordable housing rental facility in compliance with this Agreement and the Regulatory Agreement.

(b) Maintenance. During the Qualified Project Period, Borrower agrees to maintain all interior and exterior improvements, including landscaping (and all abutting ground, sidewalks, roads, parking and landscape areas) on the Project in good condition, repair and sanitary condition (and, as to landscaping, in a healthy condition) and in accordance with any Management Plan approved by the County under the Loan Agreement (including without limitation any landscape and signage plans), as the same may be amended from time to time, and all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction and all their respective departments, bureaus, and officials. Borrower acknowledges the great emphasis the County places on quality maintenance to protect its investment and to provide quality low-income housing for its constituents and to ensure that all County-subsidized affordable housing projects within the County are not allowed to deteriorate due to deficient maintenance. In addition, Borrower shall keep the Project free from all graffiti and any accumulation of debris or

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waste material. Borrower shall promptly make all repairs and replacements necessary to keep the Project in good condition and repair and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials. Borrower shall not commit or permit any waste or deterioration of the Project, shall not abandon any portion of the Project, and shall not otherwise act, or fail to act, in such a way as to unreasonably increase the risk of damage to the Project.

In the event that Borrower breaches any of the covenants contained in this Section 9.9 and such default continues for a period of five (5) days after written notice from County (with respect to graffiti, debris, waste material, and general maintenance) or thirty (30) days after written notice from County (with respect to landscaping and building improvements), then County, in addition to whatever other remedies it may have under this Agreement, the other Loan Documents or at law or in equity, shall have the right to enter upon the Project and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the County shall be permitted (but not required) to enter upon the Project and perform all acts and work necessary to protect, maintain and preserve the improvements and landscaped areas on the Project, in the amount of the expenditure arising from such acts and work of protection, maintenance, and preservation by County and/or reasonable costs of such cure, including a fifteen percent (15%) administrative charge, which amount shall be promptly paid by Borrower to County upon demand.

(c) Removal of Personal Property. During the Qualified Project Period, Borrower shall not cause or permit the removal from the Project of any items of Borrower's personal property (other than tools and equipment used in the operation of the Project) unless (i) no Event of Default remains uncured and (ii) Borrower promptly substitutes and installs on the Project other items of equal or greater value in the operation of the Project, all of which shall be free of liens and shall be subject to the liens of the Deed of Trust and the Financing Statement and executes and delivers to County all documents required by County in connection with the attachment of such liens to such items. Borrower shall keep detailed records of such removal and shall make such records available to County upon written request from time to time.

7.10 Status of Borrower. Borrower shall at all times maintain its legal status and all material licenses, rights, franchises and privileges in the jurisdiction of its formation in good standing and comply with all laws, rules and regulations of California and the United States and of any political subdivision thereof applicable to it or its business.

7.11 Insurance. While any obligation of Borrower under any Loan Document remains outstanding, Borrower shall maintain at Borrower's sole expense, the following policies of insurance in form and substance as follows:

(a) Commercial General Liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

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(b) Commercial Auto Liability insurance covering all owned, non-owned and hired autos with a limit of \$1,000,000 per occurrence);

(c) Statutory Workers' compensation insurance and Employer's Liability with a minimum limit of \$1,000,000 per occurrence (amounts subject to change to ensure proper coverage);

(d) Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" form for 100% of the Replacement Cost Value and no coinsurance provision. (including insurance against loss by flood if the Project is located in an area now or hereafter designated as subject to the danger of flood, but excluding insurance against loss by earthquake);

(e) Rent loss insurance for a period of at least one year;

(f) The Commercial Property policy, shall include a "lender's loss payable endorsement" to the County assuring County that all proceeds shall be paid to County as provided in the Deed of Trust subject to the interests of the senior lenders on the Project. The County shall be an additional named insured on the Commercial General Liability policy, and such insurance shall be primary and any insurance maintained by the County shall be excess and non-contributing. All policies shall waive all rights of subrogation against the County, its elected and appointed officials, officers, agents, and employees. The general liability policy shall contain a severability of interests clause. Certificates of insurance and endorsements for all of the above policies (and/or original policies, if required by the County from time to time), showing the same to be in full force and effect, shall be delivered to the County;

(g) All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Borrower's current audited financial report. If Borrower's SIR is approved, Borrower, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1. In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Borrower, its agents, employee's or subcontractor's performance of this Contract, Borrower shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
2. Borrower's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies,

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and the Borrower's SIR provision shall be interpreted as though the Borrower was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Borrower and Additional Insureds.

If the Borrower fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.
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7.12 Alterations and Repair. Except with the prior consent of the County, during the Qualified Project Period, Borrower shall not remove, demolish or materially alter any improvement constituting the Project, except to make non-structural repairs which preserve or increase the Project's value, and shall promptly restore, in good and workmanlike manner, any said improvement (or other aspect of the Project) that is damaged or destroyed from any cause.

7.13 Changes in Property Restrictions. Borrower shall not initiate, join in or consent to any change in any applicable zoning ordinance, general plan or similar law, or to any private restrictive covenant or any similar public or private restriction on the use of the Project, except with the prior written consent of the County.

7.14 Books, Records and Annual Statement. Borrower shall maintain complete books of account and other records reflecting the construction and operation of the Project in accordance with generally accepted accounting principles applied on a consistent basis. During the Qualified Project Period, the amount of the Residual Receipts (as defined in the Note) shall be determined on the basis of an annual audited financial statement ("Annual Statement"), for the preceding year, beginning with the first year of operation of all or any part of the Project, prepared at the Borrower's expense by an independent certified public account firm acceptable to the County. Such Annual Statement shall be prepared based on the guidelines, and taking into account the information, set forth on Exhibit "C," attached hereto and incorporated herein. During the Qualified Project Period, the Borrower shall submit the Annual Statement and any payment to the County not later than six (6) months after closing of the Borrower's previous year's books. The first Annual Statement submitted by the Borrower for the Loan shall include the period from the Completion of Construction to the close of that year's books. The County shall review and approve such statement, or request revisions, within ninety (90) days after receipt. In the event that as the result of County review, there is an increase in the amount of Residual Receipts, Borrower shall pay to the County the full amount of such increase within ten (10) days of notice of such increases. The terms of this subsection shall not be the exclusive method by which the County may review Residual Receipts payments by the Borrower. In the event that an increase in the amount of Residual Receipts for any annual period is discovered at any time subsequent to the ninety (90) day period for that year's books, no previous action or inaction by the

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County shall prohibit the County from requesting repayment of those amounts at any time during the term of this Agreement or thereafter. The Borrower shall pay to the County the full amount of such increase within thirty (30) days of notice of such increase for periods prior to the previous year.

7.15 Notices of Certain Matters. Borrower shall give notice to County, within ten (10) days after Borrower receives actual knowledge thereof, of each of the following:

(a) Any litigation or claim against the Borrower relating to the Property or the Project and involving an amount in excess of \$25,000 and any litigation or claim that might subject Borrower or any constituent partner of Borrower to liability in excess of \$50,000, whether covered by insurance or not;

(b) Any dispute between Borrower and any governmental or public agency relating to the Property or the Project, the adverse determination of which might materially affect the Project;

(c) Any trade name hereafter used by Borrower and any change in Borrower's principal place of business;

(d) Any Event of Default or event, which, with the giving of notice or the passage of time, without ameliorative action, or both, would constitute an Event of Default;

(e) Any default by Borrower or any other party under any Loan Document or Mortgage Document, or the receipt by Borrower of any notice of default under any Loan Document or Mortgage Document;

(f) The creation or imposition of any mechanics' lien or other lien against the Project;

(g) The presence of any hazardous materials on, under or about the Property or the Project; any enforcement, clean-up, removal or other action or requirement of any local, state or federal governmental or quasi-governmental authority with jurisdiction relating to any such hazardous materials; and the existence of any occurrence of conditions on any property in the vicinity of the Project that could cause any portion of the Project to be classified as "border-zone property" under the provisions of the California Health and Safety Code or any related regulations, or that could cause the Project to be otherwise subject to any restrictions relating to hazardous materials; and

(h) Any material adverse change in the financial condition of Borrower or any of its constituent general partners.

7.16 Further Assurances. Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to County all documents, and take all actions, reasonably required by County from time to time to confirm the rights created or

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now or hereafter intended to be created under the Loan Documents, to protect and further the validity, priority and enforceability of the Loan Documents, to subject to the Loan Documents any property intended by the terms of any Loan Document to be covered by the Loan Documents, or otherwise to carry out the purpose of the Loan Documents and the transactions contemplated thereunder.

7.17 Liens. Borrower shall not cause or suffer to become effective any lien, restriction or other title limitation affecting any part of the Project other than the (i) Regulatory Agreement, the Deed of Trust, the Financing Statement and the liens of the Permitted Financing and (ii) taxes not delinquent.

7.18 Payment of Expenses. Borrower shall pay the County's costs and expenses incurred in connection with the making, disbursement and administration of the Loan, as well as any revisions, transfers, extensions, renewals, modifications, refinancing or "workouts," and providing estoppels or subordinations of the Loan, and in the exercise of any of County's rights or remedies under this Agreement. The County will receive from Borrower a nonrefundable fee in the amount of Five Hundred Dollars (\$500) and Borrower shall reimburse County for all of the County's reasonable out-of-pocket expenses (including reasonable attorney's fees) incurred in the administration and review of such changes, to the extent such expenses exceed Five Hundred Dollars (\$500). Such costs and expenses may include title insurance, recording and escrow charges, survey charges, hazard insurance, premiums, fees for any appraisals and any appraisal reviews, architectural and engineering review, construction services and environmental and toxic services and reviews, zoning and entitlement services and reviews, mortgage taxes, legal fees and any other reasonable fees and costs for services, regardless of whether such services are furnished by the County's employees or agents or independent contractors.

7.19 Loan Monitoring Fees. Unless prohibited by Federal, State or local laws, the Borrower shall pay an annual loan monitoring fee during the Term. Loan monitoring fees shall be incorporated into the operating pro forma. The loan monitoring fee shall include a one time payment ("**One Time Payment**") of Five Hundred Dollars (\$500) to be used for project set-up plus an annual fee ("**Annual Fee**") of [AMOUNT] (\$XXX), which will be used to offset the reasonable costs associated with loan monitoring. The initial One Time Payment fee and initial Annual Fee will be payable to the County at the Close of Escrow. The Annual Fee will be due each subsequent year for the Qualified Project Period on or within thirty (30) days of the day and month that this Agreement was entered into as set forth on page one hereof. Loan monitoring fees will be adjusted annually. The annual adjustment shall be in accordance with the change in the Consumer Price Index for Los Angeles –Anaheim - Riverside (All Urban Consumers – All Items) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. This adjustment shall be calculated by means of the following formula:

$$A = B \times \frac{C}{D}$$

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Where: A = Adjusted Annual Fee

B = Annual Fee (as such Annual Fee may have been previously adjusted)

C = Average monthly index for the most recent twelve-month period

D = Average monthly index for the twelve-month period preceding the date of this Loan Agreement.

In the event that the Consumer Price Index (CPI) ceases to use 1982-84 = 100 as the basis of calculation, or if, in County's sole judgment, a substantial change is made in the method used by the federal government to determine the CPI or the items used to calculate the CPI, then the CPI shall be converted to the figure that would have been calculated at (or as close to such figures as shall be practical) had the manner of calculating the CPI in effect at the date of this Loan Agreement not been altered.

In the event that the CPI is not issued or published for the period for which such minimum Annual Fees are to be adjusted and computed hereunder, or in the even that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government selected by County, shall be used and if none is so published, then another index general recognized as authoritative shall be substituted by County.

In the event that the Borrower is required to pay a monitoring fee or One-Time Payment pursuant to this section any amounts paid towards the monitoring fee or One Time Payment for the HOME/OTHER COUNTY Loan to the Borrower shall be credited to the amount due under this section, such that the maximum monitoring fee and One-Time Payment hereunder combined with the monitoring fee and One-Time Payment for the HOME Loan shall not exceed \$1215, as adjusted in accordance with this section. [Omitted if HOME/OTHER COUNTY funding is not an additional award.]

7.20 Subcontracts.

(a) Upon request of County, or their designated agent, Borrower shall submit any requested Subcontract agreements to the County for review and consent. Any requested Subcontracts shall be submitted to County within forty-eight (48) hours of such request.

(b) Borrower shall assume responsibility for all subcontracted services to assure compliance with this Agreement.

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(c) Borrower shall cause all of the applicable provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

7.21 Relocation. Borrower shall, if applicable, in all matters relating to the Project:

(a) Take all reasonable steps to minimize displacement by providing tenants a reasonable opportunity to lease and occupy dwelling units in the Project being improved, if applicable;

(b) Submit to County a plan outlining financial and advisory assistance in securing temporary housing for any eligible tenant who is temporarily or permanently relocated due to the Project; and,

(c) Comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR 24 in providing relocation assistance for persons displaced by the Project.

(d) Have in effect, and follow a residential anti-displacement and relocation plan required under Section 104 (d) of the Housing and Community Development Act of 1974, as amended, in conjunction with any activity assisted with funds under the subject program.

7.22 HOME Requirements. The Borrower shall carry out the design, construction and operation of the Project, and operate the Program, in conformity with all applicable laws, regulations, and rules of governmental agencies having jurisdiction, including without limitation, the HOME Requirements and the legal requirements set forth in Exhibit No. [X] attached to this Agreement and the statutes referenced therein. For purposes of this paragraph, "HOME Requirements" mean the requirements of the HOME Investment Partnership Act, as amended (42 U.S.C. § 12741, et seq.), and the implementing regulations (24 C.F.R. § 92, et seq.), and the legal requirements summarized or referenced in Exhibit No. D attached hereto and incorporated herein by this reference. [Intentionally Omitted if inapplicable.]

7.23 Mental Health Services Act Requirements. The Borrower shall carry out the design, construction and operation of the Project, and operate the Program, in conformity with all applicable laws, regulations, and rules of governmental agencies having jurisdiction, including without limitation, the requirements set forth in California Welfare and Institutions Code Section 5771.1 *et. seq.* and, without limitation, the requirements found in Exhibit No. D attached to this Agreement. [Intentionally Omitted if inapplicable.]

7.24 Housing Successor Agency/County and/or Project Based Voucher Requirements. The Borrower shall carry out the design, construction and operation of the Project, and operate the Program, in conformity with all applicable laws, regulations, and

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rules of governmental agencies having jurisdiction, including without limitation, the requirements set forth in state and federal law and, without limitation, the requirements found in Exhibit No. D attached to this Agreement. [Intentionally Omitted if inapplicable.]

7.25 Lender Recognition. The owner shall ensure recognition of the role of the County in providing funds through this Agreement. All activities, facilities and items utilized pursuant to the Agreement shall be prominently labeled as to funding source.

7.26 Child Support Enforcement Requirements.

(a) In order to comply with child enforcement requirements of the County, within 30 days of the close of escrow, Borrower agrees to furnish to the County:

1. In the case of an individual Borrower, his/her name, date of birth, Social Security number, and residence address;
2. In the case of an Borrower doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns 10% or more of the Project;
3. A certification that the Borrower has fully complied with all applicable federal and state reporting requirements regarding its employees; and,
4. A certification that the Borrower has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to comply.

(b) The certification will be stated as follows:

"I certify that _____ (company name) _____ is in full compliance with all applicable federal and state reporting requirements for its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to be in compliance throughout the Term of this Agreement with the County of Orange. I understand that failure to comply shall constitute a material breach of the Agreement and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Agreement without costs to the County."

It is expressly understood that this data will be transmitted to government agencies charged with the establishment and enforcement of child support orders and for no other purposes.

Failure of the contractor to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material

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breach of the Agreement. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of this Agreement.

7.27 Labor Standards. To the extent applicable, the Borrower agrees to comply with the requirements of the California Department of Industrial Relations Prevailing Wage Requirements and the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours, the Safety Standards Act, the Copeland “Anti-Kickback” Act (40 U.S.C. 276, 327-333) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Borrower shall maintain documentation, which demonstrates compliance with hour, and wage requirements of this part. Such documentation shall be made available to the County for review upon request. The Borrower agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than twelve (12) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with federal requirements adopted by the County pertaining to such contracts and with the applicable requirements of the regulations of the U.S. Department of Labor, under 29 CFR, Parts 1, 3, 5, 7 and 1926 governing the payment of wages and ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing herein is intended to relieve the Borrower of its obligation, if any, to require payment of the higher rate. The Borrower shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph, for such contracts in excess of \$10,000.00.

7.28 Section 92.252 Qualification as Affordable Housing and Income Targeting Rental Housing.

The requirements of 24 CFR 92.252 are incorporated into this Agreement as if fully set forth herein.

7.29 Section 92.253 Tenant and Participant Protections.

The requirement of 24 CFR 92.253 are incorporated into this Agreement as if fully set forth herein.

7.30 Annual Audit.

Following the Conversion Date and commencing on the date six (6) months after closing of the Borrower’s previous year’s books and every one year anniversary date thereafter during the Term, Borrower shall submit to County the following audit reporting package (the “**Audit Reporting Package**”). [If federal funds are awarded, said Audit Reporting Package shall be in accordance with 2 CFR part 200, subpart F.] County reserves the right to revise the Audit Reporting Package requirements in accordance with any revision to Federal, State or County rules, regulations, ordinances, laws and statutes.

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Unless otherwise required by 2 CFR part 200, the Audit Reporting Package shall include the following:

- (a) Financial Statements for the Project, preferably with a classified Balance Sheet identifying Current Assets and Current Liabilities;
- (b) [Schedule of expenditures of Federal awards;]
- (c) Independent Auditor's report;
- (d) Summary schedule and prior audit findings, if applicable;
- (e) Corrective action plan, if applicable;
- (f) [SF-SAC (Single Audit Collection) Data Collection Form; and]
- (g) Management Letter.

7.31 Operating Reserve

Borrower shall establish an interest bearing account to be known as the Operating Reserve Account. Upon the Conversion Date shall deposit an amount into the Operating Reserve Account sufficient to pay three (3) months of operating expenses and three (3) months of mandatory debt service payments ("Target Balance").

Funds shall be invested subject to the prior written approval of the County, which approval shall not be unreasonably withheld, and any earnings shall become and remain a part of the Operating Reserve. Funds may be drawn only when revenue is insufficient to pay operating expenses. The Borrowers shall not draw funds from the Operating Reserve Account without the prior written approval of the County, which approval shall not be unreasonably withheld.

If the balance in the Operating Reserve Account falls below the amount required to pay three (3) months of operating expenses and three (3) months of mandatory debt service payments, then Borrower shall apply Residual Receipts, when and if available, or other funds, to the replenishment of Operating Reserves until the Target Balance is achieved.

In the event of a failure by the Borrower to pay operating expenses, mandatory debt service payments, or other payments required under the Loan Documents or Mortgage Loan Documents, or during the continuance of an event of default by Borrower under the Loan Documents or Mortgage Loan Documents that would provide for the acceleration of the Loan or Mortgage Loan, then County may, after delivery of notice to Borrower and the expiration of any applicable cure periods, apply the funds in the Operating Reserve Account to the Loan, a Mortgage Loan, or use such funds for the continued operation of the Project.

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7.32 Replacement Reserve

At or before the Conversion Date, Borrower shall establish an interest bearing account to be known as the Replacement Reserve Account. Annually prior to March 31 of each year, Borrower shall deposit into the Replacement Reserve Account an amount equal to three hundred dollars (\$XXX) per unit or such higher amount as may be required by a tax creditor investor or senior Mortgagee and approved by County, which approval shall not be unreasonably withheld. The Funds shall be invested subject to the prior written approval of the County and any earnings shall become and remain a part of the Replacement Reserve. The Borrowers shall not draw funds from the Replacement Reserve Account without the prior written approval of the County, which approval shall not be unreasonably withheld.

Funds may only be drawn from the Replacement Reserve Account to replace or maintain Project assets which have a useful life of more than one (1) year in accordance with Generally Accepted Accounting Principles ("GAAP"), and have been or will be depreciated on the Partnership Tax Return, Form 1040P, filed with the Internal Revenue Service by the Borrower's accountant.

In the event of a failure by the Borrower to adequately maintain the Project, or pay operating expenses, mandatory debt service payments, or other payments required under the Loan Documents or Mortgage Loan Documents, or during the continuance of an event of default by Borrower under the Loan Documents or Mortgage Loan Documents that would provide for the acceleration of the Loan or Mortgage Loan, then County may, after delivery of notice to Borrower and the expiration of any applicable cure periods, apply the funds in the Replacement Reserve Account to the Loan, a Mortgage Loan, or use such funds for the maintenance, improvement, or continued operation of the Project.

ARTICLE VIII

DEFAULT AND REMEDIES

8.1 Events of Default. Each of the following shall constitute an "Event of Default" by Borrower under this Agreement:

(a) Failure to Make Note Payments. Borrower fails to make any payment of principal and/or interest under the Note when due, after ten (10) days notice from County. Any payment that falls due on a non-business day may be made the next succeeding business day without penalty and shall not be considered a past-due payment;

(b) Failure to Make Other Payments. Borrower fails to perform any other obligation for the payment of money (other than payments described in subparagraph (a) above) under any Loan Document within ten (10) days after County gives Borrower written notice that such obligation was not performed or paid for;

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(c) Non-Monetary Failure to Perform. Borrower fails to timely perform, comply with or observe any of the terms, covenants, or conditions of this Agreement or any other Loan Document (other than those provisions elsewhere referred to in this Section 8.1) and such failure continues uncured or without Borrower commencing to diligently cure for thirty (30) days after notice thereof in writing is given by the County to Borrower, provided that if Borrower has commenced cure but cannot complete such cure reasonably within thirty (30) days, Borrower shall have ninety (90) days from the date of notice to cure such failure without such failure constituting an event of default;

(d) Mortgage Loan Document Breach. Any default or breach of Borrower that continues uncured after the expiration of any applicable cure period under any other loan document including, but not limited to, the Mortgage Loan Documents (including but not limited to the Junior HSA Deed of Trust and any related documents);

(e) Voluntary Suspension. The voluntary suspension of Borrower's business or the dissolution or termination of the partnership (if any) constituting Borrower;

(f) Unauthorized Transfer. Borrower's sale or other transfer of the Property or the Project in violation of Section 7.7 above;

(g) Fraud or Material Misstatement or Omissions. Any fraudulent act or omission of Borrower's, or intentional misrepresentation of Borrower's, pertaining to or made in connection with the Loan, Loan Documents or the Project;

(h) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of Borrower, 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) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection 8.1(h) as well; or Borrower 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; or

(i) Project Monies. Borrower's misapplication or embezzlement of Project monies.

8.2 Remedies. The occurrence of any Event of Default shall, either at the option of the County or automatically where so specified, relieve the County of any

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obligation to make or continue the Loan and shall give the County the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents or otherwise available at law or in equity or by statute (and all of the County's rights and remedies shall be cumulative), including but not limited to the following:

(a) Acceleration of Note. The County shall have the right to cause all indebtedness of the Borrower to the County under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest, or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. The Borrower shall be liable to pay the County on demand all expenses, costs and fees (including, without limitation, attorneys' 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 Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The County shall have the right to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the County for any funds advanced by the County to cure a monetary default by Borrower upon demand therefore, together with interest thereon at the rate of twelve percent (12%) per annum (which rate shall in no event exceed the maximum rate permitted by law and if it does, said rate shall be reduced to the maximum rate then permitted by law), from the date of expenditure until the date of reimbursement.

8.3 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 Borrower 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.

8.4 Waiver of Terms and Conditions. No waiver of any default or breach by Borrower hereunder shall be implied from any omission by the County to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent

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breach of the same covenant, term, or condition. The consent or approval by the County to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or the Loan Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the County in the exercise of any right, power, or remedy hereunder or under the Loan Documents, unless in the exercise of any such right, power, or remedy all obligations of Borrower to County are paid and discharged in full.

ARTICLE IX

MISCELLANEOUS

9.1 Approvals Under Agreement. Where this Agreement requires an approval or consent of the County, such approval or consent may be given on behalf of the County by the Director or his or her designee.

9.2 Time. Time is of the essence in this Agreement.

9.3 Notices. Any notice requirement set forth herein shall be in writing and delivered to the appropriate party at the address listed in this subparagraph. Addresses for notice may be changed from time to time by written notice to the other party. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change in address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

Borrower:

[BORROWER TO PROVIDE]

County:

[Orange County Housing Authority]

[County of Orange
OC Community Resources/
Housing & Community Development]
1501 E. St. Andrew Place, 1st Floor,
Santa Ana, CA 92705
Attn: [Executive] Director

ATTACHMENT N 1

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

9.4 No Third Parties Benefitted. This Agreement is made and entered into for the sole protection and benefit of the County, its successors and assigns, and Borrower, its permitted successors and assigns, and no other person or persons shall have any right of action hereon.

9.5 County to File Notices. Borrower irrevocably appoints, designates, and authorizes the County as its agent (said agency being coupled with an interest) to file for record any notice that the County deems necessary or desirable to protect its interest hereunder and under the Loan Documents.

9.6 Actions. The County shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties hereunder, or the disbursement of any proceeds of the Loan.

9.7 Successors and Assigns. The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no assignment of Borrower's rights hereunder shall be made, voluntarily or by operation of law, without the prior written consent of the County as specified in Section 8.7 above, and that any such assignment without said consent shall be void.

9.8 Construction of Words. Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, words imparting persons shall include firms, associations, partnerships and corporations, and words of either gender shall include the other gender.

9.9 Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

9.10 Governing Law and Venue. This Agreement and the Loan Documents and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement or any of the Loan Documents, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

9.11 Amendment. This Agreement may not be changed orally, but only by an agreement in writing signed by Borrower and the County.

ATTACHMENT N 1

9.12 Approvals. Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing.

9.13 Captions and Headings. Captions and headings in this Agreement are for convenience of reference only, and are not to be considered in construing the Agreement.

9.14 Nonliability. By accepting or approving anything required to be performed or given to County under the Loan Documents, including any certificate, financial statement, survey, or insurance policy, County shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by County to anyone.

9.15 Obligations Unconditional and Independent. Notwithstanding the existence at any time of any obligation or liability of County to Borrower, or any claim by Borrower against County, in connection with the Loan or otherwise, Borrower hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Borrower's obligations under the Loan Documents or (b) to claim that the existence of any such obligation, liability or claim excuses the nonperformance by Borrower of any of its obligations under the Loan Documents.

9.16 Survival of Representations and Warranties. All representations and warranties of Borrower in the Loan Documents shall survive the making of the Loan and have been or will be relied on by County notwithstanding any investigation made by County.

9.17 Prior Agreements. This Agreement (together with the other Loan Documents) contains the entire agreement between County and Borrower with respect to the Loan and all prior negotiations, understandings and agreements (including, but not limited to, any commitment letter issued by County to Borrower) are superseded by this Agreement and such Loan Documents.

9.18 Conflicts. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, this Agreement shall prevail; provided, however, that with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

9.19 Waiver of Right to Trial by Jury. Unless prohibited by Federal, State or local laws, each party to this Agreement hereby expressly waives any right to trial by jury of any claim, demand, action or cause of action arising under any Loan Document or in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to any Loan Document, or the transactions related thereto, in each case whether now existing or hereafter arising, and whether sounding in contract or tort or otherwise; and each party hereby agrees and consents that any such claim,

ATTACHMENT N 1

demand, action or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties hereto to the waiver of their right to trial by jury.

9.20. 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. This Agreement shall become effective when the parties have duly executed and delivered signature pages of this Agreement to each other. Delivery of this Agreement shall be effectuated by electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

--SIGNATURE PAGES FOLLOW --

ATTACHMENT N 1

BORROWER:

[SIGNATURE BLOCK]

SAMPLE

ATTACHMENT N 1
COUNTY:

COUNTY OF ORANGE, a political subdivision of the
state of California

By: _____
Julia Bidwell, Director
OC Community Resources,
Housing and Community Development

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By _____
Deputy

Dated _____

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**EXHIBIT A
LEGAL DESCRIPTION**

SAMPLE

ATTACHMENT N 1

EXHIBIT B

EXTREMELY LOW QUALIFIED TENANT/UNIT MIX
[], California

HOME RENT & AFFORDABILITY SCHEDULE

Number of Restricted Units	Number of Bedrooms	* Gross Restricted Rental Rate	**Utility Allowance	***Net Restricted Rental Rate	Income Limit based on Area Median Income (AMI)	Age Restriction (if any)	Project Based Section 8 Units	Number of Years Restricted
Total							Total 0	

* Restricted Rental Rate is based on the 2021 Area Median Income (AMI) published by HUD annually and does not include the utility allowance deduction. UPDATED RENTAL RATE TO BE PROVIDED AT START OF QUALIFIED PROJECT PERIOD.

** Utility allowance is based on the 2022 utility schedule published by the Orange County Housing Authority annually.

*** Rent increases shall be limited to no more than the lower of rent established as affordable based on the Median Income for the Area and the affordability restrictions set forth above, which is adjusted annually by HUD and published by the State of California, as referenced in the Loan Agreement Section 3.1(d) except as otherwise provided in the Loan Agreement Section 3.1(d).

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EXHIBIT C
Annual Statement Guidelines

Gross Revenue

Rental Income (including PBV/VASH income)
Laundry & Miscellaneous

Operating Expenses

Obligated debt service on the Senior Loan
Operating reserves
Replacement reserves (\$-----/unit)
County annual loan monitoring fee
Other public agency monitoring fees, as applicable
Asset management and property management fee
Utility fees
Property taxes
Insurance premiums
Operating and maintenance expenses
Supportive/Resident services

Cash Flow After Debt Service

Soft Lenders (as applicable)

Partnership Management Fees:

- Limited Partner Asset Management Fee in the amount of \$-----
- General Partner Partnership Management Fee in the amount of \$-----
- [combined amount not to exceed \$25,000 per year per the 2023 NOFA]

Deferred developer fee

**Cash Flow Percentage Available for Distribution to the County, as further described
in the Promissory Note**

[]%

County of Orange

County loan accrues at 3% simple interest annually